

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended July 31, 2016

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-07572

PVH CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

13-1166910

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

200 Madison Avenue, New York, New York

(Address of principal executive offices)

10016

(Zip Code)

(212) 381-3500

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(do not check if a smaller  
reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of outstanding shares of common stock, par value \$1.00 per share, of the registrant as of August 26, 2016 was 80,228,987.

SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995: Forward-looking statements in this Quarterly Report on Form 10-Q including, without limitation, statements relating to our future revenue, earnings and cash flows, plans, strategies, objectives, expectations and intentions are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Investors are cautioned that such forward-looking statements are inherently subject to risks and uncertainties, many of which cannot be predicted with accuracy, and some of which might not be anticipated, including, without limitation, (i) our plans, strategies, objectives, expectations and intentions are subject to change at any time at our discretion; (ii) we may be considered to be highly leveraged and we use a significant portion of our cash flows to service our indebtedness, as a result of which we might not have sufficient funds to operate our businesses in the manner we intend or have operated in the past; (iii) the levels of sales of our apparel, footwear and related products, both to our wholesale customers and in our retail stores, the levels of sales of our licensees at wholesale and retail, and the extent of discounts and promotional pricing in which we and our licensees and other business partners are required to engage, all of which can be affected by weather conditions, changes in the economy, fuel prices, reductions in travel, fashion trends, consolidations, repositionings and bankruptcies in the retail industries, repositionings of brands by our licensors and other factors; (iv) our plans and results of operations will be affected by our ability to manage our growth and inventory, including our ability to realize benefits from acquisitions; (v) our operations and results could be affected by quota restrictions and the imposition of safeguard controls (which, among other things, could limit our ability to produce products in cost-effective countries that have the labor and technical expertise needed), the availability and cost of raw materials, our ability to adjust timely to changes in trade regulations and the migration and development of manufacturers (which can affect where our products can best be produced), changes in available factory and shipping capacity, wage and shipping cost escalation, and civil conflict, war or terrorist acts, the threat of any of the foregoing, or political and labor instability in any of the countries where our or our licensees' or other business partners' products are sold, produced or are planned to be sold or produced; (vi) disease epidemics and health related concerns, which could result in closed factories, reduced workforces, scarcity of raw materials and scrutiny or embargoing of goods produced in infected areas, as well as reduced consumer traffic and purchasing, as consumers become ill or limit or cease shopping in order to avoid exposure; (vii) acquisitions and divestitures and issues arising with acquisitions, divestitures and proposed transactions, including, without limitation, the ability to integrate an acquired entity or business into us with no substantial adverse effect on the acquired entity's, the acquired business's or our existing operations, employee relationships, vendor relationships, customer relationships or financial performance, and the disposal of the net assets of a divested entity; (viii) the failure of our licensees to market successfully licensed products or to preserve the value of our brands, or their misuse of our brands; (ix) our results could be adversely affected by the strengthening of the United States dollar against foreign currencies in which we transact significant levels of business; (x) our retirement plan expenses recorded throughout the year are calculated using actuarial valuations that incorporate assumptions and estimates about financial market, economic and demographic conditions, and differences between estimated and actual results give rise to gains and losses that are recorded immediately in earnings, generally in the fourth quarter of the year; and (xi) other risks and uncertainties indicated from time to time in our filings with the Securities and Exchange Commission.

We do not undertake any obligation to update publicly any forward-looking statement, including, without limitation, any estimate regarding revenue, earnings or cash flows, whether as a result of the receipt of new information, future events or otherwise.

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## PART I - FINANCIAL INFORMATION

ITEM 1 - FINANCIAL STATEMENTS

PVH Corp.  
Consolidated Income Statements  
Unaudited  
(In millions, except per share data)

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 31, 2016	August 2, 2015	July 31, 2016	August 2, 2015
Net sales	\$ 1,845.4	\$ 1,765.9	\$ 3,663.1	\$ 3,551.0
Royalty revenue	69.9	75.4	147.0	149.6
Advertising and other revenue	18.0	22.7	41.0	42.7
Total revenue	1,933.3	1,864.0	3,851.1	3,743.3
Cost of goods sold (exclusive of depreciation and amortization)	899.5	861.9	1,810.4	1,755.6
Gross profit	1,033.8	1,002.1	2,040.7	1,987.7
Selling, general and administrative expenses	874.7	850.5	1,739.9	1,665.4
Debt modification and extinguishment costs	15.8	—	15.8	—
Gain to write-up equity investment in joint venture to fair value	—	—	153.1	—
Equity in net (loss) income of unconsolidated affiliates	(0.3)	2.5	(0.5)	8.6
Income before interest and taxes	143.0	154.1	437.6	330.9
Interest expense	29.2	29.2	59.1	60.1
Interest income	1.1	1.2	2.0	2.3
Income before taxes	114.9	126.1	380.5	273.1
Income tax expense	24.4	23.9	58.4	56.8
Net income	90.5	102.2	322.1	216.3
Less: Net loss attributable to redeemable non-controlling interest	—	—	—	—
Net income attributable to PVH Corp.	\$ 90.5	\$ 102.2	\$ 322.1	\$ 216.3
Basic net income per common share attributable to PVH Corp.	\$ 1.12	\$ 1.24	\$ 3.98	\$ 2.62
Diluted net income per common share attributable to PVH Corp.	\$ 1.11	\$ 1.22	\$ 3.95	\$ 2.59
Dividends declared per common share	\$ 0.0375	\$ 0.0375	\$ 0.1125	\$ 0.1125

See accompanying notes.

PVH Corp.  
Consolidated Statements of Comprehensive Income (Loss)  
Unaudited  
(In millions)

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 31, 2016	August 2, 2015	July 31, 2016	August 2, 2015
Net income	\$ 90.5	\$ 102.2	\$ 322.1	\$ 216.3
Other comprehensive (loss) income:				
Foreign currency translation adjustments, net of tax benefit of \$(0.1); \$(0.4); \$(0.1) and \$(0.4)	(99.6)	(124.8)	84.7	(140.1)
Amortization of prior service credit related to pension and postretirement plans, net of tax benefit of \$(0.1); \$(0.1); \$(0.1) and \$(0.1)	(0.0)	(0.0)	(0.1)	(0.1)
Net unrealized and realized gain (loss) related to effective cash flow hedges, net of tax expense (benefit) of \$2.1; \$0.4; \$(3.8) and \$(0.5)	16.9	(6.3)	(38.0)	(23.2)
Net gain on net investment hedge, net of tax expense of \$2.9, \$0.0, \$2.9 and \$0.0	4.9	—	4.9	—
Total other comprehensive (loss) income	(77.8)	(131.1)	51.5	(163.4)
Comprehensive income (loss)	12.7	(28.9)	373.6	52.9
Less: Comprehensive loss attributable to redeemable non-controlling interest	—	—	—	—
Total comprehensive income (loss) attributable to PVH Corp.	\$ 12.7	\$ (28.9)	\$ 373.6	\$ 52.9

See accompanying notes.

PVH Corp.  
Consolidated Balance Sheets  
(In millions, except share and per share data)

	July 31, 2016 <u>UNAUDITED</u>	January 31, 2016 <u>AUDITED</u>	August 2, 2015 <u>UNAUDITED</u>
<b>ASSETS</b>			
Current Assets:			
Cash and cash equivalents	\$ 741.7	\$ 556.4	\$ 466.7
Trade receivables, net of allowances for doubtful accounts of \$15.4, \$18.1 and \$18.8	569.6	657.2	590.2
Other receivables	24.7	28.7	27.6
Inventories, net	1,412.1	1,322.3	1,402.6
Prepaid expenses	156.0	150.5	147.1
Other	34.9	89.4	81.5
Total Current Assets	<u>2,939.0</u>	<u>2,804.5</u>	<u>2,715.7</u>
Property, Plant and Equipment, net	736.0	744.6	708.9
Goodwill	3,536.1	3,219.3	3,220.2
Tradenames	2,818.0	2,802.6	2,806.4
Other Intangibles, net	934.0	843.8	894.2
Other Assets, including deferred taxes of \$11.4, \$12.2 and \$15.7	216.7	259.0	286.7
Total Assets	<u>\$ 11,179.8</u>	<u>\$ 10,673.8</u>	<u>\$ 10,632.1</u>
<b>LIABILITIES, REDEEMABLE NON-CONTROLLING INTEREST AND STOCKHOLDERS' EQUITY</b>			
Current Liabilities:			
Accounts payable	\$ 631.8	\$ 636.1	\$ 551.0
Accrued expenses	703.2	696.3	667.2
Deferred revenue	33.8	32.3	31.0
Short-term borrowings	19.4	25.9	8.1
Current portion of long-term debt	—	136.6	111.7
Total Current Liabilities	<u>1,388.2</u>	<u>1,527.2</u>	<u>1,369.0</u>
Long-Term Debt	3,358.2	3,031.7	3,236.8
Other Liabilities, including deferred taxes of \$872.5, \$836.4 and \$889.4	1,629.8	1,562.6	1,616.5
Redeemable Non-Controlling Interest	0.1	—	—
Stockholders' Equity:			
Preferred stock, par value \$100 per share; 150,000 total shares authorized	—	—	—
Common stock, par value \$1 per share; 240,000,000 shares authorized; 83,872,364; 83,545,818 and 83,479,689 shares issued	83.9	83.5	83.5
Additional paid in capital - common stock	2,844.8	2,822.5	2,797.1
Retained earnings	2,874.1	2,561.2	2,208.2
Accumulated other comprehensive loss	(652.7)	(704.2)	(579.9)
Less: 3,540,949; 2,057,850 and 843,305 shares of common stock held in treasury, at cost	(346.6)	(210.7)	(99.1)
Total Stockholders' Equity	<u>4,803.5</u>	<u>4,552.3</u>	<u>4,409.8</u>
Total Liabilities, Redeemable Non-Controlling Interest and Stockholders' Equity	<u>\$ 11,179.8</u>	<u>\$ 10,673.8</u>	<u>\$ 10,632.1</u>

See accompanying notes.

PVH Corp.  
Consolidated Statements of Cash Flows  
Unaudited  
(In millions)

	Twenty-Six Weeks Ended	
	July 31, 2016	August 2, 2015
<b>OPERATING ACTIVITIES</b>		
Net income	\$ 322.1	\$ 216.3
Adjustments to reconcile to net cash provided by operating activities:		
Depreciation and amortization	153.2	124.0
Equity in net loss (income) of unconsolidated affiliates	0.5	(8.6)
Deferred taxes	(3.8)	(0.8)
Stock-based compensation expense	19.5	20.4
Impairment of long-lived assets	—	1.6
Debt modification and extinguishment costs	15.8	—
Gain to write-up equity investment in joint venture to fair value	(153.1)	—
Changes in operating assets and liabilities:		
Trade receivables, net	97.7	106.0
Inventories, net	(55.6)	(164.6)
Accounts payable, accrued expenses and deferred revenue	(15.9)	(45.0)
Prepaid expenses	(0.8)	(16.4)
Other, net	29.1	90.1
Net cash provided by operating activities	<u>408.7</u>	<u>323.0</u>
<b>INVESTING ACTIVITIES<sup>(1)</sup></b>		
Business acquisitions, net of cash acquired	(157.7)	—
Purchase of property, plant and equipment	(102.8)	(100.9)
Proceeds from sale of building	16.7	—
Contingent purchase price payments	(25.2)	(23.9)
Change in restricted cash	—	20.2
Investments in unconsolidated affiliates	(1.5)	(22.6)
Net cash used by investing activities	<u>(270.5)</u>	<u>(127.2)</u>
<b>FINANCING ACTIVITIES<sup>(1)</sup></b>		
Net payments on short-term borrowings	(6.5)	(0.4)
Proceeds from 2016 facilities, net of related fees	571.1	—
Repayment of Term Loan B in connection with amendment to 2014 facilities	(582.0)	—
Repayment of 2016/2014 facilities	(201.2)	(165.7)
Proceeds from 3 5/8% senior notes, net of related fees	389.6	—
Net proceeds from settlement of awards under stock plans	10.3	5.3
Excess tax benefits from awards under stock plans	0.5	3.4
Cash dividends	(9.2)	(9.4)
Acquisition of treasury shares	(133.9)	(26.8)
Payments of capital lease obligations	(3.6)	(3.8)
Net cash provided (used) by financing activities	<u>35.1</u>	<u>(197.4)</u>
Effect of exchange rate changes on cash and cash equivalents	12.0	(11.0)
Increase (decrease) in cash and cash equivalents	185.3	(12.6)
Cash and cash equivalents at beginning of period	556.4	479.3
Cash and cash equivalents at end of period	<u>\$ 741.7</u>	<u>\$ 466.7</u>

<sup>(1)</sup> See Note 17 for information on Noncash Investing and Financing Transactions.

See accompanying notes.

## 1. GENERAL

PVH Corp. and its consolidated subsidiaries (collectively, the “Company”) constitute a global apparel company whose brand portfolio consists of nationally and internationally recognized brand names, including *Calvin Klein*, *Tommy Hilfiger*, *Van Heusen*, *IZOD*, *ARROW*, *Warner’s* and *Olga*, which are owned, and *Speedo*, which is licensed in perpetuity for North America and the Caribbean, as well as various other owned, licensed and private label brands. The Company designs and markets branded dress shirts, neckwear, sportswear, jeanswear, intimate apparel, swim products, handbags, footwear and other related products and licenses its owned brands over a broad range of products. References to the aforementioned and other brand names are to registered trademarks owned by the Company or licensed to the Company by third parties and are identified by italicizing the brand name.

The consolidated financial statements include the accounts of the Company. Intercompany accounts and transactions have been eliminated in consolidation. Investments in entities that the Company does not control but has the ability to exercise significant influence over are accounted for using the equity method of accounting. The Company’s Consolidated Income Statements include its proportionate share of the net income or loss of these entities. Please see Note 6, “Investments in Unconsolidated Affiliates,” for a further discussion. During the second quarter of 2016, the Company, along with its minority interest partner, formed a joint venture in Ethiopia. The joint venture is consolidated and the minority shareholder’s proportionate share (25%) of the equity in this joint venture is accounted for as a redeemable non-controlling interest. Please see Note 5, “Redeemable Non-Controlling Interest,” for a further discussion.

The Company’s fiscal years are based on the 52-53 week periods ending on the Sunday closest to February 1 of each calendar year and are designated by the calendar year in which the fiscal year commences. References to a year are to the Company’s fiscal year, unless the context requires otherwise.

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information. Accordingly, they do not contain all disclosures required by accounting principles generally accepted in the United States for complete financial statements. Reference is made to the Company’s audited consolidated financial statements, including the notes thereto, included in the Company’s Annual Report on Form 10-K for the year ended January 31, 2016.

The preparation of interim financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from these estimates.

The results of operations for the thirteen and twenty-six weeks ended July 31, 2016 and August 2, 2015 are not necessarily indicative of those for a full fiscal year due, in part, to seasonal factors. The data contained in these financial statements are unaudited and are subject to year-end adjustments. However, in the opinion of management, all known adjustments (which consist of normal recurring accruals) have been made to present fairly the consolidated operating results for the unaudited periods.

The Company records warehousing and distribution expenses as a component of selling, general and administrative expenses in its Consolidated Income Statements. Warehousing and distribution expenses totaled \$57.4 million and \$53.2 million in the thirteen weeks ended July 31, 2016 and August 2, 2015, respectively, and totaled \$115.7 million and \$110.7 million in the twenty-six weeks ended July 31, 2016 and August 2, 2015, respectively.

Certain reclassifications have been made to the consolidated financial statements for the prior year periods to present that information on a basis consistent with the current year.

## 2. INVENTORIES

Inventories are comprised principally of finished goods and are stated at the lower of cost or market. Cost for principally all wholesale inventories in North America and certain wholesale and retail inventories in Asia and Latin America is determined using the first-in, first-out method. Cost for all other inventories is determined using the weighted average cost method. The Company reviews current business trends, inventory aging and discontinued merchandise categories to determine adjustments that it estimates will be needed to liquidate existing clearance inventories and record inventories at the lower of cost or market.

## 3. ACQUISITIONS

The Company acquired on April 13, 2016 the 55% of the ownership interests in TH Asia, Ltd. (“TH China”), its joint venture for *Tommy Hilfiger* in China, that it did not already own. Prior to April 13, 2016, the 45% interest in TH China owned by the Company was accounted for under the equity method of accounting. Following the acquisition of the 55% interest, the results of TH China’s operations were consolidated in the Company’s consolidated financial statements.

TH China began operating the Tommy Hilfiger wholesale and retail distribution businesses in China in 2011 and licensed from a subsidiary of the Company the *Tommy Hilfiger* trademarks for use in connection with these businesses.

The carrying value of the Company’s 45% interest in TH China prior to the acquisition was \$52.5 million. In connection with the acquisition, this investment was remeasured to a fair value of \$205.6 million, resulting in the recognition of a pre-tax noncash gain of \$153.1 million during the first quarter of 2016. Such fair value was estimated based on the fair value of TH China using future operating cash flow projections discounted at a rate of return that accounted for the relative risks of the estimated future cash flows and included an estimated discount for a lack of marketability.

The acquisition date fair value of the consideration for the 55% interest that the Company did not already own was \$265.8 million, consisting of \$263.0 million paid in cash and the elimination of a \$2.8 million pre-acquisition receivable owed to the Company by TH China. Together with the fair value of the Company’s 45% interest, the total fair value of TH China was \$471.4 million. The estimated fair value of assets acquired and liabilities assumed included net assets of \$99.2 million (including \$105.3 million of cash acquired), \$110.6 million of other intangible assets and \$261.6 million of goodwill. The goodwill of \$261.6 million was assigned to the Company’s Tommy Hilfiger International segment. Goodwill is not expected to be deductible for tax purposes.

The other intangible assets of \$110.6 million as of April 13, 2016 included reacquired license rights of \$72.0 million, order backlog of \$26.2 million and customer relationships of \$12.4 million, which are subject to amortization on a straight-line basis over 2.7 years, 0.8 years and 10.0 years, respectively. The Company is still in the process of finalizing the valuation of the assets acquired and liabilities assumed; thus, the allocation of the acquisition consideration is subject to change.

## 4. ASSETS HELD FOR SALE

During 2015, one of the Company’s European subsidiaries entered into an agreement to sell an owned building in Amsterdam, the Netherlands. The Company classified the building as held for sale beginning in the fourth quarter of 2015 and ceased recording depreciation on the building at that time. The building had a carrying value of \$14.7 million as of January 31, 2016, which was determined to be lower than the fair value, less costs to sell, and was included in other current assets in the Company’s Consolidated Balance Sheet in the Calvin Klein International segment.

The Company completed the sale of the building on July 4, 2016 for proceeds of €15.0 million (approximately \$16.7 million based on the exchange rate in effect on that date) and recorded a gain of \$1.5 million, which represented the excess of the proceeds, less costs to sell, over the carrying value on that date. The gain was recorded in selling, general and administrative expenses in the Company’s Consolidated Income Statement during the second quarter of 2016 and was included in the Calvin Klein International segment.

## 5. REDEEMABLE NON-CONTROLLING INTEREST

On June 29, 2016, the Company and Arvind Limited (“Arvind”) formed a joint venture in Ethiopia, PVH Arvind Manufacturing Private Limited Company (“PVH Ethiopia”), in which the Company owns a 75% interest. The Company made an initial contribution of \$0.2 million to PVH Ethiopia at formation and has consolidated the joint venture in its consolidated financial statements. PVH Ethiopia was formed to operate a manufacturing facility that will produce finished products for the Company for distribution primarily in the United States. The Company expects the manufacturing facility will begin operations in 2017.

The shareholders agreement entered into by the parties to the joint venture (the “Shareholders Agreement”) contains a put option under which the non-controlling shareholder can require the Company to purchase all of its shares in the joint venture during various future periods as specified in the Shareholders Agreement. The first such period immediately precedes the ninth anniversary of the date of incorporation of PVH Ethiopia. The Shareholders Agreement also contains call options under which the Company can require the non-controlling shareholder to sell to the Company (i) all or a portion of its shares during various future periods as specified in the Shareholders Agreement; (ii) all of its shares in the event of a change of control of the non-controlling shareholder; or (iii) all of its shares in the event that the non-controlling shareholder ceases to hold at least ten percent of the outstanding shares. The Company’s first call option referred to in clause (i) immediately follows the fifth anniversary of the date of incorporation of PVH Ethiopia. The put and call prices are the fair market value of the shares on the redemption date based upon a multiple of the joint venture’s earnings before interest, taxes, depreciation and amortization for the prior 12 months, less the joint venture’s net debt.

The fair value of the non-controlling interest as of the date of formation of the joint venture was \$0.1 million. The carrying amount of the redeemable non-controlling interest is adjusted to equal the redemption amount at the end of each reporting period, provided that this amount at the end of each reporting period cannot be lower than the initial fair value. Such changes in the redemption amount of the redeemable non-controlling interest are recognized immediately as they occur, since it is probable that the non-controlling interest will become redeemable in the future based on the passage of time. Any adjustment to the redemption amount of the redeemable non-controlling interest is determined after attribution of net income of the redeemable non-controlling interest and will be recognized immediately in retained earnings of the Company. The carrying amount of the redeemable non-controlling interest as of July 31, 2016 was \$0.1 million.

## 6. INVESTMENTS IN UNCONSOLIDATED AFFILIATES

### Karl Lagerfeld

The Company acquired an economic interest of approximately 10% in the parent company of the *Karl Lagerfeld* brand (“Karl Lagerfeld”) during 2014 for \$18.9 million. During the first quarter of 2016, a third party acquired a minority stake in Karl Lagerfeld, diluting the Company’s economic interest to approximately 8%. The Company has significant influence as defined under FASB guidance with respect to this investment, which is being accounted for under the equity method of accounting.

### PVH Australia

The Company formed a joint venture, PVH Brands Australia Pty. Limited (“PVH Australia”), in 2013 in which the Company owns a 50% economic interest. The joint venture has licensed from a subsidiary of the Company since the first quarter of 2014 the rights to distribute and sell certain *Calvin Klein* brand products in Australia, New Zealand and other island nations in the South Pacific. As part of the transaction, the Company contributed to PVH Australia its subsidiaries that were operating the Calvin Klein Jeans businesses in Australia and New Zealand.

During the first quarter of 2015, the Company completed a transaction in which the *Tommy Hilfiger* and *Van Heusen* trademarks in Australia were licensed for certain product categories to subsidiaries of PVH Australia for use in Australia, New Zealand and, in the case of *Tommy Hilfiger*, other island nations in the South Pacific. The *Tommy Hilfiger* trademarks had previously been licensed to a third party and the *Van Heusen* trademarks had previously been licensed to the Company’s joint venture partner in PVH Australia. Additionally, subsidiaries of PVH Australia license other trademarks for certain product categories.

The Company made a net payment of \$21.0 million to PVH Australia during the twenty-six weeks ended August 2, 2015, which represented its 50% share of the joint venture funding for the period. This investment is being accounted for under the equity method of accounting.

### CK India

The Company acquired in 2013 a 51% economic interest in a Calvin Klein joint venture in India that has since been renamed Calvin Klein Arvind Fashion Private Limited (“CK India”). CK India licenses from a subsidiary of the Company the rights to the *Calvin Klein* trademarks in India for certain product categories. CK India was consolidated in the Company’s financial statements during 2013. During the first quarter of 2014, Arvind purchased the Company’s prior joint venture partners’ shares in CK India and, as a result of the entry into a shareholder agreement with different governing arrangements between the Company and Arvind, the Company no longer was deemed to hold a controlling interest in the joint venture. CK India was deconsolidated as a result and the Company began reporting its 51% interest as an equity method investment in the first quarter of 2014.

The Company made a payment of \$1.6 million to CK India during the twenty-six weeks ended August 2, 2015 to contribute its 51% share of the joint venture funding for the period.

#### TH Brazil

The Company formed a joint venture, Tommy Hilfiger do Brasil S.A. (“TH Brazil”), in Brazil in 2012, in which the Company owns a 40% economic interest. TH Brazil licenses from a subsidiary of the Company the rights to the *Tommy Hilfiger* trademarks in Brazil for certain product categories. This investment is being accounted for under the equity method of accounting.

The Company made a payment of \$1.5 million to TH Brazil during the twenty-six weeks ended July 31, 2016 to contribute its 40% share of the joint venture funding for the period.

#### TH India

The Company acquired in 2011 a 50% economic interest in a company that has since been renamed Tommy Hilfiger Arvind Fashion Private Limited (“TH India”). TH India licenses from a Company subsidiary the rights to the *Tommy Hilfiger* trademarks in India for certain product categories. This investment is being accounted for under the equity method of accounting. Arvind, the Company’s joint venture partner in PVH Ethiopia and in CK India, is also the Company’s joint venture partner in TH India.

#### TH China

The Company formed TH China as a joint venture in 2010. This investment was accounted for under the equity method of accounting until April 13, 2016, on which date the Company acquired the 55% of the ownership interests in TH China that it did not already own. Please see Note 3, “Acquisitions,” for a further discussion.

#### Total Investments in Unconsolidated Affiliates

Included in other assets in the Company’s Consolidated Balance Sheets as of July 31, 2016, January 31, 2016 and August 2, 2015 is \$94.6 million, \$140.7 million (of which \$52.9 million related to TH China) and \$134.7 million (of which \$47.4 million related to TH China), respectively, related to these investments in unconsolidated affiliates.

## 7. GOODWILL

The changes in the carrying amount of goodwill for the twenty-six weeks ended July 31, 2016, by segment (please see Note 18, "Segment Data," for a further discussion of the Company's reportable segments), were as follows:

(In millions)	Calvin Klein North America	Calvin Klein International	Tommy Hilfiger North America	Tommy Hilfiger International	Heritage Brands Wholesale	Heritage Brands Retail	Total
<b>Balance as of January 31, 2016</b>							
Goodwill, gross	\$ 728.0	\$ 841.5	\$ 204.4	\$ 1,208.4	\$ 237.0	\$ 11.9	\$ 3,231.2
Accumulated impairment losses	—	—	—	—	—	(11.9)	(11.9)
Goodwill, net	728.0	841.5	204.4	1,208.4	237.0	—	3,219.3
Contingent purchase price payments to Mr. Calvin Klein	13.9	9.7	—	—	—	—	23.6
Acquisition of TH China	—	—	—	261.6	—	—	261.6
Currency translation	0.2	16.7	—	14.9	(0.2)	—	31.6
<b>Balance as of July 31, 2016</b>							
Goodwill, gross	742.1	867.9	204.4	1,484.9	236.8	11.9	3,548.0
Accumulated impairment losses	—	—	—	—	—	(11.9)	(11.9)
Goodwill, net	\$ 742.1	\$ 867.9	\$ 204.4	\$ 1,484.9	\$ 236.8	\$ —	\$ 3,536.1

The Company is required to make contingent purchase price payments to Mr. Calvin Klein in connection with the Company's acquisition in 2003 of all of the issued and outstanding stock of Calvin Klein, Inc. and certain affiliated companies (collectively, "Calvin Klein"). Such payments are based on 1.15% of total worldwide net sales, as defined in the acquisition agreement (as amended), of products bearing any of the *Calvin Klein* brands and are required to be made with respect to sales made through February 12, 2018. A significant portion of the sales on which the payments to Mr. Klein are made are wholesale sales by the Company and its licensees and other partners to retailers.

## 8. RETIREMENT AND BENEFIT PLANS

The Company has five qualified defined benefit pension plans as of July 31, 2016 covering substantially all employees resident in the United States who meet certain age and service requirements. The plans provide monthly benefits upon retirement generally based on career average compensation and years of credited service. Vesting in plan benefits generally occurs after five years of service. The Company refers to these five noncontributory plans as its "Pension Plans."

The Company also has for certain members of Tommy Hilfiger's domestic senior management a supplemental executive retirement plan, which is an unfunded non-qualified supplemental defined benefit pension plan. Such plan is frozen and, as a result, participants do not accrue additional benefits. In addition, the Company has a capital accumulation program, which is an unfunded non-qualified supplemental defined benefit plan. Under the individual participants' agreements, the participants in this plan will receive a predetermined amount during the 10 years following the attainment of age 65, provided that prior to the termination of employment with the Company, the participant has been in the plan for at least 10 years and has attained age 55. The Company also has for certain employees resident in the United States who meet certain age and service requirements an unfunded non-qualified supplemental defined benefit pension plan, which provides benefits for compensation in excess of Internal Revenue Service earnings limits and requires payments to vested employees upon, or shortly after, employment termination or retirement. The Company refers to these three noncontributory plans as its "SERP Plans."

The Company also provides certain postretirement health care and life insurance benefits to certain retirees resident in the United States. Retirees contribute to the cost of this plan, which is unfunded. During 2002, the postretirement plan was amended to eliminate the Company contribution, which partially subsidized benefits, for active participants who, as of January 1, 2003, had not attained age 55 and 10 years of service. As a result of the Company's acquisition of The Warnaco Group, Inc. ("Warnaco") in 2013, the Company also provides certain postretirement health care and life insurance benefits to certain Warnaco retirees resident in the United States. Retirees contribute to the cost of this plan, which is unfunded. This plan was frozen on January 1, 2014. The Company refers to these two plans as its "Postretirement Plans."

Net benefit cost related to the Company's Pension Plans was recognized in selling, general and administrative expenses in the Company's Consolidated Income Statements as follows:

(In millions)	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>7/31/16</u>	<u>8/2/15</u>	<u>7/31/16</u>	<u>8/2/15</u>
Service cost, including plan expenses	\$ 6.1	\$ 8.2	\$ 12.6	\$ 15.3
Interest cost	7.4	6.8	14.9	13.9
Expected return on plan assets	(8.9)	(10.4)	(17.9)	(21.2)
Total	<u>\$ 4.6</u>	<u>\$ 4.6</u>	<u>\$ 9.6</u>	<u>\$ 8.0</u>

Net benefit cost related to the Company's SERP Plans was recognized in selling, general and administrative expenses in the Company's Consolidated Income Statements as follows:

(In millions)	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>7/31/16</u>	<u>8/2/15</u>	<u>7/31/16</u>	<u>8/2/15</u>
Service cost, including plan expenses	\$ 0.9	\$ 1.5	\$ 2.2	\$ 2.8
Interest cost	0.9	0.9	1.9	1.8
Total	<u>\$ 1.8</u>	<u>\$ 2.4</u>	<u>\$ 4.1</u>	<u>\$ 4.6</u>

Net benefit cost related to the Company's Postretirement Plans was recognized in selling, general and administrative expenses in the Company's Consolidated Income Statements as follows:

(In millions)	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>7/31/16</u>	<u>8/2/15</u>	<u>7/31/16</u>	<u>8/2/15</u>
Interest cost	\$ 0.1	\$ 0.1	\$ 0.3	\$ 0.3
Amortization of prior service credit	(0.1)	(0.1)	(0.2)	(0.2)
Total	<u>\$ 0.0</u>	<u>\$ 0.0</u>	<u>\$ 0.1</u>	<u>\$ 0.1</u>

Currently, the Company expects to make a contribution of approximately \$6.9 million to its Pension Plans in 2016. The Company's actual contributions may differ from planned contributions due to many factors including changes in tax and other benefit laws, or significant differences between expected and actual pension asset performance or interest rates.

## 9. DEBT

### Short-Term Borrowings

One of the Company's Asian subsidiaries has yen-denominated short-term lines of credit and overdraft facilities with a number of Japanese banks at various interest rates that provide for borrowings of up to ¥2,200.0 million (approximately \$21.3 million based on exchange rates in effect on July 31, 2016) and are utilized primarily to fund working capital needs. As of July 31, 2016, the Company had \$19.4 million of borrowings outstanding under this facility. The weighted average interest rate on the funds borrowed at July 31, 2016 was 0.28%. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$19.4 million.

One of the Company's Asian subsidiaries has a won-denominated overdraft facility with a South Korean bank that provides for borrowings of up to ₩3,500.0 million (approximately \$3.1 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility are unsecured and bear interest at the South Korean bank three-month certificate of deposit rate plus 1.50%. There were no borrowings outstanding under this facility as of or during the twenty-six weeks ended July 31, 2016.

One of the Company's Asian subsidiaries has a United States dollar-denominated short-term revolving credit facility with a bank that provides for borrowings of up to \$10.0 million and is utilized primarily to fund working capital needs. Borrowings

under this facility bear interest at the one-month London interbank borrowing rate (“LIBOR”) plus 1.50%. At the end of each month, amounts outstanding under this facility may be carried forward for additional one-month periods for up to one year. This facility is subject to certain terms and conditions and may be terminated at any time at the discretion of the bank. There were no borrowings outstanding under this facility as of or during the twenty-six weeks ended July 31, 2016.

One of the Company’s European subsidiaries has euro-denominated short-term revolving notes with a number of banks at various interest rates, as well as overdraft facilities, that provide for borrowings of up to €60.0 million (approximately \$66.7 million based on exchange rates in effect on July 31, 2016) and are used primarily to fund working capital needs. There were no borrowings outstanding under these facilities as of or during the twenty-six weeks ended July 31, 2016.

One of the Company’s European subsidiaries has a United States dollar-denominated short-term line of credit facility with a Turkish bank that provides for borrowings of up to \$3.7 million and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Turkish overnight lending rate plus 3.00%. As of July 31, 2016, the Company had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$3.3 million.

One of the Company’s European subsidiaries has a Turkish lira-denominated short-term line of credit facility with a Turkish bank that provides for borrowings of up to lira 3.0 million (approximately \$1.0 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Turkish overnight lending rate plus 4.00%. As of July 31, 2016, the Company had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$0.9 million.

One of the Company’s Mexican subsidiaries has a peso-denominated short-term revolving credit facility with a Mexican bank that provides for borrowings of up to ₱161.1 million (approximately \$8.5 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Interbank Equilibrium Interest Rate plus 0.90%. As of July 31, 2016, the Company had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was equal to the maximum amount of borrowings available under this facility.

One of the Company’s Latin American subsidiaries has a Brazilian real-denominated short-term revolving credit facility with a Brazilian bank that provides for borrowings of up to R\$25.0 million (approximately \$7.6 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility are unsecured. There were no borrowings outstanding as of or during the twenty-six weeks ended July 31, 2016.

The Company also has the ability to draw revolving borrowings under its senior secured credit facilities as discussed in the section entitled “2016 Senior Secured Credit Facilities” below. As of July 31, 2016, the Company had no borrowings outstanding under these facilities. The maximum amount of revolving borrowings outstanding under these facilities during the twenty-six weeks ended July 31, 2016 was \$15.3 million.

#### Long-Term Debt

The carrying amounts of the Company’s long-term debt were as follows:

(In millions)	7/31/16	8/2/15
Senior secured Term Loan A facility due 2021	\$ 2,187.3	\$ 1,853.3
Senior secured Term Loan B facility	—	707.9
4 1/2% senior unsecured notes due 2022	689.6	688.0
7 3/4% debentures due 2023	99.4	99.3
3 5/8% senior unsecured notes due 2024	381.9	—
Total	3,358.2	3,348.5
Less: Current portion of long-term debt	—	111.7
Long-term debt	\$ 3,358.2	\$ 3,236.8

Please see Note 12, “Fair Value Measurements,” for the fair value of the Company’s long-term debt as of July 31, 2016 and August 2, 2015.

As of July 31, 2016, the Company's mandatory long-term debt repayments for the next five years were as follows:

(In millions)	
Remainder of 2016	\$ —
2017	56.1
2018	161.4
2019	220.1
2020	234.7
2021	1,525.8

Total debt repayments for the next five years exceed the carrying amount of the Company's Term Loan A facility as of July 31, 2016 because the carrying amount reflects the unamortized portions of debt issuance costs and the original issue discounts.

As of July 31, 2016, after taking into account the effect of the Company's interest rate swap agreements discussed in the section below entitled "2016 Senior Secured Credit Facilities," which were in effect as of such date, approximately 65% of the Company's long-term debt had a fixed interest rate, with the remainder at variable interest rates.

#### 2014 Senior Secured Credit Facilities

On March 21, 2014, the Company entered into an amendment to its senior secured credit facilities (as amended, the "2014 facilities"). The 2014 facilities consisted of a \$1,986.3 million United States dollar-denominated Term Loan A facility, a \$1,188.6 million United States dollar-denominated Term Loan B facility and senior secured revolving credit facilities consisting of (a) a \$475.0 million United States dollar-denominated revolving credit facility, (b) a \$25.0 million United States dollar-denominated revolving credit facility available in United States dollars or Canadian dollars and (c) a €185.9 million euro-denominated revolving credit facility available in euro, pounds sterling, Japanese yen or Swiss francs.

On May 19, 2016, the Company amended the 2014 facilities, as discussed in the following section.

#### 2016 Senior Secured Credit Facilities

On May 19, 2016 (the "Amendment Date"), the Company entered into an amendment (the "Amendment") to the 2014 facilities (as amended by the Amendment, the "2016 facilities"). Among other things, the Amendment provided for an additional \$582.0 million principal amount of loans under the Term Loan A facility, the repayment of all outstanding loans under the Term Loan B facility and the termination of the Term Loan B facility. In addition, the Amendment extended the maturity of the Term Loan A and the revolving credit facilities from February 13, 2019 to May 19, 2021. On the Amendment Date, the Company borrowed the additional \$582.0 million principal amount of loans under the Term Loan A facility made available pursuant to the Amendment and used the proceeds of such borrowings to repay the \$582.0 million principal amount of loans outstanding under the Term Loan B facility under the 2014 facilities.

The 2016 facilities consist of a \$2,347.4 million United States dollar-denominated Term Loan A facility and senior secured revolving credit facilities consisting of (a) a \$475.0 million United States dollar-denominated revolving credit facility, (b) a \$25.0 million United States dollar-denominated revolving credit facility available in United States dollars or Canadian dollars and (c) a €185.9 million euro-denominated revolving credit facility available in euro, pounds sterling, Japanese yen or Swiss francs. In connection with entering into the Amendment, the Company paid debt issuance costs of \$10.9 million (of which \$4.6 million was expensed as debt modification costs and \$6.3 million is being amortized over the term of the related debt agreement) and recorded debt extinguishment costs of \$11.2 million to write-off previously capitalized debt issuance costs.

The revolving credit facilities also include amounts available for letters of credit. As of July 31, 2016, the Company had \$24.1 million of outstanding letters of credit. There were no borrowings outstanding under the revolving credit facilities. A portion of each of the United States dollar-denominated revolving credit facilities is also available for the making of swingline loans. The issuance of such letters of credit and the making of any swingline loan reduces the amount available under the applicable revolving credit facility. So long as certain conditions are satisfied, the Company may add one or more term loan facilities or increase the commitments under the revolving credit facilities by an aggregate amount not to exceed the sum of (1) the sum of (x) \$1,350.0 million plus (y) the aggregate amount of all voluntary prepayments of loans under the Term Loan A and the revolving credit facilities (to the extent, in the case of voluntary prepayments of loans under the revolving credit facilities, there is an equivalent permanent reduction of the revolving commitments) plus (z) an amount equal to the aggregate revolving commitments of any defaulting lender (to the extent the commitments with respect thereto have been terminated) and (2) an

additional unlimited amount as long as the ratio of the Company's senior secured net debt to consolidated adjusted earnings before interest, taxes, depreciation and amortization (in each case calculated as set forth in the documentation relating to the 2016 facilities) would not exceed 3 to 1 after giving pro forma effect to the incurrence of such increase. The lenders under the 2016 facilities are not required to provide commitments with respect to such additional facilities or increased commitments.

The terms of the Term Loan A facility require the Company to make quarterly repayments of amounts outstanding under the 2016 facilities, which commenced with the calendar quarter ended June 30, 2016. Such amounts equal 5.00% per annum of the principal amount outstanding on the Amendment Date for the first eight calendar quarters following the Amendment Date, 7.50% per annum of the principal amount for the four quarters thereafter and 10.00% per annum of the principal amount for the remaining quarters, in each case paid in equal installments and in each case subject to certain customary adjustments, with the balance due on the maturity date of the Term Loan A facility.

The Company made payments of \$201.2 million and \$165.7 million during the twenty-six weeks ended July 31, 2016 and August 2, 2015, respectively, on its term loans under the 2014 and 2016 facilities. As a result of the voluntary repayments made by the Company, as of July 31, 2016, the Company had satisfied its mandatory long-term debt repayment requirements for the next twelve months. The Company had term loans outstanding of \$2,187.3 million, net of original issue discounts and debt issuance costs, as of July 31, 2016.

The Company's obligations under the 2016 facilities are guaranteed by substantially all of its existing and future direct and indirect United States subsidiaries, with certain exceptions. Obligations of the European borrower under the 2016 facilities are guaranteed by the Company, substantially all of the Company's existing and future direct and indirect United States subsidiaries (with certain exceptions) and Tommy Hilfiger Europe B.V., one of the Company's wholly owned subsidiaries. The Company and its United States subsidiary guarantors have pledged certain of their assets as security for the obligations under the 2016 facilities.

The outstanding borrowings under the 2016 facilities are prepayable at any time without penalty (other than customary breakage costs). The terms of the 2016 facilities require the Company to repay certain amounts outstanding thereunder with (a) net cash proceeds of the incurrence of certain indebtedness, (b) net cash proceeds of certain asset sales or other dispositions (including as a result of casualty or condemnation) that exceed certain thresholds, to the extent such proceeds are not reinvested or committed to be reinvested in the business in accordance with customary reinvestment provisions, and (c) a percentage of excess cash flow that exceeds the voluntary debt payments the Company has made during the applicable year, which percentage is based upon its net leverage ratio during the relevant fiscal period.

The United States dollar-denominated borrowings under the 2016 facilities bear interest at a rate equal to an applicable margin plus, as determined at the Company's option, either (a) a base rate determined by reference to the greater of (i) the prime rate, (ii) the United States federal funds rate plus 1/2 of 1.00% and (iii) a one-month adjusted Eurocurrency rate plus 1.00% or (b) an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The Canadian dollar-denominated borrowings under the 2016 facilities bear interest at a rate equal to an applicable margin plus, as determined at the Company's option, either (a) a Canadian prime rate determined by reference to the greater of (i) the rate of interest per annum that Royal Bank of Canada establishes at its main office in Toronto, Ontario as the reference rate of interest in order to determine interest rates for loans in Canadian dollars to its Canadian borrowers and (ii) the sum of (x) the average of the rates per annum for Canadian dollar bankers' acceptances having a term of one month that appears on the display referred to as "CDOR Page" of Reuters Monitor Money Rate Services as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the administrative agent (and if such screen is not available, any successor or similar service as may be selected by the administrative agent), and (y) 0.75%, or (b) an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The borrowings under the 2016 facilities in currencies other than United States dollars or Canadian dollars bear interest at a rate equal to an applicable margin plus an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The current applicable margin with respect to the Term Loan A facility and each revolving credit facility is 1.50% for adjusted Eurocurrency rate loans and 0.50% for base rate loans, respectively. After the date of delivery of the compliance certificate and financial statements with respect to each of the Company's fiscal quarters, the applicable margin for borrowings under the Term Loan A facility and the revolving credit facilities is subject to adjustment based upon the Company's net leverage ratio.

The 2016 facilities contain customary events of default, including but not limited to nonpayment; material inaccuracy of representations and warranties; violations of covenants; certain bankruptcies and liquidations; cross-default to material indebtedness; certain material judgments; certain events related to the Employee Retirement Income Security Act of 1974, as

amended; certain events related to certain of the guarantees by the Company and certain of its subsidiaries, and certain pledges of the Company's assets and those of certain of the Company's subsidiaries, as security for the obligations under the 2016 facilities; and a change in control (as defined in the 2016 facilities).

During the second quarter of 2014, the Company entered into an interest rate cap agreement for an 18-month term commencing on August 18, 2014. The agreement was designed with the intended effect of capping the interest rate on an initial notional amount of \$514.2 million of the Company's variable rate debt obligation under the 2014 facilities or any replacement facility with similar terms. Under the terms of this agreement, the one-month LIBOR that the Company paid was capped at a rate of 1.50%. Therefore, the maximum amount of interest that the Company would have paid on the then-outstanding notional amount was at the 1.50% capped rate, plus the current applicable margin. The agreement expired on February 17, 2016.

During the second quarter of 2014, the Company entered into an interest rate swap agreement for a two-year term commencing on February 17, 2016. The agreement was designed with the intended effect of converting an initial notional amount of \$682.6 million of the Company's variable rate debt obligation under the 2014 facilities or any replacement facility with similar terms, including the 2016 facilities, to fixed rate debt. Such agreement remains outstanding with a notional amount of \$665.3 million as of July 31, 2016, and is now converting a portion of the Company's variable rate debt obligation under the 2016 facilities to fixed rate debt. Under the terms of the agreement for the then-outstanding notional amount, the Company's exposure to fluctuations in the one-month LIBOR is eliminated and the Company will pay a weighted average fixed rate of 1.924%, plus the current applicable margin.

During the second quarter of 2013, the Company entered into an interest rate swap agreement for a three-year term commencing on August 19, 2013. The agreement was designed with the intended effect of converting an initial notional amount of \$1,228.8 million of the Company's variable rate debt obligation under the Company's previously outstanding facilities or any replacement facility with similar terms, including the 2016 facilities, to fixed rate debt. Such agreement remained outstanding with a notional amount of \$427.4 million as of July 31, 2016, and was converting a portion of the Company's variable rate debt obligation under the 2016 facilities to fixed rate debt. Under the terms of the agreement for the then-outstanding notional amount, the Company's exposure to fluctuations in the one-month LIBOR was eliminated and the Company paid a fixed rate of 0.604%, plus the current applicable margin. The agreement expired on August 17, 2016.

The notional amount of any outstanding interest rate swap will be adjusted according to a pre-set schedule during the term of the applicable swap agreement such that, based on the Company's projections for future debt repayments, the Company's outstanding debt under the Term Loan A facility is expected to always equal or exceed the combined notional amount of the then-outstanding interest rate swaps.

The 2016 facilities also contain covenants that restrict the Company's ability to finance future operations or capital needs, to take advantage of other business opportunities that may be in its interest or to satisfy its obligations under its other outstanding debt. These covenants restrict its ability to, among other things:

- incur or guarantee additional debt or extend credit;
- make restricted payments, including paying dividends or making distributions on, or redeeming or repurchasing, the Company's capital stock or certain debt;
- make acquisitions and investments;
- dispose of assets;
- engage in transactions with affiliates;
- enter into agreements restricting the Company's subsidiaries' ability to pay dividends;
- create liens on the Company's assets or engage in sale/leaseback transactions; and
- effect a consolidation or merger, or sell, transfer, or lease all or substantially all of the Company's assets.

The 2016 facilities require the Company to comply with certain financial covenants, including minimum interest coverage and maximum net leverage. A breach of any of these operating or financial covenants would result in a default under the applicable facility. If an event of default occurs and is continuing, the lenders could elect to declare all amounts then outstanding, together with accrued interest, to be immediately due and payable which would result in acceleration of its other debt. If the Company were unable to repay any such borrowings when due, the lenders could proceed against their collateral, which also secures some of the Company's other indebtedness.

#### 4 1/2% Senior Notes Due 2022

On December 20, 2012, the Company issued \$700.0 million principal amount of 4 1/2% senior notes due December 15, 2022. The Company paid \$16.3 million of fees during 2013 in connection with the issuance of these notes, which are amortized over the term of the notes. The Company may redeem some or all of these notes at any time prior to December 15, 2017 by paying a “make whole” premium plus any accrued and unpaid interest. In addition, the Company may redeem some or all of these notes on or after December 15, 2017 at specified redemption prices plus any accrued and unpaid interest. The Company’s ability to pay cash dividends and make other restricted payments is limited, in each case, over specified amounts as defined in the indenture governing the notes.

#### 7 3/4% Debentures Due 2023

The Company has outstanding \$100.0 million of debentures due November 15, 2023 with a yield to maturity of 7.80%. The debentures accrue interest at the rate of 7 3/4%. Pursuant to the indenture governing the debentures, the Company must maintain a certain level of stockholders’ equity in order to pay cash dividends and make other restricted payments, as defined in the indenture governing the debentures.

#### 3 5/8% Senior Notes Due 2024

On June 20, 2016, the Company issued €350.0 million euro-denominated principal amount of 3 5/8% senior notes due July 15, 2024. Interest on the notes is payable in euros. The Company paid €6.4 million (approximately \$7.3 million based on exchange rates in effect on the payment date) of fees during the second quarter of 2016 in connection with the issuance of these notes, which are amortized over the term of the notes. The Company may redeem some or all of these notes at any time prior to April 15, 2024 by paying a “make whole” premium plus any accrued and unpaid interest. In addition, the Company may redeem some or all of these notes on or after April 15, 2024 at their principal amount plus any accrued and unpaid interest.

Substantially all of the Company’s assets have been pledged as collateral to secure the Company’s obligations under its senior secured credit facilities, the 7 3/4% debentures due 2023 and contingent purchase price payments to Mr. Calvin Klein as discussed in Note 7, “Goodwill.”

### 10. INCOME TAXES

The effective income tax rates for the thirteen weeks ended July 31, 2016 and August 2, 2015 were 21.2% and 19.0%, respectively. The effective income tax rates for the twenty-six weeks ended July 31, 2016 and August 2, 2015 were 15.3% and 20.8%, respectively.

The effective income tax rates for the thirteen and twenty-six weeks ended July 31, 2016 were lower than the United States statutory rate due to the benefit of lower tax rates in international jurisdictions where the Company files tax returns. Also contributing to the lower effective income tax rate for the twenty-six weeks ended July 31, 2016 was the benefit of certain discrete items, including the lower tax rate applicable to the pre-tax gain recorded to write-up the Company’s existing equity investment in TH China to fair value.

The effective income tax rates for the thirteen and twenty-six weeks ended August 2, 2015 were lower than the United States statutory rate due to the benefit of lower tax rates in international jurisdictions where the Company files tax returns.

### 11. DERIVATIVE FINANCIAL INSTRUMENTS

#### Cash Flow Hedges

The Company has exposure to changes in foreign currency exchange rates related to anticipated cash flows associated with certain international inventory purchases. The Company periodically uses foreign currency forward exchange contracts to hedge against a portion of this exposure.

The Company also has exposure to interest rate volatility related to its term loans under the 2016 facilities. The Company has entered into interest rate swap agreements to hedge against a portion of this exposure. The Company had also entered into an interest rate cap agreement, which expired on February 17, 2016. Please see Note 9, “Debt,” for a further discussion of the Company’s facilities and these agreements.

The Company records the foreign currency forward exchange contracts and interest rate contracts at fair value in its Consolidated Balance Sheets, and does not net the related assets and liabilities. Changes in fair value of the foreign currency forward exchange contracts associated with certain international inventory purchases and the interest rate contracts that are designated as effective hedging instruments (collectively referred to as “cash flow hedges”) are recorded in equity as a component of accumulated other comprehensive loss (“AOCL”). The cash flows from such hedges are presented in the same category in the Company’s Consolidated Statements of Cash Flows as the items being hedged. No amounts were excluded from effectiveness testing. There was no ineffective portion of cash flow hedges during the twenty-six weeks ended July 31, 2016 and August 2, 2015.

#### Net Investment Hedge

The Company has exposure to changes in foreign currency exchange rates related to the value of its investments in foreign subsidiaries denominated in a currency other than the United States dollar. To hedge against a portion of this exposure, during the second quarter of 2016, the Company designated the carrying amount of its €350.0 million euro-denominated principal amount of 3 5/8% senior notes due 2024 (the “foreign currency borrowings”) that it had issued in the United States as a net investment hedge of its investments in certain of its foreign subsidiaries that use the euro as their functional currency. Please see Note 9, “Debt,” for a further discussion of the Company’s foreign currency borrowings.

The Company records the foreign currency borrowings at carrying value in its Consolidated Balance Sheets. The carrying value of the foreign currency borrowings is remeasured as of the end of each reporting period to reflect changes in the foreign currency exchange spot rate. Since the foreign currency borrowings are designated as a net investment hedge, such remeasurement is recorded in equity as a component of AOCL. As of July 31, 2016, the fair value and the carrying value of the foreign currency borrowings designated as a net investment hedge was \$406.5 million and \$381.9 million, respectively. The Company evaluates the effectiveness of its net investment hedge as of the beginning of each quarter. No amounts were excluded from effectiveness testing. There was no ineffective portion of the net investment hedge during the twenty-six weeks ended July 31, 2016.

#### Undesignated Contracts

The Company records immediately in earnings changes in the fair value of hedges that are not designated as effective hedging instruments (“undesignated contracts”), including all of the foreign currency forward exchange contracts related to intercompany loans that are not of a long-term investment nature. Any gains and losses that are immediately recognized in earnings on such contracts related to intercompany loans are largely offset by the remeasurement of the underlying intercompany loan balances.

In addition, the Company has exposure to changes in foreign currency exchange rates related to the translation of the earnings of its subsidiaries denominated in a currency other than the United States dollar. To hedge against a portion of this exposure, the Company entered into several foreign currency option contracts during the second quarter of 2016. These contracts represent the Company’s purchase of euro put/United States dollar call options. In connection with the foreign currency option contracts, the Company paid a cash premium of \$1.1 million during the second quarter of 2016.

The Company’s foreign currency option contracts are also undesignated contracts. As such, the changes in the fair value of these foreign currency option contracts are recognized immediately in earnings. This mitigates the effect of a strengthening United States dollar against the euro on the reporting of the Company’s euro-denominated earnings.

The Company does not use derivative or non-derivative financial instruments for trading or speculative purposes.

The following table summarizes the fair value and presentation of the Company's derivative financial instruments in its Consolidated Balance Sheets:

(In millions)	Assets (Classified in Other Current Assets and Other Assets)			Liabilities (Classified in Accrued Expenses and Other Liabilities)		
	7/31/16	1/31/16	8/2/15	7/31/16	1/31/16	8/2/15
	Contracts designated as cash flow hedges:					
Foreign currency forward exchange contracts (inventory purchases)	\$ 6.8	\$ 24.9	\$ 46.6	\$ 12.5	\$ 1.7	\$ 3.2
Interest rate contracts	—	—	0.3	17.0	20.6	14.4
<b>Total contracts designated as cash flow hedges</b>	<b>6.8</b>	<b>24.9</b>	<b>46.9</b>	<b>29.5</b>	<b>22.3</b>	<b>17.6</b>
Undesignated contracts:						
Foreign currency forward exchange contracts	1.8	19.3	18.2	0.7	0.1	0.4
Foreign currency option contracts	1.0	—	—	—	—	—
<b>Total undesignated contracts</b>	<b>2.8</b>	<b>19.3</b>	<b>18.2</b>	<b>0.7</b>	<b>0.1</b>	<b>0.4</b>
<b>Total</b>	<b>\$ 9.6</b>	<b>\$ 44.2</b>	<b>\$ 65.1</b>	<b>\$ 30.2</b>	<b>\$ 22.4</b>	<b>\$ 18.0</b>

At July 31, 2016, the notional amount outstanding of foreign currency forward exchange contracts and foreign currency option contracts was \$925.9 million and \$50.0 million, respectively. Such contracts expire principally between August 2016 and January 2018.

The following table summarizes the effect of the Company's hedges designated as cash flow and net investment hedging instruments:

(In millions)	Gain (Loss) Recognized in Other Comprehensive (Loss) Income		Gain (Loss) Reclassified from AOCL into Income (Expense)	
	7/31/16	8/2/15	Location	Amount
			7/31/16	8/2/15
<b>Thirteen Weeks Ended</b>	<b>7/31/16</b>	<b>8/2/15</b>		
Foreign currency forward exchange contracts (inventory purchases)	\$ 21.2	\$ 23.1	Cost of goods sold	\$ 3.5 \$ 27.5
Interest rate contracts	(1.4)	(2.6)	Interest expense	(2.7) (1.1)
Foreign currency borrowings (net investment hedge)	7.8	—	N/A	— —
<b>Total</b>	<b>\$ 27.6</b>	<b>\$ 20.5</b>		<b>\$ 0.8 \$ 26.4</b>
<b>Twenty-Six Weeks Ended</b>	<b>7/31/16</b>	<b>8/2/15</b>		
Foreign currency forward exchange contracts (inventory purchases)	\$ (37.2)	\$ 23.7	Cost of goods sold	\$ 8.2 \$ 48.1
Interest rate contracts	(1.5)	(1.5)	Interest expense	(5.1) (2.2)
Foreign currency borrowings (net investment hedge)	7.8	—	N/A	— —
<b>Total</b>	<b>\$ (30.9)</b>	<b>\$ 22.2</b>		<b>\$ 3.1 \$ 45.9</b>

A net loss in AOCL on foreign currency forward exchange contracts at July 31, 2016 of \$1.6 million is estimated to be reclassified in the next 12 months in the Company's Consolidated Income Statement to costs of goods sold as the underlying inventory hedged by such forward exchange contracts is sold. In addition, a net loss in AOCL for interest rate contracts at July 31, 2016 of \$12.5 million is estimated to be reclassified to interest expense within the next 12 months. Amounts recognized in AOCL for foreign currency borrowings would be recognized in earnings only upon the sale or liquidation of the hedged net investment.

The following table summarizes the effect of the Company's undesignated contracts:

(In millions)

Thirteen Weeks Ended	(Loss) Gain Recognized in (Expense) Income		
	Location	7/31/16	8/2/15
Foreign currency forward exchange contracts	Selling, general and administrative expenses	\$ (2.9)	\$ 1.8
Foreign currency option contracts	Selling, general and administrative expenses	(0.2)	—
Twenty-Six Weeks Ended	Location	7/31/16	8/2/15
Foreign currency forward exchange contracts	Selling, general and administrative expenses	\$ (6.7)	\$ 4.5
Foreign currency option contracts	Selling, general and administrative expenses	(0.2)	—

The Company had no derivative financial instruments with credit risk-related contingent features underlying the related contracts as of July 31, 2016.

## 12. FAIR VALUE MEASUREMENTS

FASB guidance for fair value measurements defines fair value 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. It also establishes a three level hierarchy that prioritizes the inputs used to measure fair value. The three levels of the hierarchy are defined as follows:

Level 1 – Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 – Observable inputs other than quoted prices included in Level 1, including quoted prices for similar assets or liabilities in active markets, quoted prices for identical assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability and inputs derived principally from or corroborated by observable market data.

Level 3 – Unobservable inputs reflecting the Company's own assumptions about the inputs that market participants would use in pricing the asset or liability based on the best information available.

In accordance with the fair value hierarchy described above, the following table shows the fair value of the Company's financial assets and liabilities that are required to be remeasured at fair value on a recurring basis:

(In millions)	7/31/16				1/31/16				8/2/15			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
<b>Assets:</b>												
Foreign currency forward exchange contracts	N/A	\$ 8.6	N/A	\$ 8.6	N/A	\$ 44.2	N/A	\$ 44.2	N/A	\$ 64.8	N/A	\$ 64.8
Interest rate contracts	N/A	—	N/A	—	N/A	—	N/A	—	N/A	0.3	N/A	0.3
Foreign currency option contracts	N/A	1.0	N/A	1.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Assets</b>	<b>N/A</b>	<b>\$ 9.6</b>	<b>N/A</b>	<b>\$ 9.6</b>	<b>N/A</b>	<b>\$ 44.2</b>	<b>N/A</b>	<b>\$ 44.2</b>	<b>N/A</b>	<b>\$ 65.1</b>	<b>N/A</b>	<b>\$ 65.1</b>
<b>Liabilities:</b>												
Foreign currency forward exchange contracts	N/A	\$ 13.2	N/A	\$ 13.2	N/A	\$ 1.8	N/A	\$ 1.8	N/A	\$ 3.6	N/A	\$ 3.6
Interest rate contracts	N/A	17.0	N/A	17.0	N/A	20.6	N/A	20.6	N/A	14.4	N/A	14.4
Contingent purchase price payments related to reacquisition of the perpetual rights to the <i>Tommy Hilfiger</i> trademarks in India	N/A	N/A	\$ 2.2	2.2	N/A	N/A	\$ 2.2	2.2	N/A	N/A	\$ 4.1	4.1
<b>Total Liabilities</b>	<b>N/A</b>	<b>\$ 30.2</b>	<b>\$ 2.2</b>	<b>\$ 32.4</b>	<b>N/A</b>	<b>\$ 22.4</b>	<b>\$ 2.2</b>	<b>\$ 24.6</b>	<b>N/A</b>	<b>\$ 18.0</b>	<b>\$ 4.1</b>	<b>\$ 22.1</b>

The fair value of the foreign currency forward exchange contracts is measured as the total amount of currency to be purchased, multiplied by the difference between (i) the forward rate as of the period end and (ii) the settlement rate specified in each contract. The fair values of the interest rate contracts are based on observable interest rate yield curves and represent the expected discounted cash flows underlying the financial instruments. The fair value of the foreign currency option contracts is estimated based on external valuation models, which do not involve management judgment and use the original strike price, current foreign currency exchange rates, the implied volatility in foreign currency exchange rates and length of time to expiration as inputs.

Pursuant to the agreement governing the reacquisition of the rights in India to the *Tommy Hilfiger* trademarks (which the Company entered into in September 2011 in connection with its acquisition of its 50% ownership of TH India), the Company is required to make annual contingent purchase price payments based on a percentage of sales of *Tommy Hilfiger* products in India in excess of an agreed upon threshold during each of five consecutive 12-month periods (extended to a sixth consecutive 12-month period if the aggregate payments for the five 12-month periods are not at least \$15.0 million, which will be the case). Such payments are subject to a \$25.0 million aggregate maximum and are due within 60 days following each one-year period. The Company made annual contingent purchase price payments of \$0.6 million, \$0.6 million, \$0.4 million and \$0.2 million during 2015, 2014, 2013 and 2012, respectively. The Company is required to remeasure this liability at fair value on a recurring basis and classifies this as a Level 3 measurement. The fair value of such liability was determined using the discounted cash flow method, based on net sales projections for the *Tommy Hilfiger* apparel and accessories businesses in India, and was discounted using rates of return that account for the relative risks of the estimated future cash flows. Excluding the initial recognition of the liability for the contingent purchase price payments and payments made to reduce the liability, changes in the fair value are included within selling, general and administrative expenses in the Company's Consolidated Income Statements.

The following table presents the change in the Level 3 contingent purchase price payment liability during the twenty-six weeks ended July 31, 2016 and August 2, 2015:

(In millions)	Twenty-Six Weeks Ended	
	7/31/16	8/2/15
Beginning Balance	\$ 2.2	\$ 4.0
Payments	—	—
Adjustments included in earnings	0.0	0.1
<b>Ending Balance</b>	<b>\$ 2.2</b>	<b>\$ 4.1</b>

Additional information with respect to assumptions used to value the contingent purchase price payment liability as of July 31, 2016 is as follows:

Unobservable Inputs	Amount
Approximate compounded annual net sales growth rate	35.0%
Approximate discount rate	15.0%

A five percentage point increase or decrease in the discount rate or the compounded annual net sales growth rate would result in an immaterial change to the liability.

There were no transfers between any levels of the fair value hierarchy for any of the Company's fair value measurements.

The following table shows the fair value of the Company's non-financial assets and liabilities that were required to be remeasured at fair value on a nonrecurring basis during the twenty-six weeks ended August 2, 2015, and the total impairments recorded as a result of the remeasurement process:

(In millions)	Fair Value Measurement Using			Fair Value As Of Impairment Date	Total Impairments
	Level 1	Level 2	Level 3		
Assets:					
Property, plant and equipment	N/A	N/A	\$ —	\$ —	\$ 1.6

Long-lived assets with a carrying amount of \$1.6 million were written down to a fair value of zero during the twenty-six weeks ended August 2, 2015 in connection with the financial performance in one of the Company's *Calvin Klein* retail stores in North America. Fair value was determined based on the estimated future operating results reflecting poor year-to-date performance and sales trends. The impairment charge was included in selling, general and administrative expenses in the Calvin Klein North America segment.

In connection with the Company's acquisition in April 2016 of the 55% of the ownership interests in TH China that it did not already own, the 45% interest in TH China owned by the Company was remeasured to a fair value of \$205.6 million, resulting in the recognition of a pre-tax noncash gain of \$153.1 million in the twenty-six weeks ended July 31, 2016. The Company classifies this as a Level 3 measurement. Please see Note 3, "Acquisitions," for a further discussion.

The Company guaranteed lease payments for substantially all G. H. Bass & Co. ("Bass") retail stores included in the sale of substantially all of the assets of the Company's Bass business in the fourth quarter of 2013 pursuant to the terms of noncancelable leases expiring on various dates through 2022. These guarantees include minimum rent payments and relate to leases that commenced prior to the sale of the Bass assets. In certain instances, the Company's guarantee remains in effect when an option is exercised to extend the term of the lease. The estimated fair value of these guarantee obligations as of July 31, 2016, January 31, 2016 and August 2, 2015 was \$1.6 million, \$1.9 million and \$2.6 million, respectively, which was included in accrued expenses and other liabilities in the Company's Consolidated Balance Sheets. The Company classifies these as Level 3 measurements. The fair value of such guarantee obligations was determined using the discounted cash flow method, based on the guaranteed lease payments, the estimated probability of lease extensions and estimates of the risk of default by the buyer of the Bass assets, and was discounted using rates of return that account for the relative risks of the estimated future cash flows.

The carrying amounts and the fair values of the Company's cash and cash equivalents, short-term borrowings and long-term debt as of July 31, 2016, January 31, 2016 and August 2, 2015 were as follows:

(In millions)	7/31/16		1/31/16		8/2/15	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Cash and cash equivalents	\$ 741.7	\$ 741.7	\$ 556.4	\$ 556.4	\$ 466.7	\$ 466.7
Short-term borrowings	19.4	19.4	25.9	25.9	8.1	8.1
Long-term debt (including portion classified as current)	3,358.2	3,434.6	3,168.3	3,190.5	3,348.5	3,408.6

The fair values of cash and cash equivalents and short-term borrowings approximate their carrying amounts due to the short-term nature of these instruments. The Company estimates the fair value of its long-term debt using quoted market prices as of the last business day of the applicable quarter. The Company classifies the measurement of its long-term debt as a Level 1 measurement. The carrying amounts of long-term debt reflect the unamortized portions of debt issuance costs and the original issue discounts.

### 13. STOCK-BASED COMPENSATION

The Company grants stock-based awards under its 2006 Stock Incentive Plan (the "2006 Plan"). The 2006 Plan replaced certain other prior stock option plans. These other plans terminated upon the 2006 Plan's initial stockholder approval in June 2006. Shares issued as a result of stock-based compensation transactions generally have been funded with the issuance of new shares of the Company's common stock.

The Company may grant the following types of incentive awards under the 2006 Plan: (i) non-qualified stock options ("NQs"); (ii) incentive stock options ("ISOs"); (iii) stock appreciation rights; (iv) restricted stock; (v) restricted stock units ("RSUs"); (vi) performance shares and performance share units ("PSUs"); and (vii) other stock-based awards. Each award granted under the 2006 Plan is subject to an award agreement that incorporates, as applicable, the exercise price, the term of the award, the periods of restriction, the number of shares to which the award pertains, performance periods and performance measures, and such other terms and conditions as the plan committee determines.

Through July 31, 2016, the Company has granted under the 2006 Plan (i) service-based NQs, RSUs and restricted stock; (ii) contingently issuable PSUs; and (iii) RSUs that are intended to satisfy the performance-based condition for deductibility under Section 162(m) of the Internal Revenue Code. According to the terms of the 2006 Plan, for purposes of determining the number of shares available for grant, each share underlying a stock option award reduces the number available by one share and each share underlying a restricted stock award, RSU or PSU reduces the number available by two shares. The per share exercise price of options granted under the 2006 Plan cannot be less than the closing price of the common stock on the date of grant.

Net income for the twenty-six weeks ended July 31, 2016 and August 2, 2015 included \$19.5 million and \$20.4 million, respectively, of pre-tax expense related to stock-based compensation, with recognized income tax benefits of \$5.8 million and \$5.0 million, respectively.

Stock options currently outstanding are generally exercisable in four equal annual installments commencing one year after the date of grant. The vesting of such options outstanding is also generally accelerated upon retirement (as defined in the 2006 Plan). Such options are granted with a 10-year term.

The Company estimates the fair value of stock options granted at the date of grant using the Black-Scholes-Merton model. The estimated fair value of the options, net of estimated forfeitures, is expensed over the options' vesting periods.

The following summarizes the assumptions used to estimate the fair value of service-based stock options granted during the twenty-six weeks ended July 31, 2016 and August 2, 2015:

	Twenty-Six Weeks Ended	
	7/31/16	8/2/15
Weighted average risk-free interest rate	1.45%	1.54%
Weighted average expected option term (in years)	6.25	6.25
Weighted average Company volatility	34.64%	36.32%
Expected annual dividends per share	\$ 0.15	\$ 0.15
Weighted average grant date fair value per option	\$ 35.60	\$ 40.23

The risk-free interest rate is based on United States Treasury yields in effect at the date of grant for periods corresponding to the expected option term. The expected option term represents the weighted average period of time that options granted are expected to be outstanding, based on vesting schedules and the contractual term of the options. Company volatility is based on the historical volatility of the Company's common stock over a period of time corresponding to the expected option term. Expected dividends are based on the Company's common stock cash dividend rate at the date of grant.

The Company has continued to utilize the simplified method to estimate the expected term for its "plain vanilla" stock options granted due to a lack of relevant historical data resulting, in part, from changes in the pool of employees receiving option grants, mainly due to acquisitions. The Company will continue to evaluate the appropriateness of utilizing such method.

Service-based stock option activity for the twenty-six weeks ended July 31, 2016 was as follows:

(In thousands, except per option data)	Options	Weighted Average Exercise Price Per Option
Outstanding at January 31, 2016	1,443	\$ 70.79
Granted	228	99.27
Exercised	155	65.82
Cancelled	6	106.83
Outstanding at July 31, 2016	1,510	\$ 75.46
Exercisable at July 31, 2016	1,057	\$ 62.29

RSUs granted to employees in 2016 generally vest in four equal annual installments commencing one year after the date of grant. Outstanding RSUs granted to employees prior to 2016 generally vest in three annual installments of 25%, 25% and 50% commencing two years after the date of grant. Service-based RSUs granted to non-employee directors vest in full one year after the date of grant. The underlying RSU award agreements (excluding agreements for non-employee director awards) generally provide for accelerated vesting upon the award recipient's retirement (as defined in the 2006 Plan). The fair value of service-based RSUs is equal to the closing price of the Company's common stock on the date of grant and is expensed, net of estimated forfeitures, over the RSUs' vesting periods.

RSU activity for the twenty-six weeks ended July 31, 2016 was as follows:

(In thousands, except per RSU data)	RSUs	Weighted Average Grant Date Fair Value Per RSU
Non-vested at January 31, 2016	653	\$ 111.61
Granted	381	97.94
Vested	150	108.67
Cancelled	45	110.16
Non-vested at July 31, 2016	839	\$ 106.00

The Company granted contingently issuable PSUs to certain of the Company's senior executives during the first quarter of each of 2013 and 2014. These awards were subject to achievement of an earnings per share goal for the two-year performance period beginning with the year of grant and a service period of one year beyond the certification of performance. For the awards granted in the first quarter of 2014, the two-year performance period has ended and the holders did not earn any shares based

on earnings per share growth over the performance period. For the awards granted in the first quarter of 2013, the holders earned an aggregate of 26,000 shares, which were paid out in the first quarter of 2016. For such awards, the Company recorded expense ratably over each applicable vesting period based on fair value and the Company's expectations of the probable number of shares to be issued. The fair value of these contingently issuable PSUs was equal to the closing price of the Company's common stock on the date of grant, reduced for the present value of any dividends expected to be paid on the Company's common stock during the performance cycle, as these contingently issuable PSUs did not accrue dividends prior to the completion of the performance cycle.

The Company granted contingently issuable PSUs to certain of the Company's executives during the second quarter of 2013 and to certain of the Company's senior executives during the first quarter of each of 2015 and 2016 subject to a three-year performance period. For such awards, the final number of shares to be earned, if any, is contingent upon the Company's achievement of goals for the applicable performance period, of which 50% is based upon the Company's absolute stock price growth during the applicable performance period and 50% is based upon the Company's total shareholder return during the applicable performance period relative to other companies included in the S&P 500 as of the date of grant. For the awards granted in the second quarter of 2013, the performance period ended on May 5, 2016 and the holders did not earn any shares, as the Company did not achieve either of the threshold performance levels required for payout. The Company records expense ratably over the applicable vesting period, net of estimated forfeitures, regardless of whether the market condition is satisfied because the awards are subject to market conditions. The fair value of the awards granted in the first quarter of 2016 and 2015 was established for each grant on the grant date using the Monte Carlo simulation model, which was based on the following assumptions:

	2016	2015
Risk-free interest rate	1.04%	0.90%
Expected Company volatility	28.33%	29.10%
Expected annual dividends per share	\$ 0.15	\$ 0.15
Weighted average grant date fair value per PSU	\$ 87.16	\$ 101.23

Certain of the awards granted in the first quarter of 2016 are subject to a holding period of one year after the vesting date. For such awards, the grant date fair value was discounted 12.99% for the restriction of liquidity.

PSU activity for the twenty-six weeks ended July 31, 2016 was as follows:

(In thousands, except per PSU data)	PSUs	Weighted Average Grant Date Fair Value Per PSU
Non-vested at January 31, 2016	493	\$ 121.41
Granted	76	87.16
Vested	26	114.77
Cancelled	421	124.01
Non-vested at July 31, 2016	122	\$ 92.42

The Company receives a tax deduction for certain transactions associated with its stock plan awards. The actual income tax benefits realized from these transactions for the twenty-six weeks ended July 31, 2016 and August 2, 2015 were \$5.8 million and \$9.0 million, respectively. Of those amounts, \$0.5 million and \$3.4 million, respectively, were reported as excess tax benefits. Excess tax benefits arise when the actual tax benefit resulting from a stock plan award transaction exceeds the tax benefit associated with the grant date fair value of the related stock award.

#### 14. ACCUMULATED OTHER COMPREHENSIVE LOSS

The following table presents the changes in AOCL, net of related taxes, by component for the twenty-six weeks ended July 31, 2016:

(In millions)	Foreign currency translation adjustments	Retirement liability adjustment	Net unrealized and realized gain (loss) on effective cash flow hedges	Total
Balance, January 31, 2016	\$ (730.5)	\$ 0.1	\$ 26.2	\$ (704.2)
Other comprehensive income (loss) before reclassifications	84.7	—	(35.2)	49.5
Less: Amounts reclassified from AOCL	—	0.1	2.8	2.9
Net gain on net investment hedge	4.9	—	—	4.9
Other comprehensive income (loss)	89.6	(0.1)	(38.0)	51.5
Balance, July 31, 2016	\$ (640.9)	\$ 0.0	\$ (11.8)	\$ (652.7)

The following table presents the changes in AOCL, net of related taxes, by component for the twenty-six weeks ended August 2, 2015:

(In millions)	Foreign currency translation adjustments	Retirement liability adjustment	Net unrealized and realized gain on effective cash flow hedges	Total
Balance, February 1, 2015	\$ (496.2)	\$ 0.4	\$ 79.3	\$ (416.5)
Other comprehensive (loss) income before reclassifications	(140.1)	—	22.1	(118.0)
Less: Amounts reclassified from AOCL	—	0.1	45.3	45.4
Other comprehensive loss	(140.1)	(0.1)	(23.2)	(163.4)
Balance, August 2, 2015	\$ (636.3)	\$ 0.3	\$ 56.1	\$ (579.9)

The following table presents reclassifications out of AOCL to earnings for the thirteen and twenty-six weeks ended July 31, 2016 and August 2, 2015:

(In millions)	Amount Reclassified from AOCL				Affected Line Item in the Company's Consolidated Income Statements	
	Thirteen Weeks Ended		Twenty-Six Weeks Ended			
	7/31/16	8/2/15	7/31/16	8/2/15		
Realized gain (loss) on effective cash flow hedges:						
Foreign currency forward exchange contracts	\$ 3.5	\$ 27.5	\$ 8.2	\$ 48.1	Cost of goods sold	
Interest rate contracts	(2.7)	(1.1)	(5.1)	(2.2)	Interest expense	
Less: Tax effect	0.4	0.3	0.3	0.6	Income tax expense	
Total, net of tax	\$ 0.4	\$ 26.1	\$ 2.8	\$ 45.3		
Amortization of retirement liability items:						
Prior service credit	\$ 0.1	\$ 0.1	\$ 0.2	\$ 0.2	Selling, general and administrative expenses	
Less: Tax effect	0.1	0.1	0.1	0.1	Income tax expense	
Total, net of tax	\$ 0.0	\$ 0.0	\$ 0.1	\$ 0.1		

## 15. STOCKHOLDERS' EQUITY

The Company's Board of Directors authorized a \$500.0 million three-year stock repurchase program effective June 3, 2015. Repurchases under the program may be made from time to time over the period through open market purchases, accelerated share repurchase programs, privately negotiated transactions or other methods, as the Company deems appropriate. Purchases are made based on a variety of factors, such as price, corporate requirements and overall market conditions, applicable legal requirements and limitations, restrictions under the Company's debt arrangements, trading restrictions under the Company's insider trading policy and other relevant factors. The program may be modified, including to increase or decrease the repurchase limitation or extend, suspend, or terminate the program, at any time, without prior notice.

During the twenty-six weeks ended July 31, 2016, the Company purchased approximately 1.4 million shares of its common stock in open market transactions for \$129.2 million (2.8 million shares for \$255.4 million since inception) under the program. As of July 31, 2016, the repurchased shares were held as treasury stock and \$244.6 million of the authorization remained available for future share repurchases.

Treasury stock activity also includes shares that were withheld in conjunction with the settlement of vested RSUs, PSUs and restricted stock to satisfy tax withholding requirements.

## 16. NET INCOME PER COMMON SHARE

The Company computed its basic and diluted net income per common share as follows:

(In millions, except per share data)	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	7/31/16	8/2/15	7/31/16	8/2/15
Net income attributable to PVH Corp.	\$ 90.5	\$ 102.2	\$ 322.1	\$ 216.3
Weighted average common shares outstanding for basic net income per common share	80.7	82.7	81.0	82.6
Weighted average impact of dilutive securities	0.6	0.8	0.6	0.8
Total shares for diluted net income per common share	81.3	83.5	81.6	83.4
Basic net income per common share attributable to PVH Corp.	\$ 1.12	\$ 1.24	\$ 3.98	\$ 2.62
Diluted net income per common share attributable to PVH Corp.	\$ 1.11	\$ 1.22	\$ 3.95	\$ 2.59

Potentially dilutive securities excluded from the calculation of diluted net income per common share as the effect would be anti-dilutive were as follows:

(In millions)	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	7/31/16	8/2/15	7/31/16	8/2/15
Weighted average potentially dilutive securities	1.0	0.6	1.0	0.6

Shares underlying contingently issuable awards that have not met the necessary conditions as of the end of a reporting period are not included in the calculation of diluted net income per common share for that period. The Company had contingently issuable awards outstanding that did not meet the performance conditions as of July 31, 2016 and August 2, 2015 and, therefore, were excluded from the calculation of diluted net income per common share for the thirteen and twenty-six weeks ended July 31, 2016 and August 2, 2015. The maximum number of potentially dilutive shares that could be issued upon vesting for such awards was 0.2 million and 0.8 million as of July 31, 2016 and August 2, 2015, respectively. These amounts were also excluded from the computation of weighted average potentially dilutive securities in the table above.

## 17. NONCASH INVESTING AND FINANCING TRANSACTIONS

During the twenty-six weeks ended July 31, 2016 and August 2, 2015, the Company recorded increases to goodwill of \$23.6 million and \$22.0 million, respectively, related to liabilities incurred for contingent purchase price payments to Mr. Calvin Klein. Such amounts are not due or paid in cash until 45 days subsequent to the Company's applicable quarter end. As such, during the twenty-six weeks ended July 31, 2016 and August 2, 2015, the Company paid \$25.2 million and \$23.9 million, respectively, in cash related to contingent purchase price payments to Mr. Calvin Klein that were recorded as additions to goodwill during the periods the liabilities were incurred.

Omitted from purchases of property, plant and equipment in the Company's Consolidated Statements of Cash Flows for the twenty-six weeks ended July 31, 2016 and August 2, 2015 are \$2.4 million and \$3.1 million, respectively, of assets acquired through capital leases.

Omitted from acquisition of treasury shares in the Company's Consolidated Statement of Cash Flows for the twenty-six weeks ended July 31, 2016 is \$2.0 million of shares repurchased under the stock repurchase program for which the trade occurred but remained unsettled as of July 31, 2016.

During the second quarter of 2016, the Company recorded a loss of \$11.2 million to write-off previously capitalized debt issuance costs in connection with the amendment of its credit facilities.

During the first quarter of 2016, the Company completed the acquisition of TH China. Included in the acquisition consideration was the elimination of a \$2.8 million pre-acquisition receivable owed to the Company by TH China.

## 18. SEGMENT DATA

The Company manages its operations through its operating divisions, which are presented as six reportable segments: (i) Calvin Klein North America; (ii) Calvin Klein International; (iii) Tommy Hilfiger North America; (iv) Tommy Hilfiger International; (v) Heritage Brands Wholesale; and (vi) Heritage Brands Retail.

*Calvin Klein North America Segment* - This segment consists of the Company's Calvin Klein North America division. This segment derives revenue principally from (i) marketing *Calvin Klein* branded apparel and related products at wholesale in North America, primarily to department and specialty stores and e-commerce sites operated by key department store customers and pure play e-commerce retailers; (ii) operating retail stores, which are primarily located in premium outlet centers in North America, and e-commerce sites in North America, which sell *Calvin Klein* branded apparel, accessories and related products; and (iii) licensing and similar arrangements relating to the use by third parties of the brand names *Calvin Klein*, *Calvin Klein Collection* and *Calvin Klein Platinum* for a broad array of products and retail services in North America.

*Calvin Klein International Segment* - This segment consists of the Company's Calvin Klein International division. This segment derives revenue principally from (i) marketing *Calvin Klein* branded apparel and related products at wholesale principally in Europe, Asia and Brazil, primarily to department and specialty stores, e-commerce sites operated by key department store customers and pure play e-commerce retailers, franchisees of *Calvin Klein*, distributors and licensees; (ii) operating retail stores and e-commerce sites in Europe, Asia and Brazil, which sell *Calvin Klein* branded apparel, accessories and related products; and (iii) licensing and similar arrangements relating to the use by third parties of the brand names *Calvin Klein Collection*, *Calvin Klein Platinum* and *Calvin Klein* for a broad array of products and retail services outside of North America. This segment also includes the Company's proportionate share of the net income or loss of its investments in unconsolidated Calvin Klein foreign affiliates in Australia and India.

*Tommy Hilfiger North America Segment* - This segment consists of the Company's Tommy Hilfiger North America division. This segment derives revenue principally from (i) marketing *Tommy Hilfiger* branded apparel and related products at wholesale in North America, primarily to department stores, principally Macy's, Inc. and Hudson's Bay Company, as well as e-commerce sites operated by key department store customers and pure play e-commerce retailers; (ii) operating retail stores, which are primarily located in premium outlet centers in North America, and e-commerce sites in North America, which sell *Tommy Hilfiger* branded apparel, accessories and related products; and (iii) licensing and similar arrangements relating to the use by third parties of the *Tommy Hilfiger* brand name for a broad array of products in North America.

*Tommy Hilfiger International Segment* - This segment consists of the Company's Tommy Hilfiger International division. This segment derives revenue principally from (i) marketing *Tommy Hilfiger* branded apparel and related products at wholesale principally in Europe and China, primarily to department and specialty stores, e-commerce sites operated by key department store customers and pure play e-commerce retailers, franchisees of *Tommy Hilfiger*, distributors and licensees; (ii) operating

retail stores in Europe, China and Japan and international e-commerce sites, which sell *Tommy Hilfiger* branded apparel, accessories and related products; and (iii) licensing and similar arrangements relating to the use by third parties of the *Tommy Hilfiger* brand name for a broad array of products outside of North America. This segment also includes the Company's proportionate share of the net income or loss of its investments in unconsolidated Tommy Hilfiger foreign affiliates in Brazil, India and Australia. This segment included the Company's proportionate share of the net income or loss of its investment in TH China until April 13, 2016, on which date the Company acquired the remaining interests that it did not already own and began to consolidate the operations as a wholly owned subsidiary of the Company. Please see Note 3, "Acquisitions," for a further discussion.

*Heritage Brands Wholesale Segment* - This segment consists of the Company's Heritage Brands Wholesale division. This segment derives revenue primarily from marketing to department, chain and specialty stores and, to a lesser extent, e-commerce sites operated by key department store customers and pure play e-commerce retailers in North America of (i) dress shirts, neckwear and underwear under various owned and licensed brand names, including several private label brands; (ii) men's sportswear principally under the brand names *Van Heusen*, *IZOD* and *ARROW*; (iii) swimwear, fitness apparel, swim accessories and related products under the brand name *Speedo*; and (iv) women's intimate apparel under the brand names *Warner's* and *Olga*. This segment also includes the Company's proportionate share of the net income or loss of its investment in its unconsolidated Heritage Brands foreign affiliate in Australia.

*Heritage Brands Retail Segment* - This segment consists of the Company's Heritage Brands Retail division. This segment derives revenue principally from operating retail stores, primarily located in outlet centers in North America, which primarily sell apparel, accessories and related products under the brand names *Van Heusen* and *IZOD*. The Company exited the Izod retail business in the third quarter of 2015 but continues to sell a limited selection of *IZOD Golf* apparel in some of its *Van Heusen* retail stores. The Company also sells *Warner's* products on a limited basis in some of its *Van Heusen* retail stores.

The following tables present summarized information by segment:

(In millions)	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	7/31/16	8/2/15	7/31/16	8/2/15
<b>Revenue – Calvin Klein North America</b>				
Net sales	\$ 361.3	\$ 317.6	\$ 700.1	\$ 616.9
Royalty revenue	28.0	29.5	58.3	59.2
Advertising and other revenue	8.7	11.1	20.2	20.9
<b>Total</b>	<b>398.0</b>	<b>358.2</b>	<b>778.6</b>	<b>697.0</b>
<b>Revenue – Calvin Klein International</b>				
Net sales	306.2	264.8	622.5	556.4
Royalty revenue	16.8	18.3	35.4	36.0
Advertising and other revenue	5.4	7.3	12.6	13.1
<b>Total</b>	<b>328.4</b>	<b>290.4</b>	<b>670.5</b>	<b>605.5</b>
<b>Revenue – Tommy Hilfiger North America</b>				
Net sales	396.0	384.8	717.1	726.3
Royalty revenue	9.2	9.9	20.2	19.5
Advertising and other revenue	2.2	2.6	4.7	5.4
<b>Total</b>	<b>407.4</b>	<b>397.3</b>	<b>742.0</b>	<b>751.2</b>
<b>Revenue – Tommy Hilfiger International</b>				
Net sales	442.1	400.2	886.7	800.4
Royalty revenue	10.1	12.3	21.7	24.4
Advertising and other revenue	0.6	0.9	1.6	1.8
<b>Total</b>	<b>452.8</b>	<b>413.4</b>	<b>910.0</b>	<b>826.6</b>
<b>Revenue – Heritage Brands Wholesale</b>				
Net sales	270.7	308.0	609.9	675.5
Royalty revenue	5.2	4.8	10.2	9.4
Advertising and other revenue	1.1	0.8	1.8	1.4
<b>Total</b>	<b>277.0</b>	<b>313.6</b>	<b>621.9</b>	<b>686.3</b>
<b>Revenue – Heritage Brands Retail</b>				
Net sales	69.1	90.5	126.8	175.5
Royalty revenue	0.6	0.6	1.2	1.1
Advertising and other revenue	0.0	0.0	0.1	0.1
<b>Total</b>	<b>69.7</b>	<b>91.1</b>	<b>128.1</b>	<b>176.7</b>
<b>Total Revenue</b>				
Net sales	1,845.4	1,765.9	3,663.1	3,551.0
Royalty revenue	69.9	75.4	147.0	149.6
Advertising and other revenue	18.0	22.7	41.0	42.7
<b>Total</b>	<b>\$ 1,933.3</b>	<b>\$ 1,864.0</b>	<b>\$ 3,851.1</b>	<b>\$ 3,743.3</b>

(In millions)	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	7/31/16 <sup>(1)</sup>	8/2/15 <sup>(1)</sup>	7/31/16 <sup>(1)</sup>	8/2/15 <sup>(1)</sup>
Income before interest and taxes – Calvin Klein North America	\$ 55.2	\$ 46.1 <sup>(11)</sup>	\$ 93.3 <sup>(7)(10)</sup>	\$ 86.5 <sup>(12)</sup>
Income before interest and taxes – Calvin Klein International	50.5	34.7 <sup>(11)</sup>	102.7 <sup>(7)(10)</sup>	84.0 <sup>(12)</sup>
Income before interest and taxes – Tommy Hilfiger North America	46.1 <sup>(3)</sup>	58.8	69.1 <sup>(3)</sup>	89.1
Income before interest and taxes – Tommy Hilfiger International	29.5 <sup>(4)</sup>	38.9	212.8 <sup>(5)</sup>	100.7
Income before interest and taxes – Heritage Brands Wholesale	8.3	17.3 <sup>(11)(13)</sup>	36.2 <sup>(7)(8)</sup>	47.6 <sup>(12)(13)</sup>
Income (loss) before interest and taxes – Heritage Brands Retail	3.7	(2.7) <sup>(14)</sup>	5.8	(2.8) <sup>(14)</sup>
Loss before interest and taxes – Corporate <sup>(2)</sup>	(50.3) <sup>(6)(9)</sup>	(39.0) <sup>(11)(15)</sup>	(82.3) <sup>(7)(9)</sup>	(74.2) <sup>(12)(15)</sup>
Income before interest and taxes	<u>\$ 143.0</u>	<u>\$ 154.1</u>	<u>\$ 437.6</u>	<u>\$ 330.9</u>

- <sup>(1)</sup> Income (loss) before interest and taxes for the thirteen and twenty-six weeks ended July 31, 2016 and August 2, 2015 was significantly impacted by the strengthening of the United States dollar against foreign currencies in which the Company transacts significant levels of business. Please see section entitled “Results of Operations” in Management’s Discussion and Analysis of Financial Condition and Results of Operations included in Item 2 of this report for a further discussion.
- <sup>(2)</sup> Includes corporate expenses not allocated to any reportable segments, as well as the Company’s proportionate share of the net income or loss of its investment in Karl Lagerfeld and the results of PVH Ethiopia. Corporate expenses represent overhead operating expenses and include expenses for senior corporate management, corporate finance, information technology related to corporate infrastructure and actuarial gains and losses from the Company’s pension and other postretirement plans (which are generally recorded in the fourth quarter).
- <sup>(3)</sup> Income before interest and taxes for the thirteen and twenty-six weeks ended July 31, 2016 included costs of \$1.3 million and \$2.6 million, respectively, related to the licensing to G-III Apparel Group, Ltd. of the Tommy Hilfiger womenswear wholesale business in the United States and Canada.
- <sup>(4)</sup> Income before interest and taxes for the thirteen weeks ended July 31, 2016 included costs of \$20.3 million associated with the Company’s acquisition of the 55% of the ownership interests in TH China that it did not already own, principally related to valuation adjustments and amortization of short-lived assets.
- <sup>(5)</sup> Income before interest and taxes for the twenty-six weeks ended July 31, 2016 included a noncash gain of \$153.1 million to write-up the Company’s equity investment in TH China to fair value in connection with the acquisition of the 55% of the ownership interests in TH China that it did not already own. Partially offsetting the gain were acquisition related costs of \$44.5 million, principally related to valuation adjustments and amortization of short-lived assets, and a one-time cost of \$5.9 million recorded on the Company’s equity investment in TH China. Please see Note 3, “Acquisitions,” for a further discussion.
- <sup>(6)</sup> Loss before interest and taxes for the thirteen weeks ended July 31, 2016 included costs of \$2.3 million associated with the Company’s integration of Warnaco and the related restructuring.
- <sup>(7)</sup> Income (loss) before interest and taxes for the twenty-six weeks ended July 31, 2016 included costs of \$9.8 million associated with the Company’s integration of Warnaco and the related restructuring. Such costs were included in the Company’s segments as follows: \$0.2 million in Calvin Klein North America; \$2.6 million in Calvin Klein International; \$0.4 million in Heritage Brands Wholesale; and \$6.6 million in corporate expenses not allocated to any reportable segments.
- <sup>(8)</sup> Income before interest and taxes for the twenty-six weeks ended July 31, 2016 included costs of \$2.6 million related to the discontinuation of several licensed product lines in the Company’s Heritage Brands dress furnishings business.

- (9) Loss before interest and taxes for the thirteen and twenty-six weeks ended July 31, 2016 included costs of \$15.8 million related to the Company's amendment of its credit facilities. Please see Note 9, "Debt," for a further discussion.
- (10) Income before interest and taxes for the twenty-six weeks ended July 31, 2016 included costs of \$5.5 million associated with the restructuring related to the new global creative strategy for *Calvin Klein* announced in April 2016. Such costs were included in the Company's segments as follows: \$2.7 million in Calvin Klein North America; and \$2.8 million in Calvin Klein International.
- (11) Income (loss) before interest and taxes for the thirteen weeks ended August 2, 2015 included costs of \$13.1 million associated with the Company's integration of Warnaco and the related restructuring. Such costs (income) were included in the Company's segments as follows: \$0.8 million in Calvin Klein North America; \$(0.2) million in Calvin Klein International; \$2.1 million in Heritage Brands Wholesale; and \$10.4 million in corporate expenses not allocated to any reportable segments.
- (12) Income (loss) before interest and taxes for the twenty-six weeks ended August 2, 2015 included costs of \$31.9 million associated with the Company's integration of Warnaco and the related restructuring. Such costs were included in the Company's segments as follows: \$2.9 million in Calvin Klein North America; \$3.7 million in Calvin Klein International; \$5.7 million in Heritage Brands Wholesale; and \$19.6 million in corporate expenses not allocated to any reportable segments.
- (13) Income before interest and taxes for the thirteen and twenty-six weeks ended August 2, 2015 included costs of \$3.3 million related to the discontinuation of several licensed product lines in the Company's Heritage Brands dress furnishings business.
- (14) Loss before interest and taxes for the thirteen and twenty-six weeks ended August 2, 2015 included costs of \$5.8 million and \$6.3 million, respectively, related to the operation of and exit from the Company's Izod retail business.
- (15) Loss before interest and taxes for the thirteen and twenty-six weeks ended August 2, 2015 included a one-time gain of \$2.2 million recorded in connection with the Company's equity investment in Karl Lagerfeld.

Intersegment transactions primarily consist of transfers of inventory principally from the Heritage Brands Wholesale segment to the Heritage Brands Retail segment, the Calvin Klein North America segment and the Tommy Hilfiger North America segment. These transfers are recorded at cost plus a standard markup percentage. Such markup percentage on ending inventory is eliminated principally in the Heritage Brands Retail segment and the Calvin Klein North America segment.

## 19. GUARANTEES

The Company guaranteed lease payments for substantially all *Bass* retail stores included in the sale of substantially all of the assets of the Company's *Bass* business in the fourth quarter of 2013 pursuant to the terms of noncancelable leases expiring on various dates through 2022. These guarantees include minimum rent payments and relate to leases that commenced prior to the sale of the *Bass* assets. In certain instances, the Company's guarantee remains in effect when an option is exercised to extend the term of the lease. The maximum amount guaranteed for all leases as of July 31, 2016 was \$34.3 million and the Company has the right to seek recourse from the buyer of the *Bass* assets for the full amount. The estimated fair value of these guarantee obligations as of July 31, 2016, January 31, 2016 and August 2, 2015 was \$1.6 million, \$1.9 million and \$2.6 million, respectively, which was included in accrued expenses and other liabilities in the Company's Consolidated Balance Sheets. Please see Note 12, "Fair Value Measurements," for a further discussion.

In connection with the Company's investments in PVH Australia and CK India, the Company has guaranteed a portion of the entities' debt and other obligations. The maximum amount guaranteed as of July 31, 2016 was approximately \$7.9 million, which is subject to exchange rate fluctuation. The guarantees are in effect for the entire terms of the respective obligations. The estimated fair value of these guarantee obligations was immaterial as of July 31, 2016, January 31, 2016 and August 2, 2015.

The Company has certain other guarantees whereby it guaranteed the payment of amounts on behalf of certain other parties, none of which are material individually or in the aggregate.

## 20. RECENT ACCOUNTING GUIDANCE

The FASB issued in May 2014 guidance that supersedes most of the current revenue recognition requirements. The core principle of the new guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. New disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers are also required. In August 2015, the FASB approved a one year delay to the required adoption date of the standard, which makes it effective for the Company no later than the first quarter of 2018, with adoption in 2017 permitted. In 2016, the FASB issued final amendments to clarify the implementation guidance related to principal versus agent considerations, identifying performance obligations and the accounting for licenses of intellectual property. The new standard is required to be applied retrospectively to each prior reporting period or retrospectively with the cumulative effect of initially applying the standard recognized at the date of initial application. The Company has not yet selected a transition method and is currently evaluating the standard to determine the impact of adoption on the Company's consolidated financial statements.

The FASB issued in November 2015 an update to accounting guidance to simplify the presentation of deferred income taxes. The guidance requires an entity to classify all deferred tax liabilities and assets as noncurrent in the balance sheet. The Company elected to early adopt this guidance during the fourth quarter of 2015 on a retrospective basis, which resulted in decreases to other current assets of \$96.0 million and other liabilities of \$87.5 million and an increase to other assets of \$8.5 million as of August 2, 2015.

The FASB issued in April 2015 an update to accounting guidance related to debt issuance costs. The guidance requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with the presentation of debt discounts. The Company adopted this guidance during the first quarter of 2016 on a retrospective basis, which resulted in decreases to prepaid expenses of \$8.1 million and \$8.1 million as of January 31, 2016 and August 2, 2015, respectively, and other assets of \$14.5 million and \$17.3 million as of January 31, 2016 and August 2, 2015, respectively, both with corresponding decreases in debt.

The FASB issued in April 2015 an update to accounting guidance related to retirement benefits. This guidance provides a practical expedient which allows a company with fiscal years that do not fall on a calendar month-end to measure defined benefit plan assets and obligations using the month end that is closest to the company's fiscal year end. If elected, this guidance should be applied consistently from year to year for all plans. The guidance became effective in the first quarter of 2016. Prospective application is required. The Company does not currently anticipate changing its measurement date under this guidance.

The FASB issued in July 2015 an update to accounting guidance to simplify the measurement of inventory. Currently, all inventory is measured at the lower of cost or market. The new guidance requires an entity to measure inventory within the scope of the guidance at the lower of cost or net realizable value. Net realizable value is the estimated selling price in the ordinary course of business less reasonably predictable costs of completion, disposal and transportation. The new guidance does not apply to inventory measured using last-in, first-out or the retail inventory methods. This guidance will be effective for the Company in the first quarter of 2017, with early adoption permitted. Prospective application is required. The adoption is not expected to have a material impact on the Company's consolidated financial statements.

The FASB issued in January 2016 an update to accounting guidance for the recognition and measurement of financial instruments. The new guidance requires equity investments that are not accounted for under the equity method of accounting to be measured at fair value with changes recognized in net income and updates certain presentation and disclosure requirements. The guidance will be effective for the Company in the first quarter of 2018 with limited early application permitted. The adoption is not expected to have a material impact on the Company's consolidated financial statements.

The FASB issued in February 2016 a new accounting standard on leases. The new standard, among other changes, will require lessees to recognize a right-of-use asset and a lease liability in the balance sheet for all leases. The lease liability will be measured at the present value of the lease payments over the lease term. The right-of-use asset will be measured at the lease liability amount, adjusted for lease prepayments, lease incentives received and the lessee's initial direct costs (*e.g.*, commissions). The guidance will be effective for the Company in the first quarter of 2019 with early application permitted. The adoption will require a modified retrospective approach for leases that exist or are entered into after the beginning of the earliest period presented. The Company is currently evaluating the standard to determine the impact of the adoption on the Company's consolidated financial statements but expects that it will result in a significant increase to its other assets and other liabilities.

The FASB issued in March 2016 an update to accounting guidance to simplify several aspects of the accounting for share-based payment award transactions, including the accounting for income taxes, forfeitures and statutory tax withholding requirements, as well as classification in the statement of cash flows. The guidance will be effective for the Company in the first quarter of 2017, with early application permitted. The Company is currently evaluating the standard to determine the impact of the adoption on the Company's consolidated financial statements.

## 21. OTHER

On May 19, 2016, the Company announced that it had entered into an agreement with Grupo Axo, S.A.P.I. de C.V. ("Grupo Axo") to form a joint venture that will license from wholly owned subsidiaries of the Company the rights to distribute in Mexico certain *Calvin Klein*, *Tommy Hilfiger*, *Warner's*, *Olga* and *Speedo* brand products. The joint venture will be formed by merging the wholly owned Mexico subsidiary of the Company that operates the Calvin Klein and Heritage Brands businesses in Mexico with the wholly owned subsidiary of Grupo Axo that distributes *Tommy Hilfiger* brand products in Mexico. In connection with this contribution, the Company would deconsolidate its Mexico subsidiary and, as a result, it may recognize a gain or loss on such transaction. The gain or loss would be measured as the difference between the fair value of the retained equity method interest and the sum of (i) the carrying value of the net assets of the subsidiary, including any foreign currency translation adjustments recorded in AOCL, and (ii) the cash contributed to the joint venture. The closing is subject to closing conditions, including regulatory approval.

## ITEM 2 - MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We aggregate our reporting segments into three main businesses: (i) Calvin Klein, which consists of the businesses we operate under our *Calvin Klein* trademarks; (ii) Tommy Hilfiger, which consists of the businesses we operate under our *Tommy Hilfiger* trademarks; and (iii) Heritage Brands, which consists of the businesses we operate under our *Van Heusen*, *IZOD*, *ARROW*, *Warner's* and *Olga* trademarks, the *Speedo* trademark we license in perpetuity for North America and the Caribbean, and other owned and licensed trademarks. References to the brand names *Calvin Klein*, *Tommy Hilfiger*, *Van Heusen*, *IZOD*, *ARROW*, *Warner's*, *Olga* and *Speedo* and to other brand names are to registered trademarks owned by us or licensed to us by third parties and are identified by italicizing the brand name.

References to the acquisition of Warnaco refer to our February 13, 2013 acquisition of The Warnaco Group, Inc. and its subsidiaries, which we refer to collectively as "Warnaco."

### OVERVIEW

The following discussion and analysis is intended to help you understand us, our operations and our financial performance. It should be read in conjunction with our consolidated financial statements and the accompanying notes, which are included in the immediately preceding item of this report.

We are one of the largest branded apparel companies in the world, with a history dating back over 130 years. Our brand portfolio consists of nationally and internationally recognized brand names, including *Calvin Klein*, *Tommy Hilfiger*, *Van Heusen*, *IZOD*, *ARROW*, *Speedo* (licensed in perpetuity for North America and the Caribbean from Speedo International Ltd.), *Warner's* and *Olga*. We also license brands from third parties primarily for use on dress shirts and neckwear offered in the United States and Canada. We exited our Izod retail business in the third quarter of 2015.

Our business strategy is to sell our branded products at multiple price points and in multiple channels of distribution and regions, which allows us to provide products to a broad range of consumers, while minimizing competition among our brands and reducing reliance on any one demographic group, merchandise preference, price point, distribution channel or region. We also license our brands to third parties for product categories and in jurisdictions where we believe our partners' expertise can better serve our businesses.

On February 1, 2016, we entered into a licensing agreement with G-III Apparel Group, Ltd. ("G-III") for the design, production and wholesale distribution of *Tommy Hilfiger* womenswear in the United States and Canada, which will result in the discontinuation of our directly operated Tommy Hilfiger North America womenswear wholesale business in the fourth quarter of 2016.

On April 13, 2016, we completed the acquisition of the 55% of the ownership interests in TH Asia, Ltd. ("TH China"), our joint venture for *Tommy Hilfiger* in China, that we did not already own (the "TH China acquisition"). As a result of the TH China acquisition, we now operate directly our Tommy Hilfiger business in its fastest growing market. The total consideration for the acquisition was \$161 million, net of cash acquired of \$105 million.

On May 19, 2016, we announced that we had entered into an agreement to form a joint venture in Mexico to which we would contribute our wholly owned subsidiary that operates and manages our Calvin Klein and Heritage Brands businesses in Mexico. In connection with this contribution, we would deconsolidate the subsidiary and, as a result, we may recognize a gain or loss on such transaction. The gain or loss would be measured as the difference between the fair value of the retained equity method interest and the sum of (i) the carrying value of the net assets of the subsidiary, including any foreign currency translation adjustments recorded in AOCL, and (ii) the cash contributed to the joint venture. The closing is subject to closing conditions, including regulatory approval.

On June 20, 2016, we issued €350 million euro-denominated principal amount of 3 5/8% senior notes due July 15, 2024. Please see "Liquidity and Capital Resources" below for a further discussion.

On June 29, 2016, we, along with our minority interest partner, formed a joint venture in Ethiopia, PVH Arvind Manufacturing Private Limited Company ("PVH Ethiopia"), in which we own a 75% interest. We made an initial contribution of \$0.2 million to PVH Ethiopia at formation and have consolidated the joint venture in our consolidated financial statements. PVH Ethiopia was formed to operate a manufacturing facility that will produce finished products for us for distribution primarily in the United States. We expect the manufacturing facility will begin operations in 2017.

## OPERATIONS OVERVIEW

We generate net sales from (i) the wholesale distribution to retailers, franchisees, licensees and distributors of dress shirts, neckwear, sportswear, jeanswear, underwear, intimate apparel, swim products, handbags, footwear, accessories and other related products under owned and licensed trademarks, including through e-commerce sites operated by key department store customers and pure play e-commerce retailers, and (ii) the sale through (a) approximately 1,550 Company-operated free-standing retail store locations worldwide under our *Calvin Klein*, *Tommy Hilfiger* and *Van Heusen* trademarks, (b) approximately 1,100 Company-operated concessions/shop-in-shops worldwide under our *Calvin Klein* and *Tommy Hilfiger* trademarks, and (c) e-commerce sites in certain countries under our *Calvin Klein* and *Tommy Hilfiger* trademarks, of apparel, footwear, accessories and other products, and swimwear and related products in North America through our *SpeedoUSA.com* e-commerce site. We also operated *IZOD* retail stores through the end of the third quarter of 2015, at which time we completed the exit from the business. Additionally, we generate royalty, advertising and other revenue from fees for licensing the use of our trademarks.

In connection with the TH China acquisition, we recorded a net pre-tax gain of \$103 million in the twenty-six weeks ended July 31, 2016, including a noncash gain of \$153 million to write-up our existing equity investment to fair value and costs of \$50 million, a portion of which was noncash and related to valuation adjustments and amortization of short-lived assets. We expect to incur additional pre-tax charges of approximately \$33 million during the remainder of 2016, primarily consisting of noncash amortization of short-lived assets.

We recorded pre-tax charges principally in connection with the Warnaco integration and related restructuring that totaled \$10 million and \$30 million in the twenty-six weeks ended July 31, 2016 and August 2, 2015, respectively. We expect to incur additional pre-tax charges of approximately \$2 million during the remainder of 2016.

We implemented initiatives in 2015 to rationalize the Heritage Brands business, including the exit from our Izod retail business (completed in the third quarter of 2015) and the discontinuation in 2015 of several licensed product lines in the dress furnishings business. We recorded pre-tax charges of \$6 million in the twenty-six weeks ended August 2, 2015 in connection with the operation of and exit from our Izod retail business. We recorded pre-tax charges of \$3 million in each of the twenty-six weeks ended July 31, 2016 and August 2, 2015 related to the discontinuation of several licensed product lines in the dress furnishings business.

We recorded pre-tax charges of \$3 million in the twenty-six weeks ended July 31, 2016 in connection with the licensing to G-III of the Tommy Hilfiger womenswear wholesale business in the United States and Canada and expect to incur additional pre-tax charges of approximately \$1 million during the remainder of 2016.

We also recorded pre-tax charges of \$6 million in the twenty-six weeks ended July 31, 2016 in connection with the restructuring associated with the new global creative strategy for *Calvin Klein* announced in April 2016.

We amended our senior secured credit facilities on May 19, 2016 and recorded pre-tax debt modification and extinguishment charges of \$16 million in the twenty-six weeks ended July 31, 2016. Please see "Liquidity and Capital Resources" below for a further discussion.

Our Calvin Klein and Tommy Hilfiger businesses each have substantial international components that expose us to significant foreign exchange risk. Amounts recorded in local foreign currencies are translated back to United States dollars using an average exchange rate over the representative period. Our international revenue and earnings are unfavorably impacted during times of a strengthening United States dollar against the foreign currencies in which we generate significant revenue and earnings and favorably impacted during times of a weakening United States dollar against those currencies. In 2015, approximately 45% of our revenue was subject to foreign currency translation. Beginning in the latter part of 2014, the United States dollar strengthened against most major currencies, resulting in a negative impact on our results of operations for 2015 and the first half of 2016. We currently expect the strength of the United States dollar and resulting unfavorable impact on our revenue and earnings to continue through the remainder of 2016. Additionally, there is a transaction impact on our financial results because inventory is often purchased in United States dollars by foreign subsidiaries. As with translation, during times of a strengthening United States dollar, our results of operations will be negatively impacted by these transactions as the increased local currency value of inventory results in a higher local currency cost of goods when the goods are sold. We use foreign currency forward exchange contracts to hedge against a portion of the exposure related to this transaction impact. The hedge contracts cover at least 70% of the projected inventory purchases in United States dollars by our foreign subsidiaries. These contracts are generally entered into 12 months in advance of the related inventory purchases. Therefore, the unfavorable impact of a strengthening United States dollar on the cost of inventory purchases covered by these hedge contracts may be

realized in our earnings in the year following inception of the hedge contracts as the underlying inventory hedged by such forward exchange contracts is sold. As such, the unfavorable impact of a strengthening United States dollar against most major currencies in the latter part of 2014 and through 2015, particularly the euro, negatively impacted our gross margin during the twenty-six weeks ended July 31, 2016, and is expected to have a negative impact on our earnings during the remainder of 2016.

Retail comparable store sales discussed below refer to sales for retail stores that have been open for at least 12 months. Sales for retail stores that are closed during the year are excluded from the calculation of retail comparable store sales. Sales for retail stores that are either relocated, materially altered in size or closed for a certain number of consecutive days for renovation are also excluded from the calculation of retail comparable store sales until such stores have been in their new location or in their newly renovated state for at least 12 months. Sales from our e-commerce sites are included within retail comparable store sales for those businesses and regions that have operated the related e-commerce site for at least 12 months. Retail comparable store sales are based on comparable weeks and local currencies.

## SEASONALITY

Our business generally follows a seasonal pattern. Our wholesale businesses tend to generate higher levels of sales in the first and third quarters, while our retail businesses tend to generate higher levels of sales in the fourth quarter. Royalty, advertising and other revenue tends to be earned somewhat evenly throughout the year, although the third quarter has the highest level of royalty revenue due to higher sales by licensees in advance of the holiday selling season. We expect this seasonal pattern will generally continue.

Due to the above factors, our operating results for the twenty-six weeks ended July 31, 2016 are not necessarily indicative of those for a full fiscal year.

## RESULTS OF OPERATIONS

### Thirteen Weeks Ended July 31, 2016 Compared With Thirteen Weeks Ended August 2, 2015

#### Total Revenue

Total revenue in the second quarter of 2016 was \$1.933 billion as compared to \$1.864 billion in the second quarter of the prior year. The increase in revenue of \$69 million was due principally to the net effect of the following items:

- The addition of an aggregate of \$78 million of revenue attributable to our Calvin Klein North America and Calvin Klein International segments, which included a reduction of approximately \$16 million related to the impact of foreign currency translation. Revenue in the Calvin Klein North America segment increased 11% (including a 1% negative foreign currency impact) primarily driven by continued healthy performance across the wholesale businesses. Revenue in the North America retail business grew modestly, as square footage expansion in Company-operated stores was partially offset by a 4% comparable store sales decline driven by continued weakness in traffic and consumer spending trends in Calvin Klein's United States stores located in international tourist locations. Calvin Klein International segment revenue increased 13% (including a 4% negative foreign currency impact), including an 11% increase in comparable store sales. The robust performance was driven by growth across Europe and Asia.
- The addition of an aggregate of \$50 million of revenue attributable to our Tommy Hilfiger North America and Tommy Hilfiger International segments, which included a reduction of approximately \$9 million related to the impact of foreign currency translation. Revenue in the Tommy Hilfiger North America segment increased 3% as growth in the wholesale business was partially offset by continued softness in the United States retail business. North America comparable store sales declined 7% compared to the prior year period, driven by continued weakness in traffic and consumer spending trends in Tommy Hilfiger's United States stores located in international tourist locations. Tommy Hilfiger International segment revenue increased 10% (including a 1% negative foreign currency impact), driven by continued strong growth in Europe, including an 8% increase in comparable store sales, and the TH China acquisition.
- The reduction of an aggregate of \$58 million of revenue attributable to our Heritage Brands Retail and Heritage Brands Wholesale segments. The decrease was driven by the rationalization initiatives in the business discussed in "Operations Overview" above. Also negatively impacting the second quarter of 2016 was overall softness in the neckwear category and a shift in the timing of wholesale shipments into the third quarter from the second quarter as compared to the prior year. Partially offsetting these decreases was an 11% increase in comparable store sales in the Van Heusen business.

## Gross Profit

Gross profit is calculated as total revenue less cost of goods sold and gross margin is calculated as gross profit divided by total revenue. Included as cost of goods sold are costs associated with the production and procurement of product, such as inbound freight costs, purchasing and receiving costs and inspection costs. Also included as cost of goods sold are the amounts recognized on foreign currency forward exchange contracts as the underlying inventory hedged by such forward exchange contracts is sold. Warehousing and distribution expenses are included in selling, general and administrative expenses. All of our royalty, advertising and other revenue is included in gross profit because there is no cost of goods sold associated with such revenue. As a result, our gross profit may not be comparable to that of other entities.

Gross profit in the second quarter of 2016 was \$1.034 billion, or 53.5% of total revenue, as compared to \$1.002 billion, or 53.8% in the second quarter of the prior year. The 30 basis point decrease was principally driven by (i) the unfavorable impact of the stronger United States dollar on our international businesses that purchase inventory in United States dollars, particularly our European businesses, as the increased local currency value of inventory resulted in higher cost of goods in local currency when the goods were sold, (ii) a decline in gross margin in the Tommy Hilfiger North America segment due to continued weakness in international tourist traffic and spending, which drove more promotional selling, and (iii) a decrease related to short-lived noncash inventory valuation adjustments recorded in connection with the TH China acquisition. These decreases were partially offset by (i) a favorable mix of business due to revenue growth in our higher-margin Calvin Klein and Tommy Hilfiger businesses and revenue contraction in our lower-margin Heritage Brands business and (ii) the addition of TH China, which carries a significantly higher gross margin than the average gross margin for our overall business.

## Selling, General and Administrative (“SG&A”) Expenses

SG&A expenses in the second quarter of 2016 were \$875 million, or 45.2% of total revenue, as compared to \$850 million, or 45.6% of total revenue in the second quarter of the prior year. The 40 basis point decrease in SG&A expenses as a percentage of total revenue was principally attributable to (i) a reduction of costs incurred in connection with the Warnaco integration and restructuring and the discontinuation of several licensed product lines in the Heritage Brands dress furnishings business and (ii) an overall leveraging of expenses due to the strong second quarter revenue growth in our larger Calvin Klein and Tommy Hilfiger businesses. These decreases were partially offset by increased costs incurred in connection with the TH China acquisition, primarily consisting of noncash amortization of short-lived assets.

## Debt Modification and Extinguishment Costs

We incurred costs totaling \$16 million during the second quarter of 2016 in connection with the amendment of our senior secured credit facilities. Please see the section entitled “Liquidity and Capital Resources” below for a further discussion.

## Equity in Net (Loss) Income of Unconsolidated Affiliates

The equity in net (loss) income of unconsolidated affiliates in the second quarter of 2016 was a loss of \$300,000 as compared to income of \$3 million in the second quarter of the prior year. These amounts relate to our share of income from our joint ventures for the *Tommy Hilfiger* brand in India and Brazil, for the *Calvin Klein* brand in India, for the *Tommy Hilfiger*, *Calvin Klein* and *Van Heusen* brands in Australia and for the *Karl Lagerfeld* brand. Also included in the second quarter of the prior year was our share of income from our joint venture for the *Tommy Hilfiger* brand in China, as the 55% that we did not own was acquired in the first quarter of 2016. In addition, the equity in net income of unconsolidated affiliates in the second quarter of the prior year included a one-time gain of \$2 million on our equity investment in the parent company of the *Karl Lagerfeld* brand (“Karl Lagerfeld”). Our investments in the continuing joint ventures are being accounted for under the equity method of accounting. Please see the section entitled “Investments in Unconsolidated Affiliates” within “Liquidity and Capital Resources” below for a further discussion.

## Interest Expense, Net

Net interest expense of \$28 million in the second quarter of 2016 was flat compared to the second quarter of the prior year, as the positive impacts from debt repayments made during 2015 and the first half of 2016 and the amendment of our senior secured credit facilities in the second quarter of 2016 were offset by the negative impacts of the interest rate swap that commenced in February 2016 to convert a portion of our variable rate debt under our term loans to fixed rate debt and the issuance of €350 million of 3 5/8% senior notes in June 2016. Please see the section entitled “Financing Arrangements” within “Liquidity and Capital Resources” below for a further discussion.

## Income Taxes

The effective income tax rate for the second quarter of 2016 was 21.2% as compared to 19.0% in the second quarter of the prior year.

The effective income tax rates for the second quarters of 2016 and 2015 were lower than the United States statutory rate due to the benefit of lower tax rates in international jurisdictions where we file tax returns.

## Redeemable Non-Controlling Interest

We have consolidated the results of PVH Ethiopia, in which we own a 75% interest, in our consolidated financial statements. The net loss attributable to the redeemable non-controlling interest was immaterial for the second quarter of 2016. Please refer to Note 5, "Redeemable Non-Controlling Interest," in the Notes to Consolidated Financial Statements included in Part 1, Item 1 of this report for a further discussion.

## Twenty-Six Weeks Ended July 31, 2016 Compared With Twenty-Six Weeks Ended August 2, 2015

### Total Revenue

Total revenue in the twenty-six weeks ended July 31, 2016 was \$3.851 billion as compared to \$3.743 billion in the twenty-six week period of the prior year. The increase in revenue of \$108 million was due principally to the net effect of the following items:

- The addition of an aggregate of \$147 million of revenue attributable to our Calvin Klein North America and Calvin Klein International segments, which included a reduction of approximately \$35 million related to the impact of foreign currency translation. Revenue in the Calvin Klein North America segment increased 12% (including a 1% negative foreign currency impact) primarily driven by strong performance in the wholesale business. Revenue in the North America retail business grew modestly, as square footage expansion in Company-operated stores was partially offset by a 4% comparable store sales decline driven by continued weakness in traffic and consumer spending trends in Calvin Klein's United States stores located in international tourist locations. Calvin Klein International segment revenue increased 11% (including a 4% negative foreign currency impact) due principally to significant growth in Europe. Calvin Klein International segment comparable store sales increased 6%.
- The net addition of \$74 million of revenue attributable to our Tommy Hilfiger North America and Tommy Hilfiger International segments, which included a reduction of approximately \$14 million related to the impact of foreign currency translation. Revenue in the Tommy Hilfiger North America segment decreased 1%, as growth in the wholesale business was more than offset by an 8% decline in comparable store sales, driven by continued weakness in traffic and consumer spending trends in Tommy Hilfiger's United States stores located in international tourist locations. Tommy Hilfiger International segment revenue increased 10% (including a 1% negative foreign currency impact), driven principally by strong growth across Europe, including a 9% increase in comparable store sales, and the TH China acquisition, which was completed in April 2016.
- The reduction of an aggregate of \$113 million of revenue attributable to our Heritage Brands Retail and Heritage Brands Wholesale segments. The decrease was primarily due to the rationalization initiatives in the business discussed above, partially offset by an 11% increase in comparable store sales in the Van Heusen business.

Revenue for the full year 2016 is currently projected to increase approximately 2% compared to the prior year, inclusive of a negative impact of approximately 1% related to foreign currency translation. Revenue for the Calvin Klein business is currently expected to increase approximately 5% compared to 2015, inclusive of a negative impact of approximately 2% related to foreign currency translation. Revenue for the Tommy Hilfiger business is currently expected to increase approximately 5% compared to 2015. Revenue for the Heritage Brands business is currently projected to decrease approximately 8% compared to 2015, principally due to the rationalization initiatives discussed in "Operations Overview" that will continue to impact the business throughout 2016.

## Gross Profit

Gross profit on total revenue in the twenty-six weeks ended July 31, 2016 was \$2.041 billion, or 53.0% of total revenue, as compared to \$1.988 billion, or 53.1% of total revenue in the twenty-six week period of the prior year. Negatively impacting gross margin in the twenty-six weeks ended July 31, 2016 was (i) the unfavorable impact of the stronger United States dollar on our international businesses that purchase inventory in United States dollars, particularly our European businesses, as the increased local currency value of inventory resulted in higher cost of goods in local currency when the goods were sold, and (ii) a decline in gross margin in the Tommy Hilfiger North America segment due to continued weakness in international tourist traffic and spending, which drove more promotional selling. These decreases were mostly offset by (i) a favorable mix of business due to revenue growth in our higher-margin Calvin Klein and Tommy Hilfiger businesses and revenue contraction in our lower-margin Heritage Brands business and (ii) the addition of TH China, which carries a significantly higher gross margin than the average gross margin for our overall business.

We currently expect that gross margin in 2016 will increase as compared to 2015 due to (i) a favorable mix of business due to the expected revenue growth in our higher-margin Calvin Klein and Tommy Hilfiger businesses and revenue contraction in the lower-margin Heritage Brands business and (ii) the addition of TH China, which we estimate will carry a significantly higher gross margin than the average gross margin for our overall business. We currently expect that these gross margin increases will be partially offset by the unfavorable impact of the stronger United States dollar on our international businesses that purchase inventory in United States dollars, as the increased local currency value of inventory results in higher cost of goods in local currency when the goods are sold.

## Selling, General and Administrative Expenses

SG&A expenses in the twenty-six weeks ended July 31, 2016 were \$1.740 billion, or 45.2% of total revenue, as compared to \$1.665 billion, or 44.5% of total revenue, in the twenty-six week period of the prior year. The 70 basis points increase in SG&A expenses as a percentage of total revenue was principally attributable to an increase of costs incurred in connection with the TH China acquisition, a portion of which was noncash charges related to amortization of short-lived assets, partially offset by a reduction of costs incurred in connection with the Warnaco integration and restructuring compared to the prior year period.

We currently expect that SG&A expenses as a percentage of total revenue in 2016 will increase from 2015 due to (i) the impact of an unfavorable mix of business due to the expected revenue growth in our higher-expense Calvin Klein and Tommy Hilfiger businesses and revenue contraction in our lower-expense Heritage Brands business, (ii) costs of approximately \$72 million expected to be incurred in connection with the acquisition of TH China, which primarily consist of noncash charges related to amortization of short-lived assets, and (iii) additional costs expected to be incurred in the second half of the year related to marketing and advertising, as well as investments associated with the recent *Calvin Klein* creative team leadership change. Additionally, our expectation of 2016 SG&A expenses does not include the impact of an actuarial gain or loss associated with our retirement plans, while our 2015 SG&A expenses included a \$20 million actuarial gain. These increases are expected to be partially offset by (i) lower costs expected to be incurred in 2016 as compared to 2015 in connection with the integration of Warnaco and the related restructuring and the discontinuation of several licensed product lines in the Heritage Brands dress furnishings business and (ii) a gain of approximately \$15 million expected to be recorded in the third quarter of 2016 related to a payment expected to be made to us to exit one of our *Tommy Hilfiger* retail flagship locations in Europe. Our actual SG&A expenses may be significantly different than our projections because of expenses associated with our retirement plans. Retirement plan expenses recorded throughout the year are calculated using actuarial valuations that incorporate assumptions and estimates about financial market, economic and demographic conditions. Differences between estimated and actual results give rise to gains and losses that are recorded immediately in earnings, generally in the fourth quarter of the year, which can create volatility in our operating results.

## Debt Modification and Extinguishment Costs

We incurred costs totaling \$16 million during the second quarter of 2016 in connection with the amendment of our senior secured credit facilities. Please see the section entitled "Liquidity and Capital Resources" below for a further discussion.

## Gain to Write-Up Equity Investment in Joint Venture to Fair Value

We recorded a pre-tax noncash gain of \$153 million in the twenty-six weeks ended July 31, 2016 to write-up our equity investment in TH China to fair value in connection with the acquisition of the 55% of the ownership interests in TH China that we did not already own. Such fair value was estimated based on the fair value of TH China and included an estimated discount for a lack of marketability. Please see Note 3, "Acquisitions," in the Notes to Consolidated Financial Statements included in Part 1, Item 1 of this report for a further discussion.

### Equity in Net (Loss) Income of Unconsolidated Affiliates

The equity in net (loss) income of unconsolidated affiliates in the twenty-six weeks ended July 31, 2016 was a loss of \$500,000, as compared to income of \$9 million during the twenty-six week period of the prior year. These amounts relate to our share of income from our joint ventures for the *Tommy Hilfiger* brand in China (the 55% that we did not own was acquired on April 13, 2016), India and Brazil, for the *Calvin Klein* brand in India, for the *Tommy Hilfiger*, *Calvin Klein* and *Van Heusen* brands in Australia and for the *Karl Lagerfeld* brand. The loss incurred during the twenty-six weeks ended July 31, 2016 is primarily related to one-time expenses of \$6 million recorded on our equity investment in TH China prior to the acquisition closing. In addition, the twenty-six weeks ended August 2, 2015 included a one-time gain of \$2 million on our equity investment in Karl Lagerfeld. Please see the section entitled “Investments in Unconsolidated Affiliates” within “Liquidity and Capital Resources” below for a further discussion.

### Interest Expense, Net

Net interest expense decreased to \$57 million in the twenty-six weeks ended July 31, 2016 from \$58 million in the twenty-six week period of the prior year as the positive impacts from debt repayments made during 2015 and the first half of 2016 and the amendment of our senior secured credit facilities in the second quarter of 2016 were mostly offset by the negative impacts of the interest rate swap that commenced in February 2016 to convert a portion of our variable rate debt under our term loans to fixed rate debt and the issuance of €350 million of 3 5/8% senior notes in June 2016. Please see the section entitled “Financing Arrangements” within “Liquidity and Capital Resources” below for a further discussion.

Net interest expense for the full year 2016 is currently expected to increase to a range of \$117 million to \$120 million compared to \$113 million in 2015, primarily due to the negative impacts of the interest rate swap that commenced in February 2016 to convert a portion of our variable rate debt under our term loans to fixed rate debt and the issuance of €350 million of 3 5/8% senior notes in June 2016, partially offset by the positive impacts from debt repayments made during 2015 and expected to be made in 2016 and the amendment of our senior secured credit facilities in the second quarter of 2016. Please see the section entitled “Financing Arrangements” within “Liquidity and Capital Resources” below for a further discussion.

### Income Taxes

The effective income tax rates for the twenty-six weeks ended July 31, 2016 and August 2, 2015 were 15.3% and 20.8%, respectively.

The effective income tax rate for the twenty-six weeks ended July 31, 2016 was lower than the United States statutory rate due primarily to the benefit of lower tax rates in international jurisdictions where we file tax returns. Also contributing to the lower effective income tax rate for the twenty-six weeks ended July 31, 2016 was the benefit of certain discrete items, including the lower tax rate applicable to the pre-tax gain recorded to write-up our existing equity investment in TH China to fair value.

The effective income tax rate for the twenty-six weeks ended August 2, 2015 was lower than the United States statutory rate due primarily to the benefit of lower tax rates in international jurisdictions where we file tax returns.

We currently expect our full year 2016 effective income tax rate to be lower than the United States statutory rate due principally to the benefit of overall lower tax rates in international jurisdictions where we file tax returns.

Our tax rate is affected by many factors, including the mix of international and domestic pre-tax earnings, discrete events arising from specific transactions, and audits by tax authorities or the receipt of new information, any of which can cause us to change our estimate for uncertain tax positions.

### Redeemable Non-Controlling Interest

We have consolidated the results of PVH Ethiopia, in which we own a 75% interest, in our consolidated financial statements. The net loss attributable to the redeemable non-controlling interest was immaterial for the twenty-six weeks ended July 31, 2016. Please refer to Note 5, “Redeemable Non-Controlling Interest,” in the Notes to Consolidated Financial Statements included in Part 1, Item 1 of this report for a further discussion.

## LIQUIDITY AND CAPITAL RESOURCES

### **Cash Flow Summary**

Cash and cash equivalents at July 31, 2016 was \$742 million, an increase of \$185 million from the amount at January 31, 2016 of \$556 million. The increase was driven in large part by the \$390 million of net proceeds from the issuance of €350 million euro-denominated principal amount of 3 5/8% senior notes on June 20, 2016, partially offset by (i) a \$158 million payment (net of cash acquired of \$105 million) in connection with the TH China acquisition and (ii) \$127 million of common stock repurchases under the stock repurchase program in 2016. The seasonality of our business may result in significant fluctuations in our cash balance between fiscal year-end and subsequent interim periods due to the timing of inventory purchases and peak sales periods. Cash flow for the full year 2016 will be impacted by various factors in addition to those noted below in this “Liquidity and Capital Resources” section, including the amount of debt repayments and stock repurchases we make in 2016.

As of July 31, 2016, approximately \$457 million of cash and cash equivalents was held by international subsidiaries whose undistributed earnings are considered permanently reinvested. Our intent is to continue to reinvest these funds in international operations. If management decides at a later date to repatriate these funds to the United States, we would be required to pay taxes on these amounts based on applicable United States tax rates, net of foreign taxes already paid.

### **Operations**

Cash provided by operating activities was \$409 million in the twenty-six weeks ended July 31, 2016 compared to \$323 million in the twenty-six weeks ended August 2, 2015. The increase in cash provided by operating activities was primarily driven by changes in working capital.

### **Capital Expenditures**

Our capital expenditures in the twenty-six weeks ended July 31, 2016 were \$103 million compared to \$101 million in the twenty-six weeks ended August 2, 2015. We currently expect that capital expenditures for the full year 2016 will be approximately \$275 million. Capital expenditures in 2016 primarily include investments in new stores and store expansions, as well as continued investments in operations and infrastructure, including system improvements.

### **Investments in Unconsolidated Affiliates**

In 2013, we formed a joint venture, PVH Brands Australia Pty. Limited (“PVH Australia”), in which we own a 50% economic interest. The joint venture has licensed from one of our subsidiaries since the first quarter of 2014 the rights to distribute and sell certain *Calvin Klein* brand products in Australia, New Zealand and other island nations in the South Pacific. As part of the transaction, we contributed to PVH Australia our subsidiaries that were operating the Calvin Klein Jeans businesses in Australia and New Zealand. During the first quarter of 2015, we completed a transaction in which the *Tommy Hilfiger* and *Van Heusen* trademarks in Australia were licensed for certain product categories to subsidiaries of PVH Australia for use in Australia, New Zealand and, in the case of *Tommy Hilfiger*, other island nations in the South Pacific. The *Tommy Hilfiger* trademarks had previously been licensed to a third party and the *Van Heusen* trademarks had previously been licensed to our joint venture partner in PVH Australia. Additionally, subsidiaries of PVH Australia license other trademarks for certain product categories. We made a net payment of \$21 million (of which \$20 million was placed into an escrow account prior to the end of 2014), to PVH Australia during the twenty-six weeks ended August 2, 2015 representing our 50% share of the joint venture funding for the period.

In 2013, we acquired a 51% economic interest in a Calvin Klein joint venture in India that has since been renamed Calvin Klein Arvind Fashion Private Limited (“CK India”). CK India licenses from one of our subsidiaries the rights to the *Calvin Klein* trademarks in India for certain product categories. During the first quarter of 2014, Arvind Limited (“Arvind”) purchased our prior joint venture partners’ shares in CK India and, as a result of the entry into a shareholder agreement with different governing arrangements between us and Arvind, we are no longer deemed to hold a controlling interest in the joint venture. CK India was deconsolidated as a result and we began reporting our 51% interest as an equity method investment in the first quarter of 2014. We made a payment of \$2 million to CK India during the twenty-six weeks ended August 2, 2015 to contribute our 51% share of the joint venture funding for the period.

In 2012, we formed a joint venture, Tommy Hilfiger do Brasil S.A. (“TH Brazil”), in Brazil, in which we own a 40% economic interest. TH Brazil licenses from one of our subsidiaries the rights to the *Tommy Hilfiger* trademarks in Brazil for certain product categories. We made a payment of \$2 million to TH Brazil during the twenty-six weeks ended July 31, 2016 to contribute our 40% share of the joint venture funding for the period.

#### ***Acquisition of TH China***

We acquired on April 13, 2016 the 55% of the ownership interests in TH China that we did not already own. Prior to April 13, 2016, our 45% interest in TH China owned by the Company was accounted for under the equity method of accounting. We paid \$158 million, net of cash acquired of \$105 million, as cash consideration for this transaction. Please see Note 3, “Acquisitions,” in the Notes to Consolidated Financial Statements included in Part 1, Item 1 of this report for a further discussion.

#### ***Tommy Hilfiger India Contingent Purchase Price Payments***

We reacquired in 2011 the rights in India to the *Tommy Hilfiger* trademarks that had been subject to a perpetual license previously granted to GVM International Limited. We are required to make annual contingent purchase price payments based on a percentage of sales of *Tommy Hilfiger* products in India in excess of an agreed upon threshold during each of five consecutive 12-month periods (extended to a sixth consecutive 12-month period if the aggregate payments for the five 12-month periods are not at least \$15 million, which will be the case). Such payments are subject to a \$25 million aggregate maximum and are due within 60 days following each one-year period. The estimated fair value of future contingent purchase price payments was \$2 million as of July 31, 2016.

#### ***Calvin Klein Contingent Purchase Price Payments***

In connection with our acquisition of Calvin Klein in 2003, we are obligated to pay Mr. Calvin Klein contingent purchase price payments based on 1.15% of total worldwide net sales (as defined in the acquisition agreement, as amended) of products bearing any of the *Calvin Klein* brands with respect to sales made through February 12, 2018. A significant portion of the sales on which the payments to Mr. Klein are made are wholesale sales by us and our licensees and other partners to retailers. Such contingent purchase price payments totaled \$25 million and \$24 million in the twenty-six weeks ended July 31, 2016 and August 2, 2015, respectively. Based upon current exchange rates, we currently expect that such payments will be approximately \$54 million for the full year 2016.

#### ***Dividends***

Our common stock currently pays annual dividends totaling \$0.15 per share. Dividends on common stock totaled \$9 million in each of the twenty-six weeks ended July 31, 2016 and August 2, 2015.

We currently project that cash dividends on our common stock in 2016 will be approximately \$12 million based on our current dividend rate, the number of shares of our common stock outstanding as of July 31, 2016, our estimates of stock to be issued during 2016 under our stock incentive plans and our estimates of stock repurchases during 2016.

#### ***Acquisition of Treasury Shares***

Our Board of Directors authorized a \$500 million three-year stock repurchase program effective June 3, 2015. Repurchases under the program may be made from time to time over the period through open market purchases, accelerated share repurchase programs, privately negotiated transactions or other methods, as we deem appropriate. Purchases are made based on a variety of factors, such as price, corporate requirements and overall market conditions, applicable legal requirements and limitations, restrictions under our debt arrangements, trading restrictions under our insider trading policy and other relevant factors. The stock repurchase program may be modified, including to increase or decrease the repurchase limitation or extend, suspend, or terminate the program, by us at any time, without prior notice.

During the twenty-six weeks ended July 31, 2016, we purchased 1.4 million shares of our common stock in open market transactions for \$129 million (2.8 million shares for \$255 million since inception) under the program, of which \$2 million was accrued for in the Consolidated Balance Sheet as of July 31, 2016. The repurchased shares were held as treasury stock and \$245 million of the authorization remained available for future share repurchases as of July 31, 2016.

Treasury stock activity also includes shares that were withheld principally in conjunction with the settlement of vested restricted stock, restricted stock units and performance share units to satisfy tax withholding requirements.

## Assets Held for Sale

In 2015, one of our European subsidiaries entered into an agreement to sell an owned building in Amsterdam, the Netherlands. We classified the building as held for sale beginning in the fourth quarter of 2015 and ceased recording depreciation on the building at that time. The building had a carrying value of \$15 million as of January 31, 2016.

We completed the sale of the building on July 4, 2016 for proceeds of €15 million (approximately \$17 million based on the exchange rate in effect on that date).

## Financing Arrangements

Our capital structure was as follows:

(in millions)	July 31, 2016	January 31, 2016	August 2, 2015
Short-term borrowings	\$ 19	\$ 26	\$ 8
Current portion of long-term debt	—	137	112
Capital lease obligations	16	15	17
Long-term debt	3,358	3,032	3,237
Stockholders' equity	4,804	4,552	4,410

In addition, we had \$742 million, \$556 million and \$467 million of cash and cash equivalents as of July 31, 2016, January 31, 2016 and August 2, 2015, respectively.

### Short-Term Borrowings

One of our Asian subsidiaries has yen-denominated short-term lines of credit and overdraft facilities with a number of Japanese banks at various interest rates that provide for borrowings of up to ¥2.200 billion (approximately \$21 million based on exchange rates in effect on July 31, 2016) and are utilized primarily to fund working capital needs. As of July 31, 2016, we had \$19 million of borrowings outstanding under this facility. The weighted average interest rate on the funds borrowed at July 31, 2016 was 0.28%. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$19 million.

One of our Asian subsidiaries has a won-denominated overdraft facility with a South Korean bank that provides for borrowings of up to ₩3.500 billion (approximately \$3 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility are unsecured and bear interest at the South Korean bank three-month certificate of deposit rate plus 1.50%. There were no borrowings outstanding under this facility as of or during the twenty-six weeks ended July 31, 2016.

One of our Asian subsidiaries has a United States dollar-denominated short-term revolving credit facility with a bank that provides for borrowings of up to \$10 million and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the one-month London interbank borrowing rate ("LIBOR") plus 1.50%. At the end of each month, amounts outstanding under this facility may be carried forward for additional one-month periods for up to one year. This facility is subject to certain terms and conditions and may be terminated at any time at the discretion of the bank. There were no borrowings outstanding under this facility as of or during the twenty-six weeks ended July 31, 2016.

One of our European subsidiaries has euro-denominated short-term revolving notes with a number of banks at various interest rates, as well as overdraft facilities, that provide for borrowings of up to €60 million (approximately \$67 million based on exchange rates in effect on July 31, 2016) and are used primarily to fund working capital needs. There were no borrowings outstanding under these facilities as of or during the twenty-six weeks ended July 31, 2016.

One of our European subsidiaries has a United States dollar-denominated short-term line of credit facility with a Turkish bank that provides for borrowings of up to \$4 million and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Turkish overnight lending rate plus 3.00%. As of July 31, 2016, we had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$3 million.

One of our European subsidiaries has a Turkish lira-denominated short-term line of credit facility with a Turkish bank that provides for borrowings of up to lira 3 million (approximately \$1 million based on exchange rates in effect on July 31, 2016)

and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Turkish overnight lending rate plus 4.00%. As of July 31, 2016, we had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was \$1 million.

One of our Mexican subsidiaries has a peso-denominated short-term revolving credit facility with a Mexican bank that provides for borrowings of up to ₱161 million (approximately \$9 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility bear interest at the Interbank Equilibrium Interest Rate plus 0.90%. As of July 31, 2016, we had no borrowings outstanding under this facility. The maximum amount of borrowings outstanding during the twenty-six weeks ended July 31, 2016 was equal to the maximum amount of borrowings available under this facility.

One of our Latin American subsidiaries has a Brazilian real-denominated short-term revolving credit facility with a Brazilian bank that provides for borrowings of up to R\$25 million (approximately \$8 million based on exchange rates in effect on July 31, 2016) and is utilized primarily to fund working capital needs. Borrowings under this facility are unsecured. There were no borrowings outstanding as of or during the twenty-six weeks ended July 31, 2016.

We also have the ability to draw revolving borrowings under our senior secured credit facilities as discussed in the section entitled “2016 Senior Secured Credit Facilities” below. As of July 31, 2016, we had no borrowings outstanding under these facilities. The maximum amount of revolving borrowings outstanding under these facilities during the twenty-six weeks ended July 31, 2016 was \$15 million.

#### Capital Lease Obligations

Our cash payments for capital lease obligations totaled \$4 million during each of the twenty-six weeks ended July 31, 2016 and August 2, 2015.

#### 2014 Senior Secured Credit Facilities

On March 21, 2014, we entered into an amendment to our senior secured credit facilities (as amended, the “2014 facilities”). The 2014 facilities consisted of a \$1.986 billion United States dollar-denominated Term Loan A facility, a \$1.189 billion United States dollar-denominated Term Loan B facility and senior secured revolving credit facilities consisting of (a) a \$475 million United States dollar-denominated revolving credit facility, (b) a \$25 million United States dollar-denominated revolving credit facility available in United States dollars or Canadian dollars and (c) a €186 million euro-denominated revolving credit facility available in euro, pounds sterling, Japanese yen or Swiss francs.

On May 19, 2016, we amended the 2014 facilities, as discussed in the following section.

#### 2016 Senior Secured Credit Facilities

On May 19, 2016 (the “Amendment Date”), we entered into an amendment (the “Amendment”) to the 2014 facilities (as amended by the Amendment, the “2016 facilities”). Among other things, the Amendment provided for an additional \$582 million principal amount of loans under the Term Loan A facility, the repayment of all outstanding loans under the Term Loan B facility and the termination of the Term Loan B facility. In addition, the Amendment extended the maturity of the Term Loan A and the revolving credit facilities from February 13, 2019 to May 19, 2021. On the Amendment Date, we borrowed the additional \$582 million principal amount of loans under the Term Loan A facility made available pursuant to the Amendment and used the proceeds of such borrowings to repay the \$582 million principal amount of loans outstanding under the Term Loan B facility under the 2014 facilities.

The 2016 facilities consist of a \$2.347 billion United States dollar-denominated Term Loan A facility and senior secured revolving credit facilities consisting of (a) a \$475 million United States dollar-denominated revolving credit facility, (b) a \$25 million United States dollar-denominated revolving credit facility available in United States dollars or Canadian dollars and (c) a €186 million euro-denominated revolving credit facility available in euro, pounds sterling, Japanese yen or Swiss francs. In connection with entering into the Amendment, we paid debt issuance costs of \$11 million (of which \$5 million was expensed as debt modification costs and \$6 million is being amortized over the term of the related debt agreement) and recorded debt extinguishment costs of \$11 million to write-off previously capitalized debt issuance costs.

The revolving credit facilities also include amounts available for letters of credit. As of July 31, 2016, we had \$24 million of outstanding letters of credit. There were no borrowings outstanding under the revolving credit facilities. A portion of each of the United States dollar-denominated revolving credit facilities is also available for the making of swingline loans. The

issuance of such letters of credit and the making of any swingline loan reduces the amount available under the applicable revolving credit facility. So long as certain conditions are satisfied, we may add one or more term loan facilities or increase the commitments under the revolving credit facilities by an aggregate amount not to exceed the sum of (1) the sum of (x) \$1.350 billion plus (y) the aggregate amount of all voluntary prepayments of loans under the Term Loan A and the revolving credit facilities (to the extent, in the case of voluntary prepayments of loans under the revolving credit facilities, there is an equivalent permanent reduction of the revolving commitments) plus (z) an amount equal to the aggregate revolving commitments of any defaulting lender (to the extent the commitments with respect thereto have been terminated) and (2) an additional unlimited amount as long as the ratio of our senior secured net debt to consolidated adjusted earnings before interest, taxes, depreciation and amortization (in each case calculated as set forth in the documentation relating to the 2016 facilities) would not exceed 3 to 1 after giving pro forma effect to the incurrence of such increase. The lenders under the 2016 facilities are not required to provide commitments with respect to such additional facilities or increased commitments.

The terms of the Term Loan A facility require us to make quarterly repayments of amounts outstanding under the 2016 facilities, which commenced with the calendar quarter ended June 30, 2016. Such amounts equal 5.00% per annum of the principal amount outstanding on the Amendment Date for the first eight calendar quarters following the Amendment Date, 7.50% per annum of the principal amount for the four quarters thereafter and 10.00% per annum of the principal amount for the remaining quarters, in each case paid in equal installments and in each case subject to certain customary adjustments, with the balance due on the maturity date of the Term Loan A facility.

We made payments of \$201 million and \$166 million during the twenty-six weeks ended July 31, 2016 and August 2, 2015, respectively, on our term loans under the 2014 and 2016 facilities. As a result of the voluntary repayments we made, as of July 31, 2016, we had satisfied our mandatory long-term debt repayment requirements for the next twelve months. We had term loans outstanding of \$2.187 billion, net of original issue discounts and debt issuance costs, as of July 31, 2016.

Our obligations under the 2016 facilities are guaranteed by substantially all of our existing and future direct and indirect United States subsidiaries, with certain exceptions. Obligations of the European borrower under the 2016 facilities are guaranteed by us, substantially all of our existing and future direct and indirect United States subsidiaries (with certain exceptions) and Tommy Hilfiger Europe B.V., a wholly owned subsidiary of ours. We and our United States subsidiary guarantors have pledged certain of our assets as security for the obligations under the 2016 facilities.

The outstanding borrowings under the 2016 facilities are prepayable at any time without penalty (other than customary breakage costs). The terms of the 2016 facilities require us to repay certain amounts outstanding thereunder with (a) net cash proceeds of the incurrence of certain indebtedness, (b) net cash proceeds of certain asset sales or other dispositions (including as a result of casualty or condemnation) that exceed certain thresholds, to the extent such proceeds are not reinvested or committed to be reinvested in the business in accordance with customary reinvestment provisions, and (c) a percentage of excess cash flow that exceeds the voluntary debt payments we have made during the applicable year, which percentage is based upon our net leverage ratio during the relevant fiscal period.

The United States dollar-denominated borrowings under the 2016 facilities bear interest at a rate equal to an applicable margin plus, as determined at our option, either (a) a base rate determined by reference to the greater of (i) the prime rate, (ii) the United States federal funds rate plus 1/2 of 1.00% and (iii) a one-month adjusted Eurocurrency rate plus 1.00% or (b) an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The Canadian dollar-denominated borrowings under the 2016 facilities bear interest at a rate equal to an applicable margin plus, as determined at our option, either (a) a Canadian prime rate determined by reference to the greater of (i) the rate of interest per annum that Royal Bank of Canada establishes at its main office in Toronto, Ontario as the reference rate of interest in order to determine interest rates for loans in Canadian dollars to its Canadian borrowers and (ii) the sum of (x) the average of the rates per annum for Canadian dollar bankers' acceptances having a term of one month that appears on the display referred to as "CDOR Page" of Reuters Monitor Money Rate Services as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the administrative agent (and if such screen is not available, any successor or similar service as may be selected by the administrative agent), and (y) 0.75%, or (b) an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The borrowings under the 2016 facilities in currencies other than United States dollars or Canadian dollars bear interest at a rate equal to an applicable margin plus an adjusted Eurocurrency rate, calculated in a manner set forth in the 2016 facilities.

The current applicable margin with respect to the Term Loan A facility and each revolving credit facility is 1.50% for adjusted Eurocurrency rate loans and 0.50% for base rate loans, respectively. After the date of delivery of the compliance certificate and

financial statements with respect to each of our fiscal quarters, the applicable margin for borrowings under the Term Loan A facility and the revolving credit facilities is subject to adjustment based upon our net leverage ratio.

The 2016 facilities contain customary events of default, including but not limited to nonpayment; material inaccuracy of representations and warranties; violations of covenants; certain bankruptcies and liquidations; cross-default to material indebtedness; certain material judgments; certain events related to the Employee Retirement Income Security Act of 1974, as amended; certain events related to certain of the guarantees by us and certain of our subsidiaries, and certain pledges of our assets and those of certain of our subsidiaries, as security for the obligations under the 2016 facilities; and a change in control (as defined in the 2016 facilities).

During the second quarter of 2014, we entered into an interest rate cap agreement for an 18-month term commencing on August 18, 2014. The agreement was designed with the intended effect of capping the interest rate on an initial notional amount of \$514 million of our variable rate debt obligation under the 2014 facilities or any replacement facility with similar terms. Under the terms of this agreement, the one-month LIBOR that we paid was capped at a rate of 1.50%. Therefore, the maximum amount of interest that we would have paid on the then-outstanding notional amount was at the 1.50% capped rate, plus the current applicable margin. The agreement expired on February 17, 2016.

During the second quarter of 2014, we entered into an interest rate swap agreement for a two-year term commencing on February 17, 2016. The agreement was designed with the intended effect of converting an initial notional amount of \$683 million of our variable rate debt obligation under the 2014 facilities or any replacement facility with similar terms, including the 2016 facilities, to fixed rate debt. Such agreement remains outstanding with a notional amount of \$665 million as of July 31, 2016, and is now converting a portion of our variable rate debt obligation under the 2016 facilities to fixed rate debt. Under the terms of the agreement for the then-outstanding notional amount, our exposure to fluctuations in the one-month LIBOR is eliminated and we will pay a weighted average fixed rate of 1.924%, plus the current applicable margin.

During the second quarter of 2013, we entered into an interest rate swap agreement for a three-year term commencing on August 19, 2013. The agreement was designed with the intended effect of converting an initial notional amount of \$1.229 billion of our variable rate debt obligation under our previously outstanding facilities or any replacement facility with similar terms, including the 2016 facilities, to fixed rate debt. Such agreement remained outstanding with a notional amount of \$427 million as of July 31, 2016, and was converting a portion of our variable rate debt obligation under the 2016 facilities to fixed rate debt. Under the terms of the agreement for the then-outstanding notional amount, our exposure to fluctuations in the one-month LIBOR was eliminated and we paid a fixed rate of 0.604%, plus the current applicable margin. The agreement expired on August 17, 2016.

The notional amount of any outstanding interest rate swap will be adjusted according to a pre-set schedule during the term of the applicable swap agreement such that, based on our projections for future debt repayments, our outstanding debt under the Term Loan A facility is expected to always equal or exceed the combined notional amount of the then-outstanding interest rate swaps.

The 2016 facilities also contain covenants that restrict our ability to finance future operations or capital needs, to take advantage of other business opportunities that may be in our interest or to satisfy our obligations under our other outstanding debt. These covenants restrict our ability to, among other things:

- incur or guarantee additional debt or extend credit;
- make restricted payments, including paying dividends or making distributions on, or redeeming or repurchasing, our capital stock or certain debt;
- make acquisitions and investments;
- dispose of assets;
- engage in transactions with affiliates;
- enter into agreements restricting our subsidiaries' ability to pay dividends;
- create liens on our assets or engage in sale/leaseback transactions; and
- effect a consolidation or merger, or sell, transfer, or lease all or substantially all of our assets.

The 2016 facilities require us to comply with certain financial covenants, including minimum interest coverage and maximum net leverage. A breach of any of these operating or financial covenants would result in a default under the applicable facility. If an event of default occurs and is continuing, the lenders could elect to declare all amounts then outstanding, together with accrued interest, to be immediately due and payable which would result in acceleration of our other debt. If we were unable to repay any such borrowings when due, the lenders could proceed against their collateral, which also secures some of our other indebtedness.

#### 4 1/2% Senior Notes Due 2022

On December 20, 2012, we issued \$700 million principal amount of 4 1/2% senior notes due December 15, 2022. We paid \$16 million of fees during 2013 in connection with the issuance of these notes, which are amortized over the term of the notes. We may redeem some or all of these notes at any time prior to December 15, 2017 by paying a “make whole” premium plus any accrued and unpaid interest. In addition, we may redeem some or all of these notes on or after December 15, 2017 at specified redemption prices plus any accrued and unpaid interest. Our ability to pay cash dividends and make other restricted payments is limited, in each case, over specified amounts as defined in the indenture governing the notes.

#### 7 3/4% Debentures Due 2023

We have outstanding \$100 million of debentures due November 15, 2023 with a yield to maturity of 7.80%. The debentures accrue interest at the rate of 7 3/4%. Pursuant to the indenture governing the debentures, we must maintain a certain level of stockholders’ equity in order to pay cash dividends and make other restricted payments, as defined in the indenture governing the debentures.

#### 3 5/8% Senior Notes Due 2024

On June 20, 2016, we issued €350 million euro-denominated principal amount of 3 5/8% senior notes due July 15, 2024. Interest on the notes is payable in euros. We paid €6 million (approximately \$7 million based on exchange rates in effect on the payment date) of fees during the second quarter of 2016 in connection with the issuance of these notes, which are amortized over the term of the notes. We may redeem some or all of these notes at any time prior to April 15, 2024 by paying a “make whole” premium plus any accrued and unpaid interest. In addition, we may redeem some or all of these notes on or after April 15, 2024 at their principal amount plus any accrued and unpaid interest.

Substantially all of our assets have been pledged as collateral to secure our obligations under our senior secured credit facilities, the 7 3/4% debentures due 2023 and contingent purchase price payments to Mr. Calvin Klein as discussed in Note 7, “Goodwill,” in the Notes to Consolidated Financial Statements included in Part I, Item 1 of this report.

As of July 31, 2016, we were in compliance with all applicable financial and non-financial covenants under our financing arrangements.

As of July 31, 2016, our corporate credit was rated Ba1 by Moody’s with a stable outlook and our issuer credit was rated BB+ by Standard & Poor’s with a stable outlook. In assessing our credit strength, we believe that both Moody’s and Standard & Poor’s considered, among other things, our capital structure and financial policies as well as our consolidated balance sheet, our historical acquisition activity and other financial information, as well as industry and other qualitative factors.

Please refer to Note 9, “Debt,” in the Notes to Consolidated Financial Statements included in Part I, Item 1 of this report for a schedule of mandatory long-term debt repayments over the next five years.

#### CRITICAL ACCOUNTING POLICIES

Our consolidated financial statements are based on the selection and application of significant accounting policies, which require management to make significant estimates and assumptions. Our significant accounting policies are outlined in Note 1, “Summary of Significant Accounting Policies,” in the Notes to Consolidated Financial Statements included in Item 8 of our Annual Report on Form 10-K for the year ended January 31, 2016. During the twenty-six weeks ended July 31, 2016, there were no significant changes to our critical accounting policies from those described in our Annual Report on Form 10-K for the year ended January 31, 2016.

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

Financial instruments held by us as of July 31, 2016 include cash and cash equivalents, short and long-term debt, foreign currency forward exchange and foreign currency option contracts and interest rate swap agreements. Note 12, "Fair Value Measurements," in the Notes to Consolidated Financial Statements included in Part I, Item 1 of this report outlines the fair value of our financial instruments as of July 31, 2016. Cash and cash equivalents held by us are affected by short-term interest rates, which are currently low. Due to the currently low rates of return we are receiving on our cash equivalents, the potential for a significant decrease in short-term interest rates is low and, therefore, a further decrease would not have a material impact on our interest income. However, there is potential for a more significant increase in short-term interest rates, which could have a more material impact on our interest income. Given our balance of cash and cash equivalents at July 31, 2016, the effect of a 10 basis point change in short-term interest rates on our interest income would be approximately \$700,000 annually. Borrowings under our 2016 facilities bear interest at a rate equal to an applicable margin plus a variable rate. As such, our credit facilities expose us to market risk for changes in interest rates. We have entered into interest rate swap agreements for the intended purpose of reducing our exposure to interest rate volatility. As of July 31, 2016, after taking into account the effect of our interest rate swap agreements that were in effect at such date, approximately 65% of our long-term debt was at a fixed interest rate, with the remainder at variable interest rates. Given our debt position at July 31, 2016, the effect of a 10 basis point change in interest rates on our interest expense would be approximately \$1 million annually. Please refer to "Liquidity and Capital Resources" in the Management's Discussion and Analysis section included in Part I, Item 2 of this report for a further discussion of our credit facilities and interest rate swap agreements.

Our Calvin Klein and Tommy Hilfiger businesses each have substantial international components that expose us to significant foreign exchange risk. Our Heritage Brands business also has international components but those components are not significant to the business. Changes in exchange rates between the United States dollar and other currencies can impact our financial results in two ways: a translation impact and a transaction impact. The translation impact refers to the impact that changes in exchange rates can have on our financial results, as our operating results in local foreign currencies are translated into United States dollars using an average exchange rate over the representative period. Accordingly, the impact of a strengthening United States dollar, particularly against the euro, the Brazilian real, the Japanese yen, the Korean won, the British pound sterling, the Canadian dollar, the Mexican peso, the Indian rupee, the Russian ruble and the Chinese yuan renminbi, will have a negative impact on our reported results of operations. To hedge against a portion of this exposure, we entered into several foreign currency option contracts during the second quarter of 2016. These contracts represent our purchase of euro put/United States dollar call options. The changes in the fair value of these foreign currency option contracts are recognized immediately in earnings. This mitigates the effect of a strengthening United States dollar against the euro on the reporting of our euro-denominated operating results. Absent material changes in the fair value of these foreign currency option contracts, we expect reductions in revenue and net income in 2016 due to the foreign exchange translation impact of approximately \$40 million and \$20 million, respectively, based on current exchange rates.

The transaction impact on financial results is common for apparel companies operating outside the United States that purchase goods in United States dollars, as is the case with most of our foreign operations. As with translation, during times of a strengthening United States dollar, our results of operations will be negatively impacted from these transactions as the increased local currency value of inventory results in higher cost of goods sold in local currency when the goods are sold. We also have exposure to changes in foreign currency exchange rates related to certain intercompany loans. We currently use and plan to continue to use foreign currency forward exchange contracts or other derivative instruments to mitigate the cash flow or market value risks associated with these inventory and intercompany transactions, but we are unable to entirely eliminate these risks. We expect a reduction in net income in 2016 due to the foreign exchange transaction impact of approximately \$110 million, based on current exchange rates.

Included in the calculations of expense and liabilities for our pension plans are various assumptions, including return on assets, discount rates, mortality rates and future compensation increases. Actual results could differ from these assumptions, which would require adjustments to our balance sheet and could result in volatility in our future pension expense. Holding all other assumptions constant, a 0.25% increase or decrease in the assumed discount rate would decrease or increase, respectively, 2016 net pension expense by approximately \$28 million.

#### ITEM 4 - CONTROLS AND PROCEDURES

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Operating & Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based upon that evaluation, our Chief Executive Officer and Chief Operating & Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report. Disclosure controls and procedures are designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Operating & Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

There have been no changes in our internal control over financial reporting during the period to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1 - LEGAL PROCEEDINGS

We are a party to certain litigations which, in management’s judgment based in part on the opinions of legal counsel, will not have a material adverse effect on our financial position.

ITEM 1A - RISK FACTORS

Please refer to Item 1A. Risk Factors in our Annual Report on Form 10-K for the fiscal year ended January 31, 2016 for a description of certain significant risks and uncertainties to which our business, operations and financial condition are subject. There have been no material changes to these risk factors as of July 31, 2016.

ITEM 2 - UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares (or Units) Purchased <sup>(1)(2)</sup>	(b) Average Price Paid per Share (or Unit) <sup>(1)(2)</sup>	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs <sup>(1)</sup>	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs <sup>(1)</sup>
May 2, 2016 - May 29, 2016	165,531	\$ 89.99	155,500	\$ 309,333,797
May 30, 2016 - July 3, 2016	417,018	93.44	407,000	271,371,557
July 4, 2016 - July 31, 2016	277,998	96.32	277,500	244,643,303
Total	860,547	\$ 93.71	840,000	\$ 244,643,303

<sup>(1)</sup> On June 1, 2015, we announced that our Board of Directors authorized us, effective June 3, 2015, to repurchase up to \$500 million of our outstanding common stock. The Board of Director’s authorization is effective through June 3, 2018. Repurchases under the program may be made from time to time over the period through open market purchases, accelerated share repurchase programs, privately negotiated transactions or other methods, as we deem appropriate. Purchases are made based on a variety of factors, such as price, corporate requirements and overall market conditions, applicable legal requirements and limitations, restrictions under our debt arrangements, trading restrictions under our insider trading policy, and other relevant factors. The program may be modified, including to increase or decrease the repurchase limitation or extend, suspend, or terminate the program, at any time, without prior notice.

<sup>(2)</sup> Our 2006 Stock Incentive Plan provides us with the right to deduct or withhold, or require employees to remit to us, an amount sufficient to satisfy any applicable tax withholding requirements applicable to stock-based compensation awards. To the extent permitted, employees may elect to satisfy all or part of such withholding requirements by tendering previously owned shares or by having us withhold shares having a fair market value equal to the minimum statutory tax withholding rate that could be imposed on the transaction. Included in this table are shares withheld during the second quarter of 2016 principally in connection with the settlement of vested restricted stock units to satisfy tax withholding requirements, in addition to the shares repurchased as part of the stock repurchase program discussed above.

## ITEM 6 - EXHIBITS

The following exhibits are included herein:

- 3.1 Certificate of Incorporation (incorporated by reference to Exhibit 5 to the Company's Annual Report on Form 10-K for the fiscal year ended January 29, 1977); Amendment to Certificate of Incorporation, filed June 27, 1984 (incorporated by reference to Exhibit 3B to the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 1985); Amendment to Certificate of Incorporation, filed June 2, 1987 (incorporated by reference to Exhibit 3(c) to the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 1988); Amendment to Certificate of Incorporation, filed June 1, 1993 (incorporated by reference to Exhibit 3.5 to the Company's Annual Report on Form 10-K for the fiscal year ended January 30, 1994); Amendment to Certificate of Incorporation, filed June 20, 1996 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 28, 1996); Certificate of Amendment of Certificate of Incorporation, filed June 29, 2006 (incorporated by reference to Exhibit 3.9 to the Company's Quarterly Report on Form 10-Q for the period ended May 6, 2007); Certificate of Amendment of Certificate of Incorporation, filed June 23, 2011 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on June 29, 2011).
- 3.2 Certificate of Designation of Series A Cumulative Participating Preferred Stock, filed June 10, 1986 (incorporated by reference to Exhibit A of the document filed as Exhibit 3 to the Company's Quarterly Report on Form 10-Q for the period ended May 4, 1986).
- 3.3 Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock of Phillips-Van Heusen Corporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on February 26, 2003); Corrected Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock of Phillips-Van Heusen Corporation, dated April 17, 2003 (incorporated by reference to Exhibit 3.9 to the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 2003).
- 3.4 Certificate Eliminating Reference to Series B Convertible Preferred Stock From Certificate of Incorporation of Phillips-Van Heusen Corporation, filed June 12, 2007 (incorporated by reference to Exhibit 3.10 to the Company's Quarterly Report on Form 10-Q for the period ended May 6, 2007).
- 3.5 Certificate Eliminating Reference to Series A Cumulative Participating Preferred Stock From Certificate of Incorporation of Phillips-Van Heusen Corporation (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed on September 28, 2007).
- 3.6 Certificate of Designations of Series A Convertible Preferred Stock of Phillips-Van Heusen Corporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed May 12, 2010).
- 3.7 Certificate Eliminating Reference to Series A Convertible Preferred Stock From Certificate of Incorporation of PVH Corp. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on May 3, 2013).
- 3.8 By-Laws of PVH Corp., as amended through April 28, 2016 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on May 3, 2016).
- 4.1 Specimen of Common Stock certificate (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 31, 2011).

- 4.2 Indenture, dated as of November 1, 1993, between Phillips-Van Heusen Corporation and The Bank of New York, as Trustee (incorporated by reference to Exhibit 4.01 to the Company’s Registration Statement on Form S-3 (Reg. No. 33-50751) filed on October 26, 1993); First Supplemental Indenture, dated as of October 17, 2002 to Indenture dated as of November 1, 1993 between Phillips-Van Heusen Corporation and The Bank of New York, as Trustee (incorporated by reference to Exhibit 4.15 to the Company’s Quarterly Report on Form 10-Q for the period ended November 3, 2002); Second Supplemental Indenture, dated as of February 12, 2002 to Indenture, dated as of November 1, 1993, between Phillips-Van Heusen Corporation and The Bank of New York, as Trustee (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K, filed on February 26, 2003); Third Supplemental Indenture, dated as of May 6, 2010, between Phillips-Van Heusen Corporation and The Bank of New York Mellon (formerly known as The Bank of New York), as Trustee (incorporated by reference to Exhibit 4.16 to the Company’s Quarterly Report on Form 10-Q for the period ended August 1, 2010); Fourth Supplemental Indenture, dated as of February 13, 2013 to Indenture, dated as of November 1, 1993, between PVH Corp. and The Bank of New York Mellon, as Trustee (incorporated by reference to Exhibit 4.11 to the Company’s Quarterly Report on Form 10-Q for the period ended May 5, 2013).
- 4.3 Indenture, dated as of May 6, 2010, between Phillips-Van Heusen Corporation and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.15 to the Company’s Quarterly Report on Form 10-Q for the period ended August 1, 2010).
- 4.4 First Supplemental Indenture, dated as of November 8, 2012, to Indenture dated as of May 6, 2010, between PVH Corp. (formerly known as “Phillips-Van Heusen Corporation”) and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.9 to the Company’s Annual Report on Form 10-K for the fiscal year ended February 3, 2013).
- 4.5 Indenture, dated as of December 20, 2012, between PVH Corp. and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K, filed on December 20, 2012).
- 4.6 Indenture, dated as of June 20, 2016, between PVH Corp., U.S. Bank National Association, as Trustee, Elavon Financial Services Limited, UK Branch, as Paying Agent and Authenticating Agent, and Elavon Financial Services Limited, as Transfer Agent and Registrar (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K, filed on June 20, 2016).
- +10.1 Second Amendment to Credit Agreement, dated as of May 19, 2016, entered into by and among PVH Corp., PVH B.V. (formerly known as Tommy Hilfiger B.V.), the Guarantors listed on the signature pages thereto, each Lender party thereto, each Issuing Bank party thereto, the Swing Line Lender party thereto and Barclays Bank PLC, as administrative agent and collateral agent.
- +10.2 Schedule of Non-Management Directors’ Fees, effective June 16, 2016.
- +31.1 Certification of Emanuel Chirico, Chairman and Chief Executive Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
- +31.2 Certification of Michael Shaffer, Executive Vice President and Chief Operating & Financial Officer, pursuant to Section 302 of the Sarbanes – Oxley Act of 2002.
- \*,+32.1 Certification of Emanuel Chirico, Chairman and Chief Executive Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
- \*,+32.2 Certification of Michael Shaffer, Executive Vice President and Chief Operating & Financial Officer, pursuant to Section 906 of the Sarbanes – Oxley Act of 2002, 18 U.S.C. Section 1350.
- +101.INS XBRL Instance Document
- +101.SCH XBRL Taxonomy Extension Schema Document
- +101.CAL XBRL Taxonomy Extension Calculation Linkbase Document

+101.DEF XBRL Taxonomy Extension Definition Linkbase Document

+101.LAB XBRL Taxonomy Extension Label Linkbase Document

+101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

+Filed or furnished herewith.

\* Exhibits 32.1 and 32.2 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that Section. Such exhibits shall not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

SIGNATURES

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

PVH CORP.

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Registrant

Dated: September 1, 2016

/s/ JAMES W. HOLMES

James W. Holmes

Senior Vice President and Controller (Chief Accounting Officer)

## Exhibit Index

Exhibit	Description
10.1	Second Amendment to Credit Agreement, dated as of May 19, 2016, entered into by and among PVH Corp., PVH B.V. (formerly known as Tommy Hilfiger B.V.), the Guarantors listed on the signature pages thereto, each Lender party thereto, each Issuing Bank party thereto, the Swing Line Lender party thereto and Barclays Bank PLC, as administrative agent and collateral agent.
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101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

## SECOND AMENDMENT TO CREDIT AGREEMENT

This **SECOND AMENDMENT TO CREDIT AGREEMENT**, dated as of May 19, 2016 (this "Amendment"), is entered into by and among PVH Corp., a Delaware corporation (the "U.S. Borrower"), PVH B.V. (formerly known as Tommy Hilfiger B.V.), a Dutch private limited liability company with its corporate seat in Amsterdam, The Netherlands (the "European Borrower" and, together with the U.S. Borrower, the "Borrowers"), the Guarantors (as defined in the Existing Credit Agreement (as defined below)) listed on the signature pages hereto, each Lender party hereto (including the Incremental Tranche A Term Lenders and any Replacement Lenders (each, as defined below)), each Issuing Bank party hereto, the Swing Line Lender party hereto and Barclays Bank PLC ("Barclays"), as administrative agent (in such capacity, the "Administrative Agent") and collateral agent (in such capacity, the "Collateral Agent") under the Existing Credit Agreement.

### RECITALS

**WHEREAS**, the Borrowers and the Guarantors have entered into that certain Amended and Restated Credit and Guaranty Agreement, dated as of March 21, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time immediately prior to the date hereof, the "Existing Credit Agreement"), with the Lenders from time to time party thereto, the Administrative Agent, the Collateral Agent and the other parties referred to therein;

**WHEREAS**, the Borrowers have requested that the Existing Credit Agreement be amended as set forth in Exhibit A-1 hereto (the "Amended Credit Agreement"; except as otherwise provided herein, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms therein) so as to, among other things, (i) extend the Revolving Commitment Termination Date and the Tranche A Term Loan Maturity Date, (ii) increase the aggregate principal amount of Tranche A Term Loans by an amount not to exceed the amount of Tranche B Term Loans outstanding on the Effective Date (immediately prior to effectiveness of this Amendment) (such additional Tranche A Term Loans, the "Incremental Tranche A Term Loans") and (iii) increase the U.S. Swing Line Sublimit by up to \$25,000,000 and the Canadian Swing Line Sublimit by up to \$15,000,000;

**WHEREAS**, each Lender that executes and delivers a signature page to this Amendment hereby agrees to the terms and conditions of this Amendment (each such Lender that has executed and delivered a signature page to this Amendment on or prior to 5:00 p.m. New York City time on May 13, 2016 (such time, the "Consent Deadline" and each such Lender, a "Consenting Lender");

**WHEREAS**, the Lenders party hereto constitute (a) at least the Required Lenders under the Existing Credit Agreement, calculated after giving effect to the funding of the Incremental Tranche A Term Commitments and the repayment in full of the Tranche B Term Loans with the proceeds thereof and (b) all the Lenders holding Tranche A Term Loans and Revolving Commitments after giving effect to the transactions described in Section 2(b) hereof and including all Incremental Tranche A Term Lenders;

**WHEREAS**, each Lender holding Revolving Commitments, Revolving Loans or Tranche A Term Loans that does not execute and deliver a signature page to this Amendment

on or prior to the Consent Deadline (each, a “Non-Consenting Lender”) shall assign, all of its interest, rights and obligations under the Existing Credit Agreement with respect to its Revolving Commitments, Revolving Loans or Tranche A Term Loans, as applicable to a Replacement Lender pursuant to Section 2.23 of the Existing Credit Agreement and Section 2(c) of this Amendment;

**WHEREAS**, each Person party hereto that elects to make Incremental Tranche A Term Loans on its signature page hereto (each, an “Incremental Tranche A Term Lender”) severally (and not jointly) agrees to extend Incremental Tranche A Term Loans on the Effective Date (as defined in Section 3 of this Amendment) in an aggregate principal amount not to exceed the amount of Incremental Tranche A Term Loans that it requested to make as set forth on such signature page (such amount, its “Incremental Tranche A Term Commitment”); and

**WHEREAS**, the aggregate proceeds of the Incremental Tranche A Term Loans shall be used by the U.S. Borrower to prepay an equivalent portion of the Tranche B Term Loans on the Effective Date.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 Amendment to Existing Credit Agreement. Subject to the satisfaction of the conditions set forth in Section 3 of this Amendment, on the Effective Date:

(a) The Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in the change pages of the Existing Credit Agreement attached as Exhibit A-1 hereto;

(b) Schedules 1.01(a), 1.01(c), 6.01, 6.02, 6.05, 6.06 and 6.11 to the Existing Credit Agreement shall be amended and restated into the form of schedules attached hereto as Exhibit A-2;

(c) Schedule 1.01(b) to the Existing Credit Agreement shall be deleted in its entirety; and

(d) Any Schedule to the Existing Credit Agreement not amended pursuant to clause (b) above or deleted pursuant to clause (c) above shall remain in full force and effect.

SECTION 2 Allocations, Reallocations and Incremental Term Loans.

(a) Each Incremental Tranche A Term Lender agrees, severally and not jointly, to make Incremental Tranche A Term Loans to the U.S. Borrower on the Effective Date, as set forth in Section 2.01(a) of the Amended Credit Agreement, in an amount to be determined by the Administrative Agent, notified to such Incremental Tranche A Term Lender prior to the Effective Date and as set forth on Schedule 1.01(a) to the Amended Credit Agreement (but in any event not to exceed such Incremental Tranche A Term Lender’s Incremental Tranche A Term Commitment). The Administrative Agent shall notify each Tranche A Term Lender that

is a Consenting Lender with a request to purchase an allocation of Incremental Tranche A Term Loans after the Effective Date as set forth on its signature page hereto of the amount of such Incremental Tranche A Term Loan so allocated to it (but in any event, not to exceed such Lender's requested allocation set forth on such signature page).

(b) The Borrower Representative hereby gives written notice to the Administrative Agent and each Lender pursuant to (and in accordance with) Section 2.23 of the Existing Credit Agreement that it requests to have each Non-Consenting Lender assign its Revolving Commitments, Revolving Loans and Tranche A Term Loans to one or more Lenders party hereto set forth on Exhibit C hereto who agree to replace such Non-Consenting Lenders (each such Lender a "Replacement Lender"). Each Replacement Lender shall, prior to the effectiveness of the amendments set forth herein, purchase the Revolving Commitments, the Revolving Loans and the Tranche A Term Loans, as applicable, of any such Non-Consenting Lender, in each case, in accordance with Section 2.23 and Section 10.06 of the Existing Credit Agreement in an aggregate principal amount equal to the amount set forth opposite such Lender's name on Exhibit C hereto. Payment for the purchase of such Non-Consenting Lender's Revolving Commitments, Revolving Loans and Tranche A Term Loans shall be made by the applicable Replacement Lender to each Non-Consenting Lender on the Effective Date and (without limitation of the right of the Replacement Lender to require the further execution of an Assignment Agreement) the receipt of such payment by such Non-Consenting Lender shall be deemed to effectuate the consummation of such purchase option and assignment and the Administrative Agent shall reflect such assignment in the Register. Each Replacement Lender by its signature hereto consents to this Amendment with respect to such purchased Revolving Commitments, Revolving Loans and Tranche A Term Loans, in each case, effective at the time of such assignment. Subject to the return by each Non-Consenting Lender of its Revolving Note or Tranche A Term Loan Note (in each case, if any) to the Administrative Agent for cancellation, the Borrowers shall, if requested by any Replacement Lender, issue and deliver a new Revolving Note, and/or Tranche A Term Loan Note to such Replacement Lender (or its designee) in accordance with the terms of Section 10.06(f) of the Existing Credit Agreement.

(c) Each Lender with Tranche A Term Loans agrees, severally and not jointly, to purchase Tranche A Term Loans from, or assign Tranche A Term Loans to, the Administrative Agent, in each case in an amount determined by the Administrative Agent (and notified to such Lender prior to the Effective Date) to be necessary in order that, after giving effect to any assignments of Tranche A Term Loans by Non-Consenting Lenders, any Incremental Tranche A Term Loans made pursuant to Section 2(a) of this Amendment and all such assignments and purchases of Tranche A Term Loans described in this Section 2(c), the Tranche A Term Loans will be held by the applicable Lenders ratably in accordance with their Tranche A Term Loan Exposure. The Incremental Tranche A Term Loans shall be treated as Tranche A Term Loans for all purposes under the Amended Credit Agreement, including, without limitation, with respect to maturity, prepayments, repayments, interest rate and other economic terms. Notwithstanding anything in the Amended Credit Agreement to the contrary, the initial Interest Period with respect to the Incremental Tranche A Term Loans shall commence on the Effective Date and end on the date(s) necessary (as determined by the Administrative Agent) to ensure that all such Incremental Tranche A Term Loans are included in each Tranche A Term Loan, outstanding, on a pro rata basis. The Administrative Agent is hereby authorized to take all actions as may be reasonably necessary to ensure that all such Incremental Tranche A Term Loans are included in each Tranche A Term Loan outstanding, on a pro rata basis and the

Administrative Agent shall be authorized to mark the Register accordingly to reflect the amendments and adjustments set forth herein. The interest rate with respect to the Incremental Tranche A Term Loans shall be identical to the interest rate on the Tranche A Term Loans under the Amended Credit Agreement and the Incremental Tranche A Term Loans shall amortize as set forth in Section 2.12(a) of the Amended Credit Agreement.

(d) Notwithstanding anything herein or in the Existing Credit Agreement to the contrary, (i) the Lenders party hereto waive the payment of any compensation required to be paid pursuant to Section 2.18 of the Existing Credit Agreement (to the extent any right to such compensation arises in connection with this Amendment and the transactions contemplated hereby, including, for the avoidance of doubt, Section 2(d)(ii) of this Amendment) and (ii) the Interest Periods in effect immediately prior to the Effective Date shall remain in effect with respect to Loans outstanding immediately prior to the Effective Date (or if new Interest Periods are entered into in connection with the Effective Date with respect to such Loans outstanding immediately prior to the Effective Date, the end dates of such new Interest Periods shall be the same as the Interest Period end dates with respect to such Loans immediately prior to the Effective Date).

**SECTION 3 Conditions to Effectiveness.** This Amendment shall become effective on and as of the first Business Day when the following conditions have been satisfied (the "Effective Date"):

(a) The Administrative Agent shall have received counterparts (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart) of (1) this Amendment duly executed by (i) each Loan Party, (ii) the Administrative Agent, (iii) the Collateral Agent, (iii) the Swing Line Lender, (iv) each Issuing Bank, (v) the Lenders constituting at least the Required Lenders under the Existing Credit Agreement, calculated after giving effect to the funding of the Incremental Tranche A Term Commitments and the repayment in full of the Tranche B Term Loans with the proceeds thereof and (vi) the Lenders constituting all of the Revolving Lenders and all of the Lenders holding Tranche A Term Loans (in each case after giving effect to the transactions described in Section 2(b) hereof and including all Incremental Tranche A Term Lenders) and (2) a joinder agreement to the CK Intercreditor Agreement duly executed by the Collateral Agent.

(b) The Administrative Agent shall have received (in each case, executed and delivered by each applicable Loan Party) with respect to each existing Mortgage: (a) if advisable to preserve the perfection and priority of the Collateral Agent's security interest granted in the applicable Mortgaged Property, a modification to each existing Mortgage (each a "Mortgage Modification"), duly executed and acknowledged by each Loan Party that is the owner of or holder of any interest in the applicable Mortgaged Property giving effect to the amendment of the Existing Credit Agreement as contemplated hereby, and otherwise in form for recording in the recording office of the applicable political subdivision where such Mortgaged Property is situated, (b) a date-down endorsement or other such modification endorsement reasonably acceptable to the Collateral Agent in respect of each Title Policy currently applicable to any such Mortgage and (c) a completed "Life of Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property on which a "Building" (as defined in 12 CFR Chapter III, Section 339.2) is located and if any Mortgaged

Property is located in a flood zone as indicated by the “Life of Loan” Federal Emergency Management Agency Standard Flood Hazard Determination, evidence of a policy of flood insurance for such Mortgaged Property written in an amount not less than the outstanding principal amount of the indebtedness secured by such Mortgage that is reasonably allocable to such real property or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less, and which policy has a term ending not later than the maturity of the Indebtedness secured by such Mortgage.

(c) The aggregate proceeds of the Incremental Tranche A Term Loans shall, substantially simultaneously with the effectiveness of this Amendment, be used by the U.S. Borrower to prepay an equivalent portion of the Tranche B Term Loans.

(d) Each applicable Replacement Lender shall have, immediately prior to the effectiveness of this Amendment, paid to each applicable Non-Consenting Lender all amounts required to be paid by such Replacement Lender pursuant to clause (1) of the first proviso in Section 2.23 of the Existing Credit Agreement and the applicable Borrower shall have paid to each Non-Consenting Lender all amounts required to be paid by such Borrower pursuant to clause (2) of the first proviso in Section 2.23 of the Existing Credit Agreement, in each case in order to give effect to the transaction contemplated by Section 2(b) of this Amendment.

(e) The U.S. Borrower shall have paid all fees and reasonable expenses (including, without limitation, legal fees and expenses) of the Lead Arrangers, the Administrative Agent and the Lenders as and to the extent required pursuant to the terms of the Engagement Letter and invoiced to the U.S. Borrower at least two Business Days prior to the Effective Date.

(f) The Administrative Agent shall have received originally executed copies of the favorable written opinions of Wachtell, Lipton, Rosen & Katz, as New York counsel to the Loan Parties, Potter Anderson & Corroon LLP, as Delaware counsel to the Loan Parties, Katten Muchin Rosenman LLP, as California counsel to the Loan Parties, Fennemore Craig Jones Vargas, as Nevada counsel to the Loan Parties, Price Benowitz LLP, as Virginia counsel to the Loan Parties, De Brauw Blackstone Westbroek New York B.V., P.C., as Dutch counsel to the Loan Parties, Loyens & Loeff N.V., as Dutch counsel to the Administrative Agent, the Lenders and the other Secured Parties, Mark D. Fischer, as general counsel of the U.S. Loan Parties, and Yu Lian de Bakker, as general counsel of an affiliate of the European Loan Parties, in each case as to such matters as are customary for financings of this type, dated as of the Effective Date and otherwise in form and substance reasonably satisfactory to the Administrative Agent (and each Loan Party hereby instructs such counsel to deliver such opinions to the Administrative Agent).

(g) The Administrative Agent shall have received in relation to each Loan Party (1) copies of each Organizational Document and, to the extent applicable, certified as of a recent date by the appropriate governmental official; (2) corporate or entity certificates incorporating, without limitation, signature and incumbency certificates of the officers, managers, members and/or directors of such Person executing the Loan Documents to which it is a party; (3) to the extent applicable, resolutions of the Board of Directors (which, in the case of each European Loan Party, shall be its board of managing directors) approving and authorizing the execution, delivery and performance of this Amendment and the other Loan Documents to which it is a

party or by which it or its assets may be bound as of the Effective Date, certified (to the extent required under applicable law or customary in accordance with local law or practice) as of the Effective Date by its secretary, its assistant secretary, director or any other competent officer or appropriate person as being in full force and effect without modification or amendment; (4) to the extent required under applicable law, the relevant entity's Organizational Documents or internal regulations or, customary in accordance with local law or practice, a copy of resolutions from the general meeting of shareholders or its partners approving and authorizing the execution, delivery and performance of this Amendment and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Effective Date, certified as of the Effective Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (5) to the extent required under applicable law or customary in accordance with local law or practice, a good standing certificate from the applicable Governmental Authority of its jurisdiction of incorporation, organization or formation, dated a recent date prior to the Effective Date; provided that, in lieu of delivering the Organizational Documents required by clause (1) and/or the corporate or entity certificates required by clause (2), the Borrower Representative may deliver a certificate of an Authorized Officer certifying that there have been no amendments to those Organizational Documents and/or corporate or entity certificates previously delivered to the Administrative Agent in connection with the Existing Credit Agreement.

(h) The Administrative Agent shall have received a Solvency Certificate from the U.S. Borrower in the form of Exhibit B attached hereto.

(i) No event shall have occurred and be continuing or would result directly from the effectiveness of this Amendment and the consummation of the transactions contemplated hereby that would constitute a Default or an Event of Default.

(j) The representations and warranties contained in the Amended Credit Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the Effective Date to the same extent as though made on and as of the Effective Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, to the extent any such representation or warranty is already qualified by materiality or Material Adverse Effect, such representation or warranty shall be true and correct in all respects.

(k) The Administrative Agent shall have received a fully executed and delivered Borrowing Notice with respect to the Incremental Tranche A Term Loans.

(l) To the extent requested in writing to the U.S. Borrower at least 10 Business Days prior to the Effective Date, the Lenders shall have received at least three days prior to the Effective Date all documentation and other information relating to the Loan Parties required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

For the avoidance of doubt, the Amendments set forth in Section 1 hereof shall become effective immediately following the repayment of the outstanding Tranche B Term Loans with

the proceeds of the Incremental Tranche A Term Loans made pursuant to Section 2(a) hereof and the consummation of the transactions described in Section 2(b) hereof.

SECTION 4 Incremental Tranche A Term Loans. The parties hereto hereby agree that (a) the Incremental Tranche A Term Loans constitute Incremental Term Loans incurred pursuant to (and in accordance with) Section 2.24 of the Existing Credit Agreement and (b) this Amendment (including, without limitation, the Amended Credit Agreement) shall be deemed to be a Joinder Agreement effecting necessary and appropriate amendments to the Existing Credit Agreement and the other Loan Documents in connection with the creation of the Incremental Tranche A Term Loans. The Lenders party hereto hereby waive compliance with the requirements of Section 2.24 of the Existing Credit Agreement with respect to the creation of the Incremental Tranche A Term Loans and agree that the Incremental Tranche A Term Loans shall not be deemed a use of the amount set forth in clause (B)(1) of the first sentence of such Section.

SECTION 5 Effect on Loan Documents. Except as specifically amended herein, all other Loan Documents shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Except as specifically set forth herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of the Loan Documents or in any way limit, impair or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or the Collateral Agent under the Loan Documents. The Borrowers and the other Loan Parties acknowledge and agree that, on and after the Effective Date, this Amendment and each of the other Loan Documents to be executed and delivered by a Loan Party in connection herewith shall constitute a Loan Document for all purposes of the Amended Credit Agreement. On and after the Effective Date, each reference in the Amended Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Existing Credit Agreement, and each reference in the other Loan Documents to “Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Existing Credit Agreement shall mean and be a reference to the Existing Credit Agreement as amended by this Amendment, and this Amendment and the Amended Credit Agreement shall be read together and construed as a single instrument. Nothing herein shall be deemed to entitle the Borrowers to a further consent to, or a further waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Amended Credit Agreement or any other Loan Document in similar or different circumstances. For the avoidance of doubt, this Amendment does not constitute a novation or termination by any Loan Party of the Indebtedness and Obligations under the Existing Credit Agreement.

SECTION 6 Expenses. The Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by the Administrative Agent in connection with this Amendment and any other documents prepared in connection herewith, in each case to the extent required by Section 10.02 of the Amended Credit Agreement. The Borrowers hereby confirm that the indemnification provisions set forth in Section 10.03 of the Amended Credit Agreement shall apply to this Amendment and such losses, claims, damages, liabilities, costs and expenses (as more fully set forth therein as applicable) which may arise herefrom or in connection herewith.

SECTION 7 Amendments; Execution in Counterparts; Severability.

(a) This Amendment may not be amended nor may any provision hereof be waived except pursuant to a writing signed by each party hereto.

(b) In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction).

SECTION 8 Reaffirmation. Each of the Loan Parties party hereto, including each Guarantor, hereby (a) acknowledges and agrees that the Incremental Tranche A Term Loans and the Lenders thereof constitute Loans and Lenders under the Loan Documents, and that all of such Loan Party's obligations under the Security Documents and the other Loan Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis, (b) reaffirms each Lien granted by it to the Collateral Agent for the benefit of the Secured Parties and the guaranties made by it pursuant to the Existing Credit Agreement, (c) acknowledges and agrees that the grants of security interests by and the guaranties of the Loan Parties contained in the Existing Credit Agreement and the Security Documents are, and shall remain, in full force and effect after giving effect to this Amendment and the transactions contemplated hereby, and (d) agrees that the Obligations include Incremental Tranche A Term Loans.

SECTION 9 GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER THIS AMENDMENT. The provisions of Section 10.15 of the Amended Credit Agreement are incorporated herein by reference.

SECTION 10 Headings. The Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose, modify or amend the terms or conditions hereof, be used in connection with the interpretation of any term or condition hereof or be given any substantive effect.

SECTION 11 Counterparts. This Amendment may be executed in any number of counterparts (and by different parties hereto on different counterparts), each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or other electronic transmission will be effective as delivery of an original counterpart thereof.

[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.

**PVH CORP.**, as U.S. Borrower

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH B.V.**, as European Borrower

By: /s/ Daniel Grieder  
Name: Daniel Grieder  
Title: Managing Director

By: /s/ Martijn Hagman  
Name: Martijn Hagman  
Title: Managing Director

Signature Page to  
PVH Corp. Second Amendment to Credit Agreement

U.S. GUARANTORS:

**PVH PUERTO RICO, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH PUERTO RICO LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH PRINCE C.V. HOLDING CORPORATION**

By: /s/ Michael A. Shaffer  
Name: Michael A. Shaffer  
Title: Executive Vice President

**BASSNET LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

Signature Page to  
PVH Corp. Second Amendment to Credit Agreement

**PVH RETAIL STORES LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**IZOD.COM INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH WHOLESALE CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH FOREIGN HOLDINGS CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH WHOLESALE NEW JERSEY, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**CALVIN KLEIN, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CK SERVICE CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CLUETT PEABODY RESOURCES CORPORATION**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CLUETT, PEABODY & CO., INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH EUROPE, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**PVH REALTY CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH NECKWEAR, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**KARL LAGERFELD LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**TOMMY HILFIGER U.S.A., INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**TOMMY HILFIGER RETAIL, LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**TOMMY HILFIGER WHOLESALE, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**TOMMY HILFIGER LICENSING LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**TOMCAN INVESTMENTS INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH GTLD HOLDINGS LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH GUAM, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**THE WARNACO GROUP, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**WARNACO INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CALVIN KLEIN JEANSWEAR COMPANY**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**WARNACO SWIMWEAR PRODUCTS INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**AUTHENTIC FITNESS ON-LINE, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**CCC ACQUISITION CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CKJ HOLDINGS, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**DESIGNER HOLDINGS LTD.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**OCEAN PACIFIC APPAREL CORP.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**WARNACO PUERTO RICO, INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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**WARNACO RETAIL INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**CKU.COM INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**WARNACO U.S., INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**WARNACO SWIMWEAR INC.**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

**PVH GIFT CARD COMPANY LLC**

By: /s/ Mark Fischer  
Name: Mark Fischer  
Title: Executive Vice President

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EUROPEAN GUARANTOR:

**TOMMY HILFIGER EUROPE B.V.**

By: /s/ Daniel Grieder  
Name: Daniel Grieder  
Title: Managing Director

By: /s/ Martijn Hagman  
Name: Martijn Hagman  
Title: Managing Director

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**BARCLAYS BANK PLC,**  
as Administrative Agent, Collateral Agent, Swing Line Lender and Issuing Bank

By: /s/ Ritam Bhalla  
Name: Ritam Bhalla  
Title: Director

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NY~~5627635-3~~[7596523.12](#)

**BANK OF AMERICA, N.A.,**  
as an Issuing Bank

By: /s/ Carlos J. Medina \_\_\_\_\_  
Name: Carlos J. Medina  
Title: Vice President

Signature Page to  
PVH Corp. Second Amendment to Credit Agreement

NY\5627635.3\7596523.12

**THE BANK OF NOVA SCOTIA,**  
as an Issuing Bank

By: /s/ Michelle C. Phillips  
Name: Michelle C. Phillips  
Title: Director & Execution Head

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PVH Corp. Second Amendment to Credit Agreement

NY\5627635-37596523.12

**JPMORGAN CHASE BANK, N.A.,**  
as an Issuing Bank

By: /s/ James A. Knight  
Name: James A. Knight  
Title: Executive Director

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NY\5627635-37596523.12

SIGNATURE PAGES & PROCEDURES FOR LENDERS PROVIDED SEPARATELY

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NY ~~5627635.3~~ [7596523.12](#)

**EXHIBIT A-1**  
**Amended Credit Agreement**

[To Be Attached.]

**AMENDED AND RESTATED  
CREDIT AND GUARANTY AGREEMENT**

**DATED AS OF MARCH 21, 2014<sup>1</sup>**

**AMONG**

**PVH CORP., AS U.S. BORROWER,**

**PVH B.V., AS EUROPEAN BORROWER,**

**CERTAIN SUBSIDIARIES OF PVH CORP.,  
AS GUARANTORS,**

**VARIOUS LENDERS,**

**BARCLAYS BANK PLC,  
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT,**

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND ~~CITIGROUP GLOBAL MARKETS~~  
~~INCITIBANK, N.A.~~,  
AS CO-SYNDICATION AGENTS**

**AND**

**JPMORGAN CHASE BANK, N.A. AND ROYAL BANK OF CANADA,  
AS DOCUMENTATION ~~AGENT~~AGENTS**

---

**BARCLAYS BANK PLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, CITIGROUP GLOBAL  
MARKETS INC., JPMORGAN CHASE BANK, N.A. AND RBC CAPITAL MARKETS<sup>±2</sup>,  
AS JOINT LEAD ARRANGERS,**

**AND**

**BARCLAYS BANK PLC, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, CITIGROUP GLOBAL  
MARKETS INC., JPMORGAN CHASE BANK, N.A. AND RBC CAPITAL MARKETS,  
AS JOINT LEAD BOOKRUNNERS**

<sup>1</sup> As amended to reflect the Second Amendment dated as of May 19, 2016

<sup>±2</sup> RBC Capital Markets is a brand name for the capital markets businesses of Royal Bank of Canada and its affiliates

**SENIOR SECURED CREDIT FACILITIES**

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  - A-3 Issuance Notice
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  - B-3 Revolving Loan Note
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  - B-5 Incremental Term Loan Note
  - C Compliance Certificate
  - D Certificate re Non-Bank Status
  - E-1 Closing Date Certificate
  - E-2 Solvency Certificate
  - F-1 Guarantor Counterpart Agreement
  - F-2 Ancillary Borrower Counterpart Agreement
  - G Mortgage
  - H Landlord Waiver and Consent Agreement
  - I Joinder Agreement
  - J Perfection Certificate

**AMENDED AND RESTATED  
CREDIT AND GUARANTY AGREEMENT**

This **AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT**, dated as of March 21, 2014, is entered into by and among **PVH CORP.**, a Delaware corporation (the "U.S. Borrower"), **PVH B.V.** (formerly known as Tommy Hilfiger B.V.), a Dutch private limited liability company with its corporate seat in Amsterdam, The Netherlands (the "European Borrower" and, together with the U.S. Borrower, the "Borrowers"), **CERTAIN SUBSIDIARIES OF THE U.S. BORROWER**, as Guarantors, the Lenders party hereto from time to time, and **BARCLAYS BANK PLC** ("Barclays"), as Administrative Agent (together with its permitted successors in such capacity, the "Administrative Agent") and as Collateral Agent (together with its permitted successors in such capacity, the "Collateral Agent"), with **MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED** ("MLPFS") and ~~**CIFIGROUP GLOBAL MARKETS INC.**~~ ("~~CGM~~**CITIBANK, N.A.**" ("Citi"), as Co-Syndication Agents (together with their permitted successors in such capacity, the "Co-Syndication Agents"), and **ROYAL BANK OF CANADA** ("Royal Bank") and, in connection with the Second Amendment, JPMorgan Chase Bank, N.A. ("JPMorgan"), as Documentation ~~Agent~~Agents.

**RECITALS:**

**WHEREAS**, capitalized terms used in these Recitals have the respective meanings set forth for such terms in Section 1.01 hereof;

**WHEREAS**, pursuant to that certain Credit and Guaranty Agreement, dated as of February 13, 2013 (the "Original Credit Agreement"), by and among the Borrowers, certain subsidiaries of the U.S. Borrower, as guarantors, the Lenders party thereto from time to time (the "Original Lenders") and Barclays Bank PLC, as administrative agent and collateral agent, the Original Lenders have extended certain credit facilities to the Borrowers; and

**WHEREAS**, pursuant to the First Amendment, the Borrowers, certain subsidiaries of the U.S. Borrower party thereto, the Lenders party thereto, the Issuing Banks party thereto and the Administrative Agent have agreed to amend the Original Credit Agreement into the form hereof, which amendment shall become effective as provided in the First Amendment.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**ARTICLE I.  
DEFINITIONS AND INTERPRETATION**

**Section 1.01 Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"2020 Notes" means the 7.375% senior unsecured notes due 2020 issued by the U.S. Borrower pursuant to the 2020 Notes Indenture.

“2020 Notes Documents” means the 2020 Notes, the 2020 Notes Indenture and all other instruments, agreements and other documents evidencing or governing the 2020 Notes or providing for any guarantee or other right in respect thereof.

“2020 Notes Indenture” means that certain Indenture, dated as of May 6, 2010, between the U.S. Borrower and U.S. Bank National Association, as trustee.

“2022 Notes” means the 4.500% senior unsecured notes due 2022 issued by the U.S. Borrower pursuant to the 2022 Notes Indenture.

“2022 Notes Documents” means the 2022 Notes, the 2022 Notes Indenture and all other instruments, agreements and other documents evidencing or governing the 2022 Notes or providing for any guarantee or other right in respect thereof.

“2022 Notes Indenture” means that certain Indenture, dated as of December 20, 2012, between the U.S. Borrower and U.S. Bank National Association, as trustee.

“2023 Debentures” means the 7-3/4% debentures due 2023 issued by the U.S. Borrower pursuant to the 2023 Debentures Indenture.

“2023 Debentures Indenture” means that certain Indenture, dated as of November 1, 1993, between the U.S. Borrower and the 2023 Debentures Trustee.

“2023 Debentures Intercreditor Agreement” means that certain 2023 Debentures Intercreditor Agreement, dated as of the Closing Date, between the U.S. Borrower, the Collateral Agent and The Bank of New York Mellon, as trustee under the 2023 Debentures Indenture.

“2023 Debentures Obligations” means all obligations of every nature of any Group Member under or with respect to the 2023 Debentures.

“2023 Debentures Trustee” means The Bank of New York Mellon, as trustee under the 2023 Debentures Indenture, and its successors in such capacity.

“Acquired Business” means The Warnaco Group, Inc., a Delaware corporation, which was acquired by the U.S. Borrower pursuant to the Acquisition.

“Acquisition” means that certain acquisition pursuant to the Acquisition Agreement whereby the Acquired Business was merged with Merger Sub on the Closing Date, with the Acquired Business surviving as a wholly-owned Subsidiary of the U.S. Borrower.

“Acquisition Agreement” means that certain Agreement and Plan of Merger, dated as of October 29, 2012, by and among the U.S. Borrower, Merger Sub and the Acquired Business.

“Acquisition Agreement Representations” means the representations and warranties made by or with respect to the Acquired Business in the Acquisition Agreement that are material to the interests of the Lenders (but only to the extent that the U.S. Borrower or its Subsidiaries (other than the Acquired Business and its Subsidiaries) have the right to terminate their respective obligations under

the Acquisition Agreement (or decline to consummate the transactions thereunder) as a result of a breach of such representations in the Acquisition Agreement).

“Acquisition Consideration” means the purchase consideration for any PermittedSubject Acquisition and all other payments by any Group Member in exchange for, or as part of, or in connection with, any PermittedSubject Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such PermittedSubject Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person or business (it being understood that the amount of any deferred payment, including consideration paid in the form of or pursuant to an “earn-out” or other contingent payment, shall be calculated as the present value of expected future payments in respect thereof, as of the date of consummation of the applicable PermittedSubject Acquisition in accordance with GAAP).

“Acquisition Period” shall mean the period from and after the consummation of a Qualifying Acquisition to and including the last day of the fourth full fiscal quarter following the fiscal quarter in which such Qualifying Acquisition was consummated.

“Adjusted Eurocurrency Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurocurrency Rate Loan, the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by the Administrative Agent to be the applicable Screen Rate for deposits (for delivery on the first day of such period) (such page currently being (x) in relation to a Loan denominated in Dollars or Other Foreign Currency, the LIBOR01 page, (y) in relation to a Loan denominated in Canadian Dollars, the CDOR page and (z) in relation to a Loan denominated in Euros, the EURIBOR01 page) with a term equivalent to such period in the relevant currency, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rates referenced in the preceding clause (a) are not available, the rate *per annum* equal to the offered quotation rate to first class banks in the London interbank market by the Administrative Agent for deposits (for delivery on the first day of the relevant period) in such currency of amounts in same day funds comparable to the principal amount of the applicable Loan of the Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurocurrency Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement. Notwithstanding the foregoing, with respect to ~~any determination of the Adjusted Eurocurrency Rate with respect to~~ Revolving Loans and Tranche BA Term Loans, the Adjusted Eurocurrency Rate shall not be less than 0.750.00% *per annum*.

“Administrative Agent” has the meaning specified in the preamble hereto.

“Adverse Proceeding” means any action, suit or proceeding at law or in equity or, to the knowledge of any Authorized Officer of any Borrower, any hearing (whether administrative, judicial or

otherwise), investigation before or by any Governmental Authority or arbitration (whether or not purportedly on behalf of any Group Member) against or affecting any Group Member or any property of any Group Member.

“Affected Lender” has the meaning set forth in Section 2.18(b).

“Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10.0% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting Securities or by contract or otherwise; provided, that no Agent or Lender shall be deemed to be an Affiliate of any Loan Party.

“Agent” means each of the Administrative Agent, the Collateral Agent, the Co-Syndication Agents and the Documentation ~~Agent~~Agents.

“Agent Affiliates” has the meaning set forth in Section 10.01(b)(iii).

“Aggregate Amounts Due” has the meaning set forth in Section 2.17.

“Aggregate Payments” has the meaning set forth in Section 7.02(b).

“Agreement” means this Amended and Restated Credit and Guaranty Agreement, dated as of March 21, 2014, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Agreement Currency” has the meaning set forth in Section 10.25.

“ALTA” means American Land Title Association, and any successor thereto.

“Ancillary Borrower” means, with respect to an Ancillary Facility, any Borrower or any Group Member that shall have acceded as a Borrower to this Agreement and become a Borrower under the Ancillary Facility pursuant to Section 10.26.

“Ancillary Commencement Date” means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the European Revolving Commitment Period.

“Ancillary Commitment” means, in relation to an Ancillary Lender and an Ancillary Facility, the Euro Equivalent of the maximum amount of Approved Currency or other currency freely exchangeable into Euro and agreed to by the Ancillary Lender which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorized as such under Section 2.26, to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

“Ancillary Document” means each document relating to or evidencing the terms of an Ancillary Facility.

“Ancillary Facility” means any ancillary facility made available by any Ancillary Lender in accordance with Section 2.26.

“Ancillary Lender” means each Lender (or Affiliate of a Lender) that makes available an Ancillary Facility in accordance with Section 2.26.

“Ancillary Outstandings” means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force, the aggregate of the Euro Equivalent of the following amounts outstanding under such Ancillary Facility: (a) the principal amount under each overdraft facility and on-demand short term loan facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available such Ancillary Facility to the extent that the credit balances are freely available to be set off by such Ancillary Lender against liabilities owed to it by that Borrower under such Ancillary Facility); (b) the face amount of each guaranty, bond and letter of credit under such Ancillary Facility and (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of such Ancillary Lender under each other type of accommodation provided under such Ancillary Facility, in each of clauses (a) through (c), as determined by such Ancillary Lender, acting reasonably in accordance with its normal banking practice and in accordance with the relevant Ancillary Document.

“Applicable Margin” means

~~(i) (a) with respect to Tranche B Term Loans that are Eurocurrency Rate Loans, (1) from the Restatement Date until the date of delivery of the Compliance Certificate and the financial statements for the Fiscal Quarter during which the Restatement Date occurs, a percentage, *per annum*, determined by reference to the following table as if the Net Leverage Ratio then in effect were greater than 2.75:1.00 and (2) thereafter, a percentage, *per annum*, determined by reference to the Net Leverage Ratio in effect from time to time as set forth below and (b) with respect to Tranche B Term Loans that are Base Rate Loans, (1) from the Restatement Date until the date of delivery of the Compliance Certificate and the financial statements for the Fiscal Quarter during which the Restatement Date occurs, a percentage, *per annum*, determined by reference to the table below as if the Net Leverage Ratio then in effect were greater than 2.75:1.00 and (2) thereafter, a percentage, *per annum*, determined by reference to the Net Leverage Ratio in effect from time to time as set forth below: [\[Reserved\]](#)~~

<b>Net Leverage Ratio</b>	<b>Applicable Margin for Tranche B Term Loans that are Eurocurrency Rate Loans</b>	<b>Applicable Margin for Tranche B Term Loans that are Base Rate Loans</b>
> 2.75:1.00	2.50%	1.50%
≤ 2.75:1.00	2.25%	1.25%

(ii) (a) with respect to Tranche A Term Loans and Revolving Loans that are Eurocurrency Rate Loans, (1) from the ~~Restatement~~Second Amendment Date until the date of delivery of the Compliance Certificate and the financial statements for the Fiscal Quarter during which the ~~Restatement~~Second Amendment Date occurs, a percentage, *per annum*, determined by reference to the table below as if the Net Leverage Ratio then in effect were greater than ~~3.00~~2.00:1.00 but less than or equal to ~~4.00~~3.00:1.00 and (2) thereafter, a percentage, *per annum*, determined by reference to the Net Leverage Ratio in effect from time to time as set forth below and (b) with respect to Tranche A Term Loans that are Base Rate Loans and Revolving Loans that are Base Rate Loans or Canadian Prime Rate Loans, (1) from the ~~Restatement~~Second Amendment Date until the date of delivery of the Compliance Certificate and the financial statements for the Fiscal Quarter during which the ~~Restatement~~Second Amendment Date occurs, a percentage, *per annum*, determined by reference to the table below as if the Net Leverage Ratio then in effect were greater than ~~3.00~~2.00:1.00 but less than or equal to ~~4.00~~3.00:1.00 and (2) thereafter, a percentage, *per annum*, determined by reference to the Net Leverage Ratio in effect from time to time as set forth below:

Net Leverage Ratio	Applicable Margin for Tranche A Term Loans, U.S. Revolving Loans and Canadian Revolving Loans that are Eurocurrency Rate Loans and European Revolving Loans	Applicable Margin for Tranche A Term Loans and U.S. Revolving Loans that are Base Rate Loans and Canadian Revolving Loans that are Canadian Prime Rate Loans
> 4.00:1.00	2.00%	1.00%
≤ 4.00:1.00 > 3.00:1.00	1.75%	0.75%
≤ 3.00:1.00 > 2.00:1.00	1.50%	0.50%
≤ 2.00:1.00	1.25%	0.25%

(iii) with respect to Swing Line Loans, an amount equal to (a) the Applicable Margin for Tranche A Term Loans that are Eurocurrency Rate Loans as set forth in clause (ii)(a)(1) or (ii)(a)(2) above, as applicable, minus (b) 1.00% *per annum*.

No change in the Applicable Margin for Tranche A ~~Term Loans, Tranche B~~ Term Loans and Revolving Loans, as applicable, shall be effective until three Business Days after the date on which the Administrative Agent has received the applicable financial statements and a Compliance Certificate pursuant to Section 5.01(c) calculating the Net Leverage Ratio. At any time the Borrower Representative has not submitted to the Administrative Agent the applicable information as and when required under Section 5.01(c), ~~(x)~~ the Applicable Margin for Tranche A Term Loans and Revolving Loans shall be determined as if the Net Leverage Ratio were in excess of ~~4.00:1.00~~ and ~~(y) the Applicable Margin for Tranche B Term Loans shall be determined as if the Net Leverage Ratio were in excess of 2.75:1.00.~~ Promptly following receipt of the applicable information under

Section 5.01(c), the Administrative Agent shall give each Lender telefacsimile or telephonic notice (confirmed in writing) of the Applicable Margin for Tranche A ~~Term Loans, Tranche B~~ Term Loans and Revolving Loans, as applicable, in effect from such date. In the event that any financial statement or certificate delivered pursuant to Section 5.01 is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for Tranche A ~~Term Loans, Tranche B~~ Term Loans and Revolving Loans, as applicable, for any period (an “Applicable Period”) than the Applicable Margin for Tranche A Term Loans, ~~Tranche B Term Loans~~ and Revolving Loans, as applicable, applied for such Applicable Period, then (i) the Borrower Representative shall immediately deliver to the Administrative Agent a correct certificate required by Section 5.01 for such Applicable Period, (ii) the Applicable Margin for Tranche A Term Loans, ~~Tranche B Term Loans~~ and Revolving Loans, as applicable, shall be recalculated with the Net Leverage Ratio at the corrected level and (iii) each applicable Borrower shall immediately pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for Tranche A Term Loans, ~~Tranche B Term Loans~~ and Revolving Loans, as applicable, for such Applicable Period. Nothing in this definition shall limit the right of the Administrative Agent or any Lender under Section 2.10 or Article VIII and the provisions of this definition shall survive the termination of this Agreement. Notwithstanding the foregoing, at any time (x) prior to the Restatement Date, the Applicable Margin shall be determined in accordance with the Original Credit Agreement and (y) prior to the Second Amendment Date shall be determined in accordance with this Agreement prior to giving effect to the Second Amendment.

“Applicable Period” has the meaning set forth in the definition of “Applicable Margin”.

“Applicable Reserve Requirement” means, at any time, for any Eurocurrency Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. The rate of interest on Eurocurrency Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

“Applicable Revolving Commitment Fee Percentage” means (a) from the ~~Restatement~~Second Amendment Date until the date of delivery of the Compliance Certificate and the financial statements for the Fiscal Quarter during which the ~~Restatement~~Second Amendment Date occurs, a percentage, *per annum*, determined by reference to the following table as if the Net Leverage Ratio then in effect were ~~in excess of 3.00~~less than 4.00:1.00, and (b) thereafter, a percentage, *per annum*, determined by reference to the Net Leverage Ratio in effect from time to time as set forth below:

Net Leverage Ratio	Commitment Fee
≥ <del>3.00</del> 4.00 : 1.00	0.375%
< <del>3.00</del> 4.00 : 1.00	0.250%

No change in the Applicable Revolving Commitment Fee Percentage shall be effective until three Business Days after the date on which the Administrative Agent has received the applicable financial

statements and a Compliance Certificate pursuant to Section 5.01(c) calculating the Net Leverage Ratio. At any time the Borrower Representative has not submitted to the Administrative Agent the applicable information as and when required under Section 5.01(c), the Applicable Revolving Commitment Fee Percentage shall be determined as if the Net Leverage Ratio were in excess of ~~3.00~~4.00:1.00. Promptly following receipt of the applicable information under Section 5.01(c), the Administrative Agent shall give each Lender telefacsimile or telephonic notice (confirmed in writing) of the Applicable Revolving Commitment Fee Percentage in effect from such date. In the event that any financial statement or certificate delivered pursuant to Section 5.01 is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Revolving Commitment Fee Percentage for any Applicable Period than the Applicable Revolving Commitment Fee Percentage applied for such Applicable Period, then (i) the Borrower Representative shall immediately deliver to the Administrative Agent a correct certificate required by Section 5.01 for such Applicable Period, (ii) the Applicable Revolving Commitment Fee Percentage shall be recalculated with the Net Leverage Ratio at the corrected level and (iii) each applicable Borrower shall immediately pay to the Administrative Agent the accrued additional fees owing as a result of such increased Applicable Revolving Commitment Fee Percentage for such Applicable Period. Nothing in this definition shall limit the right of the Administrative Agent or any Lender under Section 2.10 or Article VIII and the provisions of this definition shall survive the termination of this Agreement. Notwithstanding the foregoing, at any time prior to the (x) Restatement Date, the Applicable Revolving Commitment Fee Percentage shall be determined in accordance with the Original Credit Agreement- and (y) Second Amendment Date, the Applicable Revolving Commitment Fee Percentage shall be determined in accordance with this this Agreement prior to giving effect to the Second Amendment.

“Approved Currency” means each of Dollars, Euros, Canadian Dollars or any Other Foreign Currency.

“Approved Electronic Communications” means any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to Agents or to Lenders by means of electronic communications pursuant to Section 10.01(b).

“Arrangers” means Barclays, MLPFS, ~~CGMI and RBCCM~~, (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of Second Amendment Date), CGMI, RBCCM and, from the Second Amendment Date, JPMorgan Chase Bank, N.A. each in its capacity as a joint lead arranger.

“Asset Sale” means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicense), transfer or other disposition to, or any exchange of property with, any Person (other than (a) any Loan Party or (b) any Restricted Subsidiary in the ordinary course of business), in one transaction or a series of transactions, of all or any part of any Group Member’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or

licensed, including the Equity Interests of any of the U.S. Borrower's Subsidiaries, other than (i) inventory (or other assets) sold, leased, licensed out or otherwise disposed of in the ordinary course of business, (ii) sales, leases, licenses out or other dispositions of worn out, obsolete, scrap or surplus assets or assets no longer useful in the conduct of the business of any Group Member, in each case, in the ordinary course of business, and (iii) sales, leases, licenses out or other dispositions of other assets for aggregate consideration of less than \$10,000,000 with respect to any transaction or series of related transactions.

“Assignment Agreement” means an assignment agreement in the form agreed to by the Administrative Agent and the Lenders on the Closing Date, with such amendments or modifications solely to reflect market practice as may be approved in writing by the Administrative Agent.

“Assignment Effective Date” has the meaning set forth in Section 10.06(b).

“Attributable Indebtedness” means, in respect of any Sale and Lease-Back, as at the time of determination, the present value (discounted at the interest rate borne by the 2020 Notes, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the Capital Lease included in such Sale and Lease-Back (including any period for which such Capital Lease has been extended).

“Authorized Officer” means, as applied to any Person, the chairman of the board (if an officer), principal executive officer, president or any corporate vice president (or the equivalent thereof), principal financial officer, principal accounting officer or any director of such Person. Unless otherwise specified, an Authorized Officer shall refer to an Authorized Officer of the Borrower Representative.

“Available Amount” means, as of any date, the sum, without duplication, of: (i) the sum of (a) the aggregate cumulative amount of any Consolidated Excess Cash Flow to the extent not otherwise required to be applied pursuant to Section 2.14(d), beginning with the Fiscal Year ending February 2, 2014, plus (b) the Consolidated Excess Cash Flow, if any, for FQ4 2012, (ii) \$307,353,000, (iii) the Net Cash Proceeds received after the Closing Date and on or prior to the date of such determination of the Available Amount, of any sale of Equity Interests by, or capital contribution to, the U.S. Borrower (which, in the case of any such sale of Equity Interests, are not Disqualified Equity Interests and are not issued in connection with the Closing Date Transactions), and (iv) an amount equal to any returns (including dividends, interest, distributions, returns on principal, profits on sale, repayments, income and similar amounts) actually received in cash and Cash Equivalents by any Loan Party in respect of any Investments made or owned pursuant to Section 6.06(m), less, the sum of any Available Amount used from and after the Closing Date to make (w) Restricted Payments pursuant to Sections 6.04(f) and 6.04(g), (x) Investments permitted by Section 6.06(m) and (y) below par purchases of Term Loans in accordance with Section 2.13(c). For the avoidance of doubt, any Net Cash Proceeds from the sale of Equity Interests or any cash returns received in respect of any Investment pursuant to Section 6.06(m)(ii) or 6.06(n)(ii) received by any Group Member shall not be included in the Available Amount to the extent such Net Cash Proceeds or cash returns are utilized to make Restricted Payments pursuant to Section 6.04(f)(ii) or Investments

pursuant to Section 6.06(m)(ii) or 6.06(n)(ii), as applicable, which are not specifically tied to the Available Amount.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bank Guarantee” means a direct guaranty issued for the account of any Foreign Subsidiary pursuant to this Agreement by an Issuing Bank, in form acceptable to such Issuing Bank, ensuring that a liability of such Subsidiary acceptable to such Issuing Bank and owing to a third party will be met.

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

“Barclays” has the meaning specified in the preamble hereto.

“Base Rate” means, for any day, a rate *per annum* equal to the greater of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1.00%, and (iii) the Adjusted Eurocurrency Rate that would be payable on such day for a Eurocurrency Rate Loan with a one-month Interest Period plus 1.00%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively. ~~Notwithstanding the foregoing, with respect to any determination of the Base Rate with respect to Tranche B Term Loans, the Base Rate shall not be less than 1.75% per annum.~~

“Base Rate Loan” means a Loan bearing interest at a rate determined by reference to the Base Rate.

“Board of Directors” means with respect to any Person, the board of directors, the board of managers or similar governing body of such Person, or if such Person is owned and/or managed by a single entity, the board of directors or similar governing body of such entity.

“Board of Governors” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Bookrunners” means each of Barclays, MLPFS, Citi ~~and RBCCM,~~ RBCCM and, in connection with the Second Amendment, JPMorgan each in its capacity as a joint lead bookrunner.

“Borrower Financial Advisor” has the meaning set forth in Section 10.24.

“Borrower Representative” means the U.S. Borrower in its capacity as representative of the other Borrowers as set forth in Section 2.25.

“Borrowers” means the Persons identified as the “Borrowers” in the preamble hereto or any other Person that may accede to this Agreement as an Ancillary Borrower hereunder.

“Borrowing Notice” means a notice substantially in the form of Exhibit A-1.

“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 Principal Office with respect to the Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, 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 on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer which utilizes a single shared platform and which was launched on 19 November 2007 (TARGET 2) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, 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;

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (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; and

(e) if such day relates to any interest rate settings, funding, disbursement, settlements and payments in Canadian Dollars, means any day other than a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by law to close.

“Canadian Dollars” means the lawful money of Canada.

“Canadian Issuing Bank” means an Issuing Bank that has agreed to issue Canadian Letters of Credit.

“Canadian Letter of Credit” means any commercial or standby letter of credit issued or to be issued by an Issuing Bank for the account of the U.S. Borrower or any of its Subsidiaries pursuant to Section 2.04(a)(iii) of this Agreement, and any letter of credit issued and outstanding as of the Closing Date and designated by the Borrower Representative as a “Canadian Letter of Credit” pursuant to a written notice delivered to the Administrative Agent on or prior to the Closing Date; provided that the issuer thereof is a Revolving Lender hereunder. Each such letter of credit so designated shall be deemed to constitute a Canadian Letter of Credit and a Letter of Credit issued hereunder on the Closing Date for all purposes under this Agreement and the other Loan Documents.

“Canadian Letter of Credit Sublimit” means the lesser of (a) \$10,000,000 and (b) the aggregate unused amount of the Canadian Revolving Commitments then in effect.

“Canadian Letter of Credit Usage” means, as at any date of determination, the sum of (i) the Dollar Equivalent of the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Canadian Letters of Credit then outstanding, and (ii) the Dollar Equivalent of the aggregate amount of all drawings under Canadian Letters of Credit honored by the Issuing Bank and not theretofore reimbursed by or on behalf of the U.S. Borrower.

“Canadian Prime Rate” means, at any time, the greater of (i) the rate of interest *per annum* which Royal Bank establishes at its main office in Toronto, Ontario as the reference rate of interest in order to determine interest rates for loans in Canadian Dollars to its Canadian borrowers, adjusted automatically with each quoted or published change in such rate, all without the necessity of any notice to the U.S. Borrower or any other Person and (ii) the sum of (x) the average of the rates *per annum* for Canadian Dollar bankers’ acceptances having a term of one month that appears on the display referred to as “CDOR Page” of Reuters Monitor Money Rate Services as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the Administrative Agent (and if such screen is not available, any successor or similar service as may be selected by the Administrative Agent), and (y) 0.75%.

“Canadian Prime Rate Loans” means Loans for which the applicable rate of interest is based upon the Canadian Prime Rate.

“Canadian Refunded Swing Line Loans” has the meaning set forth in Section 2.03(b)(iv).

“Canadian Revolving Commitment” means the commitment of a Lender to make or otherwise fund any Canadian Revolving Loan and to acquire participations in Canadian Letters of Credit and Swing Line Loans hereunder and “Canadian Revolving Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Canadian Revolving Commitment, if any, is set forth on Schedule 1.01(c) or in the applicable Assignment Agreement or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Canadian Revolving Commitments as of the ~~Restatement~~Second Amendment Date is \$25,000,000.

“Canadian Revolving Commitment Period” means the period from and including the Closing Date to but excluding the Canadian Revolving Commitment Termination Date.

“Canadian Revolving Commitment Termination Date” means the earliest to occur of (i) the ~~sixth~~fifth anniversary of the ~~Closing~~Second Amendment Date, which date is ~~February 13, 2019~~May 19, 2021, (ii) the date ~~the~~such Canadian Revolving Commitments are permanently reduced to zero pursuant to Section 2.13(b) or 2.14 and (iii) the date of the termination of ~~the~~such Canadian Revolving Commitments pursuant to Section 8.01.

“Canadian Revolving Exposure” means, with respect to any Lender as of any date of determination, (i) prior to the termination of ~~the~~such Lender’s Canadian Revolving Commitments, that Lender’s Canadian Revolving Commitment; and (ii) after the termination of ~~the~~such Lender’s Canadian Revolving Commitments, the sum of (a) the Dollar Equivalent of the aggregate outstanding principal amount of the Canadian Revolving Loans of that Lender, (b) in the case of an Issuing Bank, the Dollar Equivalent of the aggregate Canadian Letter of Credit Usage in respect of all Canadian Letters of Credit issued by such Issuing Bank (net of any participations by Lenders in such Canadian Letters of Credit), (c) the Dollar Equivalent of the aggregate amount of all participations by that Lender in any outstanding Canadian Letters of Credit or any unreimbursed drawing under any Canadian Letter of Credit, (d) in the case of the Canadian Swing Line Lender, the aggregate outstanding principal amount of all Canadian Swing Line Loans (net of any participations therein by other Lenders); and (e) the aggregate amount of all participations therein by that Lender in any outstanding Canadian Swing Line Loans.

“Canadian Revolving Loan” means Loans made by a Lender in respect of its Canadian Revolving Commitment to the U.S. Borrower pursuant to Section 2.02(c) and/or Section 2.24.

“Canadian Swing Line Lender” means Barclays in its capacity as the Canadian Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

“Canadian Swing Line Loan” means a Loan made by the Canadian Swing Line Lender to the U.S. Borrower pursuant to Section 2.03(a)(ii).

“Canadian Swing Line Sublimit” means the lesser of (i) \$~~10,000,000~~25,000,000 and (ii) the aggregate unused amount of Canadian Revolving Commitments then in effect.

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

“Cash Collateralize” means either (a) the delivery of cash to the Collateral Agent as security for the payment of Obligations in respect of Letters of Credit in an amount equal to 102.0% of the aggregate face amount of such outstanding Letters of Credit or (b) the delivery to the applicable Issuing Bank of a customary back-to-back letter of credit in an amount equal to 102.0% of the aggregate face amount of the outstanding Letters of Credit issued by such Issuing Bank. “Cash Collateralization” has a correlative meaning.

“Cash Equivalents” means, as at any date of determination, any of the following: (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the

United States or Canada or (b) issued by any agency of the United States or Canada, as the case may be, the obligations of which are backed by the full faith and credit of the United States or Canada, as the case may be, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state or province of the United States or Canada, as the case may be, or any political subdivision of any such state or province, or any taxing authority or public instrumentality of any thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-3 from S&P or at least P-3 from Moody's (or, if at any time neither Moody's or S&P shall be rating such obligations, an equivalent rating from another nationally recognized rating service) or the equivalent rating from any other internationally recognized rating agency; (iii) certificates of deposit or bankers' acceptances maturing within one year after such date and overnight deposits, in each case, with any Lender or a commercial bank (a) having capital and surplus of not less than \$500,000,000 (or the Dollar Equivalent as of the date of determination) and (b) [\(other than in the case of a Lender or commercial bank located in Brazil, as to which the requirements of this clause \(b\) shall not apply\)](#), having a rating of at least BBB from S&P or at least Baa2 from Moody's (or, if at any time neither Moody's or S&P shall be rating such obligations, an equivalent rating from another nationally recognized rating service) or the equivalent rating from any other internationally recognized rating agency; (iv) shares of any money market mutual fund that has substantially all of its assets invested continuously in the types of investments referred to in [clauses \(i\), \(ii\), \(iii\), \(vi\) and \(vii\)](#) of this definition, (v) marketable short-term money market or similar securities having a rating of at least P-2 from Moody's or at least A-2 from S&P (or, if at any time neither Moody's nor S&P shall be rating such obligation, an equivalent rating from another nationally recognized rating service) or the equivalent rating from any other internationally recognized rating agency and maturing within one year after such date, (vi) commercial paper rated at least P-1 by Moody's or at least A-1 by S&P (or, if at any time neither Moody's or S&P shall be rating such obligations, an equivalent rating from another nationally recognized rating service) maturing within one year from such date and Indebtedness and preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of one year or less from such date, (vii) repurchase obligations for underlying securities of the types described in [clauses \(i\), \(ii\) and \(iii\)](#) above entered into with any bank meeting the qualifications specified in [clause \(iii\)](#) above or (viii) investment in investment funds investing 90% of their assets in securities of the types described in [clauses \(i\) through \(vii\)](#) above; **provided**, that, in the case of any Investment by a Subsidiary that is not a U.S. Subsidiary, "Cash Equivalents" shall also include: (w) direct obligations of the sovereign nation (or any agency thereof) in which such Foreign Subsidiary is organized and is conducting business or in obligations fully and unconditionally guaranteed by such sovereign nation (or any agency thereof), in each case maturing within one year after such date, (x) investments of the type and maturity described in [clauses \(i\) through \(iv\)](#) above of Subsidiaries that are not U.S. Subsidiaries (with, in the case of [clauses \(i\) and \(ii\)](#), the references to Canada or the United States to also include the sovereign nation thereof), which Investments have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies, (y) repurchase obligations for underlying securities of the types described in [clauses \(i\), \(ii\) and \(iii\)](#) above (as modified pursuant to [clause \(x\)](#) above) entered into with any bank meeting the qualifications specified in [clause \(iii\)](#) above and (z) shares of money

market mutual or similar funds which invest exclusively in assets otherwise satisfying the requirements of this definition (including this proviso).

“Cash Management Agreement” means any agreement or arrangement to provide treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer (including automated clearinghouse transfer services) and other cash management services entered into with a Lender Counterparty.

“Certificate re Non-Bank Status” means a certificate substantially in the form of Exhibit D.

“Change of Control” means, (i) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (a) shall have acquired beneficial ownership or control of 35.0% or more on a fully diluted basis of the voting interest in the Equity Interests of the U.S. Borrower or (b) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors of the U.S. Borrower, (ii) the majority of the seats (other than vacant seats) on the Board of Directors of the U.S. Borrower cease to be occupied by Continuing Directors, (iii) the U.S. Borrower shall cease to own, directly or indirectly, 100% of the Equity Interests of the European Borrower or (iv) any “change of control” (or similar event, however denominated) shall occur under and as defined in any indenture or agreement in respect of Material Indebtedness of any Borrower.

“China JV” means TH Asia Limited, a Hong Kong company limited by shares.

“CGMI” ~~has the meaning specified in the preamble hereto~~ means [Citigroup Global Markets Inc.](#)

“CK Distribution” means a CK Distribution as such term is defined in the CKI Intercreditor Agreement.

“CK Letter Agreement” means that certain letter agreement, dated April 7, 2010 by and between the U.S. Borrower and Mr. Calvin Klein.

“CKI” means Calvin Klein, Inc., a New York corporation.

“CKI Affiliates” means CK Service Corp. and any Person that becomes a Subsidiary of CKI or CK Service Corp. after the Closing Date.

“CKI Amount” means, for any period, the Design Services Purchase Payments, as defined in and paid or payable by any Group Member to Mr. Calvin Klein or the Klein heirs for such period pursuant to the CKI Stock Purchase Agreement.

“CKI and Debenture Obligations” means the “First Lien Obligations” as defined in the CKI Intercreditor Agreement.

“CKI Blockage Event” means the commencement of a Blockage Period, as defined in the CKI Intercreditor Agreement.

“CKI Collateral Agent” means The Bank of New York Mellon Trust Company, N.A., as collateral agent under the CKI Security Agreement, and its successors in such capacity.

“CKI Documents” means the CKI Stock Purchase Agreement, the CKI Security Agreement, the CKI Pledgor Guarantees, the CKI Intercreditor Agreement and the CKI Intercreditor Joinder Agreement.

“CKI Intercreditor Agreement” means that certain CK Intercreditor Agreement dated May 6, 2010, among the Collateral Agent and the CKI Collateral Agent, as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“CKI Intercreditor Joinder Agreement” means that certain Joinder Agreement to CK Intercreditor Agreement, dated as of February 12, 2013 and effective as of the Closing Date, entered into by the Collateral Agent.

“CKI Liquidated Damages Amount” means the Liquidated Damages Amount as such term is defined in the CKI Stock Purchase Agreement as of the Closing Date.

“CKI Obligations” means all obligations of every nature of the U.S. Borrower, CKI and the CKI Affiliates under or with respect to the CKI Documents.

“CKI Pledgor Guarantees” means the Pledgor Guarantees, as the same may be amended, restated, supplemented or otherwise modified from time to time, into which each of CKI and CK Service Corp. has entered, and certain CKI Affiliates may enter from time to time after the Closing Date, pursuant to which CKI and CK Service Corp. and, if any, the CKI Affiliates party thereto have guaranteed the payment in full of the U.S. Borrower’s obligations under the CKI Stock Purchase Agreement.

“CKI Related Assets Pledge and Security Agreement” means the CKI Related Assets Pledge and Security Agreement, dated as of the Closing Date, among the U.S. Borrower, CKI and the CKI Affiliates in favor of the Collateral Agent, as it may be amended, restated, supplemented or otherwise modified from time to time.

“CKI Security Agreement” means that certain Amended and Restated Pledge and Security Agreement, dated as of May 6, 2010, among the U.S. Borrower, CKI, the CKI Affiliates, the CKI Collateral Agent and Mr. Calvin Klein, pursuant to which a First Priority Lien shall have been granted to the CKI Collateral Agent on the Equity Interests in CKI and the CKI Affiliates and on any other assets of CKI and the CKI Affiliates named therein, to secure the CKI Obligations as it may be amended, restated, supplemented or otherwise modified from time to time.

“CKI Stock Purchase Agreement” means the Stock Purchase Agreement, dated as of December 17, 2002, among the U.S. Borrower, CKI, the CKI Affiliates and the sellers named therein, as it may be amended, restated, supplemented or otherwise modified from time to time.

“CKI Trust” means the trust established pursuant to the Delaware Business Trust Act, as amended, and the CKI Trust Agreement.

“CKI Trust Agreement” means the Trust Agreement, dated as of March 14, 1994, between CKI and Wilmington Trust Company, relating to the CKI Trust, and the other agreements related thereto.

“Class” means (i) with respect to Lenders, each of the following classes of Lenders: (a) Lenders having Tranche A Term Loan Exposure, (b) ~~Lenders having Tranche B Term Loan Exposure~~, (c) Lenders having U.S. Revolving Exposure (including the U.S. Swing Line Lender), (d) Lenders having European Revolving Exposure, (e) Lenders having Canadian Revolving Exposure (including the Canadian Swing Line Lender) and (f) Lenders having Incremental Term Loan Exposure of each applicable Series, and (ii) with respect to Loans, each of the following classes of Loans: (a) Tranche A Term Loans, (b) ~~Tranche B Term Loans~~, (c) U.S. Revolving Loans (including U.S. Swing Line Loans), (d) European Revolving Loans, (e) Canadian Revolving Loans (including Canadian Swing Line Loans) and (f) each Series of Incremental Term Loans.

“Closing Date” means February 13, 2013.

“Closing Date Ancillary Facility” means any Ancillary Facility, under and as defined in the Existing PVH Credit Agreement, existing on the Closing Date and listed on Schedule 2.26.

“Closing Date Certificate” means a Closing Date Certificate substantially in the form of Exhibit E-1.

“Closing Date Mortgaged Property” means each Real Estate Asset listed on Schedule 3.01(e).

“Closing Date Transactions” means the Acquisition, the repayment or refinancing of the Existing Credit Facilities Indebtedness, the issuance of the 2022 Notes, the entry into the Original Credit Agreement and the other Loan Documents and the initial borrowing of the Loans under the Original Credit Agreement on the Closing Date, the issuance of equity securities in connection with the Acquisition, all transactions in connection with or related to the foregoing and the payment of fees, costs and expenses relating to each of the foregoing.

“Collateral” means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Security Documents as security for the Obligations.

“Collateral Agent” has the meaning specified in the preamble hereto.

“Commitment” means any Revolving Commitment or Term Loan Commitment.

“Commodity Agreement” means any and all commodity swap agreements, cap agreements, collar agreements, floor agreements, exchange agreements, forward contracts, option contracts or other similar agreement or arrangement, each of which is for the purpose of hedging the commodity exposure associated with the operations of the Group and not for speculative purposes.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit C.

“Confidential Information Memorandum” means the Confidential Information Memorandum of the U.S. Borrower, dated as of November 2012.

“Consent Solicitation” means the solicitation of consents to certain amendments to the 2020 Notes Documents to increase the amount of senior secured debt permitted to be incurred by the U.S. Borrower and its Subsidiaries thereunder.

“Consolidated Adjusted EBITDA” means, for any period, an amount determined for the Group on a consolidated basis equal to (i) Consolidated Net Income, plus, to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for (a) consolidated interest expense, (b) provisions for taxes based on income, profits or capital, (c) total depreciation expense, (d) total amortization expense, (e) other non-cash charges (including, without limitation, any non-cash charges related to writing up inventory in connection with the Acquisition, but excluding any non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period), (f) all amounts in respect of extraordinary, unusual or non-recurring losses, expenses or charges (including, without limitation, (A) any fees, expenses or charges associated with or related to any restructurings (including restructuring related to the Acquisition and, for the avoidance of doubt, the effect of retention, headcount reductions, systems establishment costs, contract termination costs and excess pension charges), (B) any fees, expenses or charges relating to plant shutdowns, facility consolidations, business exits and discontinued operations, (C) acquisition integration costs, (D) any (i) severance, other employee termination benefits or relocation costs, expenses or charges, (ii) one-time non-cash compensation charges recorded from grants of stock options, restricted stock, restricted stock units, performance shares, stock appreciation rights and other equity-based awards, in each case to officers, directors and employees, (iii) the costs and expenses after the Closing Date relating to the employment of terminated employees, (iv) lease termination costs and (v) fees, expenses, charges or change in control payments which, in each case under clauses (A) through (D) (other than clause (D)(ii)), shall, if realized in connection with, resulting from, related to or in anticipation of the Acquisition, not exceed \$200,000,000 in the aggregate and (E) any expenses or charges relating to any offering of Equity Interests, Permitted Acquisition, or any Investment or Indebtedness permitted under this Agreement, in each case under this clause (E), whether or not successful), (g) any financial advisory fees, accounting fees, legal fees and other similar advisory and consulting fees and related out-of-pocket expenses incurred by any Group Member as a result of the Closing Date Transactions or the Consent Solicitation, in an aggregate amount not to exceed \$75,000,000, (h) with respect to any four-Fiscal Quarter measurement period ending on or prior to the end of the 12 full Fiscal Quarters following the Closing Date, the amount of cost savings and other operating improvements and synergies projected by the U.S. Borrower in good faith to be realized as a result of actions taken or anticipated to be taken no later than the eight full Fiscal Quarters following the Closing Date in connection with or as a result of the Acquisition (calculated on a *pro forma* basis as though such cost savings and other operating improvements and synergies had been realized on the first day of such period), without duplication of the amount of actual benefits realized during such period from such actions to the extent already included in the Consolidated Net Income for such period, in an aggregate amount not to exceed \$100,000,000 for any four-Fiscal Quarter measurement period, (i) losses on agreements with respect to Hedge Agreements and any related tax gains, in each case incurred in connection with or as a result of the Acquisition, and (j) non-cash losses on agreements with respect to Hedge Agreements, minus, (ii) to the extent included in calculating Consolidated Net Income, the sum of (a) all amounts in respect of extraordinary, unusual or nonrecurring gains, (b) gains on agreements with respect to

Hedge Agreements and any related tax gains, in each case incurred in connection with or as a result of the Acquisition, (c) non-cash gains on agreements with respect to Hedge Agreements, (d) cash payments made during such period with respect to non-cash charges that were added back pursuant to clause (e) above in a prior period, and (e) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash gain in any prior period). For the avoidance of doubt, Consolidated Adjusted EBITDA shall be calculated to exclude any gain resulting from any debt repurchase (including, for the avoidance of doubt, repurchases of Loans under Section 2.13(c) or repurchases of the 2023 Debentures).

In addition, for purposes of making the calculation referred to above, acquisitions (including the Acquisition), Investments, dispositions, mergers, consolidations, operational improvements and discontinued operations (as determined in accordance with GAAP) that have been made by any Group Member, including through mergers or consolidations and including any related financing transactions, during the relevant period or subsequent to such period and on or prior to the date of such calculation (the “relevant transaction”), shall be deemed to have occurred on the first day of the relevant period and (without duplication of the *pro forma* adjustments provided for in the immediately preceding paragraph with respect to the Acquisition) such calculation shall be made giving *pro forma* effect to any cost savings and other operating improvements and synergies in connection with such relevant transaction (without duplication of actual benefits realized during such period from the same) that are (a) factually supportable and determined in good faith by the U.S. Borrower, as certified in an officer’s certificate signed by an Authorized Officer and (b) do not exceed the actual cost savings expected in good faith to be realized by the Group over the 12-month period following such relevant transaction.

“Consolidated Capital Expenditures” means, for any period, the aggregate of all expenditures of the Group during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in “purchase of property and equipment” or similar items reflected in the consolidated statement of cash flows of the Group; provided, that Consolidated Capital Expenditures shall not include any expenditures (i) for replacements and substitutions of fixed assets, capital assets or equipment to the extent made with Net Cash Proceeds invested pursuant to Section 2.14(a) or 2.14(b) or (ii) which constitute a Permitted Acquisition under Section 6.08.

“Consolidated Cash Interest Expense” means, for any period, total interest expense payable in cash in such period (including that portion attributable to Capital Leases in accordance with GAAP) of the Group on a consolidated basis with respect to all outstanding Indebtedness of the Group (net of cash interest income), excluding, however, any one time financing fees (to the extent included in such Person’s consolidated interest expense for such period).

“Consolidated Current Assets” means, as at any date of determination, the total assets of the Group on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents.

“Consolidated Current Liabilities” means, as at any date of determination, the total liabilities of the Group on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

“Consolidated Excess Cash Flow” means, for any period, an amount (if positive) equal to:

(i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, (b) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for non-cash charges reducing Consolidated Net Income, including for depreciation and amortization (excluding any such non-cash charge to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period) and (c) the Consolidated Working Capital Adjustment, minus

(ii) the sum, without duplication, of (a) the amounts for such period paid in cash of (1) scheduled repayments of Indebtedness to the extent actually made (excluding for the avoidance of doubt, repayments of revolving loans or swing line loans except to the extent the related revolving commitments are permanently reduced in connection with such repayments and any purchases (or repayments in connection therewith) of Loans pursuant to Section 2.13(c)) and scheduled repayments of obligations under Capital Leases (excluding any interest expense portion thereof), (2) Consolidated Capital Expenditures, and (3) to the extent actually declared, Restricted Payments permitted by Section 6.04(d), and (b) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash gain in any prior period).

“Consolidated Net Income” means, for any period, (i) the net income (or loss) of the Group on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the net income of any Person (other than a Group Member) in which any other Person (other than a Group Member) has a joint interest to the extent that the declaration or payment of dividends or similar distributions by that Person of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Person, (b) the loss, if applicable, of any Person (other than a Group Member) in which any other Person (other than a Group Member) has a joint interest, (c) to the extent included in net income, the income (or loss) of any Person accrued prior to the date it becomes a Group Member or is merged into or consolidated with the Group or that Person’s assets are acquired by any Group Member, (d) the income of any Subsidiary of the U.S. Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (e) any after-tax non-cash gains (or losses) attributable to Asset Sales or returned surplus assets of any Pension Plan, (f) the CKI Amount and the Itochu Amount to the extent not already reducing net income; provided that, if during any period, the U.S. Borrower or any of its Subsidiaries repays the Itochu Amount in whole, then for such period, the excess of the amount of such amounts repaid over the regularly scheduled payment of the Itochu Amount for such period shall not reduce net income, (g) the non-cash income (or loss) related to one-time and ongoing mark-to-market gains (or losses) with respect to the pension or postretirement plans of any Group Member resulting from a change in accounting principle prior to or after the Closing Date

and (h) (to the extent not included in clauses (a) through (g) above) any net extraordinary gains or net extraordinary losses. For the avoidance of doubt, cash amounts used by the Borrowers to make purchases of debt (including purchases of Loans under Section 2.13(c) and purchases of the 2023 Debentures) shall not reduce Consolidated Net Income, nor will any non-cash gain associated with the cancellation of such purchased debt increase Consolidated Net Income.

“Consolidated Total Assets” means as of any date of determination, the total assets of the Group, determined in accordance with GAAP, as set forth on the consolidated balance sheet of the U.S. Borrower as of such date (which calculation shall give *pro forma* effect to any acquisition or Asset Sale by any Group Member, in each case involving the payment or receipt by any Group Member of consideration (whether in the form of cash or non-cash consideration) in excess of \$100,000,000 that has occurred since the date of such consolidated balance sheet, as if such acquisition or Asset Sale had occurred on the last day of the fiscal period covered by such balance sheet).

“Consolidated Total Net Debt” means, as at any date of determination, (a) the aggregate stated balance sheet amount of all Indebtedness of the Group (or, if higher, the par value or stated face amount of all such Indebtedness (other than zero-coupon Indebtedness)), determined on a consolidated basis in accordance with GAAP, exclusive of any contingent liability in respect of any letter of credit, plus (b) to the extent not included in clause (a), any Indebtedness relating to securitization of receivables generated by the Group (whether or not such Indebtedness is on the balance sheet of the Group), minus (c) Unrestricted Cash of the Group as of such date, in an aggregate amount not to exceed \$350,000,000. For the avoidance of doubt, Consolidated Total Net Debt will be calculated to exclude all Indebtedness of the Group to ITOCHU Corporation pursuant to the Itochu Agreement or otherwise related to such agreement and all Indebtedness of the Group pursuant to the CKI Documents.

“Consolidated Working Capital” means, as at any date of determination, the excess of Consolidated Current Assets of the Group over Consolidated Current Liabilities of the Group.

“Consolidated Working Capital Adjustment” means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the beginning of such period exceeds (or is less than) Consolidated Working Capital as of the end of such period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities and the effect of any Permitted Acquisition during such period; provided, that there shall be included with respect to any Permitted Acquisition during such period an amount (which may be a negative number) by which the Consolidated Working Capital acquired in such Permitted Acquisition as at the time of such acquisition exceeds (or is less than) Consolidated Working Capital at the end of such period.

“Contingent Liability” means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the

payment of dividends or other distributions upon the Equity Interests of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation with respect thereto) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby.

"Continuing Directors" means individuals who on the Closing Date constituted the Board of Directors of the U.S. Borrower (together with any new directors whose election by such Board of Directors or whose nomination for election by the stockholders of the U.S. Borrower was approved by a vote of a majority of the directors of the U.S. Borrower then still in office who were either directors on the Closing Date or whose election or nomination for election was previously so approved).

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contributing Guarantors" has the meaning set forth in Section 7.02(b).

"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"Copyrights" has the meaning set forth in the U.S. Pledge and Security Agreement.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit F-1 or Exhibit F-2, as applicable, delivered by a Loan Party pursuant to Section 5.11 or by an Ancillary Borrower pursuant to Section 10.26.

"Covenant Transaction" has the meaning set forth in Section 1.04(c).

"Credit Date" means the date of a Credit Extension.

"Credit Extension" means the making of a Loan or the issuing of a Letter of Credit.

"Crown" means the government of Canada, any provincial or territorial government therein and any of their political subdivisions.

"Currency Agreement" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk of the Group and not for speculative purposes.

"Debtor Relief Law" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, examinership, reorganization or similar debtor relief laws of the United States or other Relevant Jurisdiction from time to time in effect and affecting the rights of creditors generally.

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” has the meaning set forth in Section 2.10.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Revolving Commitment within three Business Days of the date required to be funded by it hereunder, (b) notified the Borrower Representative, the Administrative Agent or any Lender in writing, or has otherwise indicated through a public statement, that it does not intend to comply with its funding obligations hereunder and generally under agreements in which it commits to extend credit, (c) failed, within three Business Days after receipt of a written request from the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Revolving Commitments, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute ~~or~~, (e) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, custodian, administrator, examiner, liquidator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, custodian, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment; or (f) become the subject of a Bail-In Action; provided that a Lender shall not qualify as a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or its parent company, or of the exercise of control over such Lender or any Person controlling such Lender, by a Governmental Authority or instrumentality thereof; provided that if the Borrower Representative, the Administrative Agent, the applicable Swing Line Lender and the applicable Issuing Bank agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateralization of Letters of Credit and/or Swing Line Loans), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the obligations of the Swing Line Lender and/or the Issuing Bank and the funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a *pro rata* basis by the Lenders in accordance with their Pro Rata Shares (without giving effect to Section 2.22), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender.

“Defaulting Revolving Lender” has the meaning set forth in Section 2.22.

“Designated Gross Amount” has the meaning set forth in Section 2.26(b)(ii).

“Designated Net Amount” has the meaning set forth in Section 2.26(b)(ii).

“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 (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (iii) provides for scheduled payments of dividends in cash or (iv) 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 then latest Term Loan Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior Payment in Full of all Obligations.

“Documentation Agent” means Royal Bank of Canada; and, in connection with the Second Amendment, JPMorgan as Documentation Agent, together with ~~its~~their permitted successors in such capacity; provided, however, that as and to the extent necessary to preserve the rights and obligations pursuant to Article IX hereof or otherwise pursuant to the provisions hereof of Credit Suisse Securities (USA) LLC, as Documentation Agent under the Original Credit Agreement, “Documentation Agent” shall also refer to Credit Suisse Securities (USA) LLC in its capacity as such.

“Dollar Equivalent” means, with respect to an amount denominated in Dollars, such amount, and with respect to an amount denominated in any other Approved Currency, the equivalent in Dollars of such amount determined at the Exchange Rate on the applicable Valuation Date. In making the determination of the Dollar Equivalent for purposes of determining the aggregate available Canadian Revolving Commitments on any Credit Date, the Administrative Agent shall use the Exchange Rate in effect at the date on which any U.S. Borrower requests the extension of credit for such Credit Date pursuant to the provisions of this Agreement.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Dutch Security Agreements” means (i) the Dutch law deed of pledge over partnership interests in Trumpet C.V., dated the Closing Date, by and among BassNet, Inc. and PVH Prince C.V. Holding Corp., as pledgors, the Collateral Agent, as pledgee, and Trumpet C.V. as the partnership, (ii) the Dutch law deed of pledge over a partnership interest in Arrow C.V., dated the Closing Date, by and among Tommy Hilfiger U.S.A., Inc., as pledgor, the Collateral Agent, as pledgee, and Arrow C.V., as the partnership, (iii) the Dutch law deed of pledge over partnership interests in Tommy Holding C.V., dated the Closing Date, by and among Tommy Hilfiger U.S.A., Inc. and the U.S. Borrower, as pledgors, the Collateral Agent, as pledgee, and Tommy Holding C.V., as the partnership and (iv) any other Dutch law deed of pledge of shares over the shares in any other Dutch entities directly

owned by the U.S. Borrower or any other U.S. Loan Party required pursuant to Section 7.14 of the agreements described in the preceding clauses (i) through (iii).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person other than a natural Person that is (i) a Lender, an Affiliate of any Lender or a Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (ii) a commercial bank, insurance company, investment or mutual fund, European Credit Management Limited (ECM) programs or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided, that neither any Loan Party nor any Affiliate thereof, nor any Defaulting Lender, shall be an Eligible Assignee.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, the Group or any of their respective ERISA Affiliates or with respect to which the Group or any of their respective ERISA Affiliates has or would reasonably be expected to have liability, contingent or otherwise, under ERISA.

“Engagement Letter” means that engagement letter, dated as of February 21, 2014, among the U.S. Borrower, the Arrangers and the Bookrunners.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order, decree or directive (conditional or otherwise) by any Governmental Authority or any other Person, arising (i) pursuant to any Environmental Law, (ii) in connection with any actual or alleged violation of, or liability pursuant to, any Environmental Law, (iii) in connection with any Hazardous Material, including the presence or Release of, or exposure to, any Hazardous Materials and any abatement, removal, remedial, corrective or other response action related to Hazardous Materials or (iv) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any and all current or future foreign or domestic, federal, state or local laws (including any common law), statutes, ordinances, orders, rules, regulations, judgments or any other requirements of Governmental Authorities relating to or imposing liability or standards of conduct with respect to (i) environmental matters, (ii) the generation, use, storage, transportation or disposal of, or exposure to, Hazardous Materials; or (iii) occupational safety and health, industrial

hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to any Group Member or any Facility.

“Equity Interests” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

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

“ERISA Affiliate” means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of any Group Member shall continue to be considered an ERISA Affiliate of such Group Member within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Group Member and with respect to liabilities arising after such period for which such Group Member could be liable under the Internal Revenue Code or ERISA.

“ERISA Event” means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by a regulation in effect on the Closing Date); (ii) the failure to meet the minimum funding standard of Section 412 or 430 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) a determination by the Pension Plan’s actuary that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (iv) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (v) a determination under and in accordance with said sections that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (vi) the withdrawal by any Group Member or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Group Member or any of its Affiliates pursuant to Section 4063 or 4064 of ERISA; (vii) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which is reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (viii) the imposition of liability on any

Group Member or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (ix) the withdrawal of any Group Member or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Group Member or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (x) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) of ERISA or a violation of Section 436 of the Internal Revenue Code with respect to any Pension Plan; (xi) the occurrence of any Foreign Plan Event or (xii) any other event or condition with respect to an Employee Benefit Plan with respect to which any Group Member is likely to incur liability other than in the ordinary course.

“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.

“Euro” or “€” means the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the legislative measures of the European Union for the introduction of, changeover to or operation of the Euro in one or more member states, being in part legislative measures to implement the European and Monetary Union as contemplated in the Treaty on European Union.

“Euro Equivalent” means, with respect to an amount denominated in Euros, such amount, and with respect to an amount denominated in Dollars or any Other Foreign Currency, the equivalent in Euros of such amount determined at the Exchange Rate on the applicable Valuation Date. In making the determination of the Euro Equivalent for purposes of determining the aggregate available European Revolving Commitments on any Credit Date, the Administrative Agent shall use the Exchange Rate in effect at the date on which the European Borrower requests the extension of credit for such Credit Date pursuant to the provisions of this Agreement.

“Eurocurrency Rate Loan” means a Loan bearing interest at a rate determined by reference to the Adjusted Eurocurrency Rate.

“European Borrower” has the meaning specified in the preamble hereto.

“European Guaranteed Obligations” has the meaning set forth in [Section 7.01\(b\)](#).

“European Guarantor” means Tommy Hilfiger Europe B.V.

“European Issuing Bank” means an Issuing Bank that has agreed to issue European Letters of Credit.

“European Letter of Credit” means any Bank Guarantee or any commercial or standby letter of credit issued or to be issued by an Issuing Bank for the account of any Foreign Subsidiary pursuant to [Section 2.04\(a\)\(ii\)](#) of this Agreement, and any letter of credit issued and outstanding as of the Closing Date and designated by the Borrower Representative as a “European Letter of Credit” pursuant to a written notice delivered to the Administrative Agent on or prior to the Closing Date; provided that the issuer thereof is a Revolving Lender hereunder. Each such letter of credit so

designated shall be deemed to constitute a European Letter of Credit and a Letter of Credit issued hereunder on the Closing Date for all purposes under this Agreement and the other Loan Documents.

“European Letter of Credit Sublimit” means the lesser of (a) €125,000,000 and (b) the aggregate unused amount of the European Revolving Commitments then in effect.

“European Letter of Credit Usage” means, as at any date of determination, the sum of (i) the Euro Equivalent of the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all European Letters of Credit then outstanding, and (ii) the Euro Equivalent of the aggregate amount of all drawings under European Letters of Credit honored by an Issuing Bank and not theretofore reimbursed by or on behalf of the European Borrower.

“European Loan Party” means the European Borrower and the European Guarantor.

“European Obligations” means the Obligations in respect of any European Revolving Loan and any other Obligations of the European Borrower and the European Guarantor.

“European Revolving Commitment” means the commitment of a Lender to make or otherwise fund any European Revolving Loan and to acquire participations in European Letters of Credit hereunder, as reduced by the amount of any Ancillary Commitment, and “European Revolving Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s European Revolving Commitment, if any, is set forth on Schedule 1.01(c) or in the applicable Assignment Agreement or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the European Revolving Commitments as of the ~~Restatement~~Second Amendment Date is €185,850,000.

“European Revolving Commitment Period” means the period from and including the Closing Date to but excluding the European Revolving Commitment Termination Date.

“European Revolving Commitment Termination Date” means the earliest to occur of (i) the ~~sixth~~fifth anniversary of the ~~Closing~~Second Amendment Date, which date is ~~February 13, 2019~~May 19, 2021, (ii) the date ~~the~~such European Revolving Commitments are permanently reduced to zero pursuant to Section 2.13(b) or 2.14 and (iii) the date of the termination of ~~the~~such European Revolving Commitments pursuant to Section 8.01.

“European Revolving Exposure” means, with respect to any Lender as of any date of determination, (i) prior to the termination of ~~the~~such Lender’s European Revolving Commitments, that Lender’s European Revolving Commitment; and (ii) after the termination of ~~the~~such Lender’s European Revolving Commitments, the sum of (a) the Euro Equivalent of the aggregate outstanding principal amount of the European Revolving Loans of that Lender, (b) in the case of an Issuing Bank, the Euro Equivalent of the aggregate European Letter of Credit Usage in respect of all European Letters of Credit issued by such Issuing Bank (net of any participations by Lenders in such European Letters of Credit), (c) the Euro Equivalent of the aggregate amount of all participations by that Lender in any outstanding European Letters of Credit or any unreimbursed drawing under any European Letter of Credit and (d) the Euro Equivalent of the aggregate amount of all amounts borrowed from such Lender under any Ancillary Facility pursuant to Section 2.26.

“European Revolving Loan” means Loans made by a Lender in respect of its European Revolving Commitment to the European Borrower pursuant to Section 2.02(b) and/or Section 2.24.

“Event of Default” means any of the conditions or events set forth in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Exchange Rate” means the rate at which any currency (the “Original Currency”) may be exchanged into Dollars, Euros or another currency (the “Exchanged Currency”), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (London, England time) on such date. In the event that such rate does not appear on the Reuters screen, the “Exchange Rate” with respect to such Original Currency into such Exchanged Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower Representative or, in the absence of such agreement, such “Exchange Rate” shall instead be the Administrative Agent’s spot rate of exchange in the interbank market where its foreign currency exchange operations in respect of such Original Currency are then being conducted, at or about 11:00 a.m. (local time), on such date for the purchase of the Exchanged Currency, with such Original Currency for delivery two Business Days later; provided, that if at the time of any such determination, no such spot rate can reasonably be quoted, the Administrative Agent may use any reasonable method as it deems applicable to determine such rate, and such determination shall be conclusive absent manifest error.

“Excluded Swap Obligation” means, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, 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 such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect 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 security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means (i) any Tax imposed on the overall net income of a Person (or franchise tax or minimum tax imposed in lieu thereof) by the jurisdiction in which that Person is organized or in which that Person’s principal office (and/or, in the case of a Lender, its applicable lending office) is located or with which that Person has a present or former connection (other than any

connection arising solely from the acquisition and holding of any Loan and/or Commitment (including entering into or being a party to this Agreement), the receipt of payments relating thereto, and/or the exercise of rights and remedies under this Agreement or any other Loan Document); (ii) with respect to any Lender to a U.S. Loan (other than a Lender that becomes a Lender pursuant to Section 2.23), any Tax imposed pursuant to the laws of the United States of America or any political subdivision thereof or therein that would apply if any payment were made under any of the Loan Documents to such Lender on the day such Lender becomes a Lender (or designates a new lending office), except to the extent such Lender's assignor (or such Lender, when it designates a new lending office) was entitled to receive additional amounts pursuant to Section 2.20; (iii) with respect to any Lender, any withholding Tax that is imposed on any payment to such Lender on the day that such Lender becomes a Lender (or designates a new lending office) by any jurisdiction, excluding any jurisdiction (other than the United States of America or any political subdivision thereof, which shall be governed by clause (ii) hereof) that would not have imposed such Tax but for the fact that any of the Loan Parties is organized or has its principal office located in such jurisdiction, or has a present or former connection with, or makes or causes to be made any payment under any Loan Document through, such jurisdiction on behalf of any Loan Party, except to the extent such Lender's assignor (or such Lender, when it designates a new lending office) was entitled to receive additional amounts pursuant to Section 2.20; (iv) any Tax that is attributable to a Lender's failure to comply with Section 2.20(c) or (v) any U.S. federal withholding Tax imposed by reason of a Lender's failure to comply with the requirements of Sections 1471 through 1474 of the Code (as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with)), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code or any legislation or other official guidance or official requirements adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code ("FATCA").

"Existing Credit Facilities Indebtedness" means Indebtedness and other obligations outstanding under (i) the Existing PVH Credit Agreement and (ii) the Existing Warnaco Credit Facilities.

"Existing PVH Credit Agreement" means that certain Amended and Restated Credit and Guaranty Agreement, dated as of March 2, 2011, among PVH Corp., Tommy Hilfiger B.V., certain subsidiaries of the PVH Corp. party thereto as guarantors, the lenders party thereto from time to time and Barclays Bank PLC, as administrative agent and collateral agent.

"Existing Warnaco Credit Facilities" means (i) that certain Term Loan Agreement, dated as of June 17, 2011, among Warnaco Inc., Calvin Klein Jeanswear Company, Warnaco Swimwear Products Inc., the Acquired Business, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, (ii) that certain Credit Agreement, dated as of August 26, 2008 (as amended on June 17, 2011 and November 11, 2011), among Warnaco Inc., the Acquired Business, the lenders and issuers party thereto, Bank of America, N.A., as administrative agent and collateral agent and (iii) that certain Credit Agreement, dated as of August 26, 2008 (as amended on June 17, 2011 and November 11, 2011), among Warnaco of Canada Company, the Acquired Business, the lenders and issuers party thereto, Bank of America, N.A., as administrative agent and collateral agent.

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by any Group Member or any of its predecessors or Affiliates.

“Fair Share” has the meaning set forth in Section 7.02(b).

“Fair Share Contribution Amount” has the meaning set forth in Section 7.02(b).

“FATCA” has the meaning set forth in the definition of “Excluded Taxes”.

“FDIC” means the Federal Deposit Insurance Corporation and any successor thereto.

“Federal Funds Effective Rate” means for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to the Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by the Administrative Agent.

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the principal financial officer of the U.S. Borrower that such financial statements fairly present, in all material respects, the financial condition of the Group at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Financial Plan” has the meaning set forth in Section 5.01(h).

“First Amendment” means that certain First Amendment to Credit Agreement, dated as of March 21, 2014, by and among the Borrowers, the Guarantors party thereto, the Lenders party thereto, each Issuing Bank party thereto and Barclays Bank PLC, as administrative agent and collateral agent under the Original Credit Agreement.

“First Amendment Tranche A Term Loan Commitment” means the commitment of a Lender to make or otherwise to fund a Tranche A Term Loan on the Restatement Date. The aggregate amount of ~~each Lender’s~~ the First Amendment Tranche A Term Loan ~~Commitment, if any, is set forth on Schedule 1.01(a) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the First Amendment Tranche A Term Loan Commitments as of the Restatement Date is \$350,000,000, was \$350,000,000 and is \$0 as of the Second Amendment Date.~~

“First Amendment Tranche B Term Loan Commitment” means the commitment of a Lender to make or otherwise to fund a Tranche B Term Loan on the Restatement Date. ~~The amount of each Lender’s First Amendment Tranche B Term Loan Commitment, if any, is set forth on Schedule 1.01(b) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to~~

~~the terms and conditions hereof.~~ The aggregate amount of the First Amendment Tranche B Term Loan Commitments as of the Restatement Date ~~is \$250,000,000, was \$250,000,000 and is \$0 as of the Second Amendment Date.~~

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien is not subject to any other Lien on such Collateral, other than any Permitted Lien.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of the Group ending on the Sunday closest to February 1 of each calendar year (or, if the fiscal year-end is changed to some other date pursuant to Section 6.14, such other date).

“Flood Certificate” means a “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

“Flood Program” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“Flood Zone” means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

“Foreign Currency Equivalent” means, with respect to an amount denominated in Canadian Dollars or any Other Foreign Currency, such amount, and with respect to an amount denominated in Dollars or Euros, the equivalent in Canadian Dollars or such Other Foreign Currency of such amount determined at the Exchange Rate on the applicable Valuation Date. In making the determination of the Foreign Currency Equivalent for purposes of determining the aggregate available Canadian Revolving Commitments on any Credit Date, the Administrative Agent shall use the Exchange Rate in effect at the date on which the U.S. Borrower requests the extension of credit for such Credit Date pursuant to the provisions of this Agreement.

“Foreign Plan” means any Employee Benefit Plan, program, policy, arrangement or agreement maintained or contributed to by any European 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 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 to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, in each case which is reasonably likely to result, directly or indirectly, in material liability to a Loan Party, (d) the

incurrence of any material 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 transaction that is prohibited under any applicable law and that would reasonably be expected to result in the incurrence of any 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 fine, excise tax or penalty resulting from any noncompliance with any applicable law.

“Foreign Subsidiary” means (i) any Restricted Subsidiary that is not organized under the laws of the United States, any State thereof or the District of Columbia and (ii) any Restricted Subsidiary of a Subsidiary described in clause (i).

“FQ1”, “FQ2”, “FQ3” and “FQ4” mean, when used with a numerical year designation, the first, second, third or fourth Fiscal Quarters, respectively, of the designated Fiscal Year of any Borrower (e.g., FQ4 2012 means the fourth Fiscal Quarter of a Borrower’s 2012 Fiscal Year, which ends February 3, 2013).

“Funding Guarantor” has the meaning set forth in Section 7.02(b).

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.02, United States generally accepted accounting principles in effect as of the date of determination thereof consistently applied.

“Governmental Acts” means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

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

“Governmental Authorization” means any permit, license, authorization, certification, registration, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Group” means, collectively, the U.S. Borrower and its Restricted Subsidiaries; provided that, as used in Sections 5.01(a) and 5.01(b) with respect to the financial statements required to be delivered thereunder, it shall mean the U.S. Borrower and its consolidated Subsidiaries in accordance with GAAP.

“Group Member” means any of the U.S. Borrower or any of its Restricted Subsidiaries.

“Group Member Adjusted EBITDA” means, for any period for any Group Member, the amount of Consolidated Adjusted EBITDA attributable to such Group Member for such period, calculated on an unconsolidated basis and by excluding all intercompany items (provided that, for the purpose of the determination of a Material Company solely as such term is used in Section 8.01(f), 8.01(g),

8.01(h) or 8.01(l), Group Member Adjusted EBITDA shall be calculated on a consolidated basis for such Group Member and its Subsidiaries).

“Group Member Assets” means, for any Group Member, as of any date of determination, the total assets of such Group Member, determined in accordance with GAAP, calculated on an unconsolidated basis and by excluding all intercompany items (provided that, for the purpose of the determination of a Material Company solely as such term is used in Section 8.01(f), 8.01(g), 8.01(h) or 8.01(l), Group Member Assets shall be calculated on a consolidated basis for such Group Member and its Subsidiaries).

“Guaranteed Obligations” has the meaning set forth in Section 7.01(b).

“Guarantor” means (i) with respect to the Obligations of the U.S. Borrower, each U.S. Subsidiary that has become a party hereto as a Guarantor, (ii) with respect to the Obligations of the European Borrower or any Ancillary Borrower, (x) the U.S. Borrower, (y) each U.S. Subsidiary that has become a party hereto as a Guarantor and (z) the European Guarantor and (iii) with respect to the Obligations of any Restricted Subsidiary arising under any Hedge Agreement, Cash Management Agreement or Treasury Transaction, the U.S. Borrower.

“Guaranty” means the guaranty of each Guarantor set forth in Article VII.

“Hazardous Materials” means any pollutant, contaminant, chemical, waste, material or substance, exposure to which or Release of which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to human health and safety or to the indoor or outdoor environment, including petroleum, petroleum products, asbestos, urea formaldehyde, radioactive materials, polychlorinated biphenyls and toxic mold.

“Hedge Agreement” means an Interest Rate Agreement, Commodity Agreement or a Currency Agreement entered into with a Lender Counterparty.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Historical Financial Statements of the Acquired Business” means as of the Closing Date, (i) audited consolidated financial statements of the Acquired Business consisting of balance sheets as of December 31, 2011 and January 1, 2011 and income statements and statements of stockholders’ equity and cash flows for Fiscal Years 2009, 2010 and 2011 and an unqualified audit report relating thereto, and (ii) unaudited consolidated financial statements of the Acquired Business consisting of a balance sheet, income statement and statement of cash flows for the nine months ended September 29, 2012.

“Historical Financial Statements of the U.S. Borrower” means as of the Closing Date, (i) audited consolidated financial statements of the U.S. Borrower consisting of balance sheets as of January 29, 2012 and January 30, 2011 and income statements and statements of stockholders’ equity and

cash flows for Fiscal Years 2009, 2010 and 2011 and an unqualified audit report relating thereto and (ii) unaudited consolidated financial statements of the U.S. Borrower consisting of a balance sheet, income statement and statement of cash flows for the nine months ended October 28, 2012.

“Increased Amount Date” has the meaning set forth in Section 2.24.

“Increased-Cost Lender” has the meaning set forth in Section 2.23.

“Incremental Revolving Commitments” has the meaning set forth in Section 2.24.

“Incremental Revolving Loan” has the meaning set forth in Section 2.24.

“Incremental Revolving Loan Lender” has the meaning set forth in Section 2.24.

“Incremental Term Loan” has the meaning set forth in Section 2.24.

“Incremental Term Loan Commitments” has the meaning set forth in Section 2.24.

“Incremental Term Loan Exposure” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lender.

“Incremental Term Loan Lender” has the meaning set forth in Section 2.24.

“Incremental Term Loan Maturity Date” means the date on which Incremental Term Loans of a Series shall become due and payable in full hereunder, as specified in the applicable Joinder Agreement, including by acceleration or otherwise.

“Incremental Term Loan Note” means a promissory note in the form of Exhibit B-5, as it may be amended, restated, supplemented or otherwise modified from time to time.

~~“Incurrence Test” means that, as of the applicable test date, the Net Leverage Ratio as of such date, based on Consolidated Adjusted EBITDA for the most recently ended period of four consecutive Fiscal Quarters of the Group for which internal financial statements are available and Consolidated Total Net Debt as of the applicable test date, shall be 3.00:1.00 or less.~~

“Indebtedness” means, as applied to any Person, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a capitalized liability on a balance sheet in conformity with GAAP; (iii) obligations evidenced by bonds, debentures, notes or other similar instruments; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding trade accounts payable and accrued expenses in the ordinary course of business which are not overdue for a period of more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person and any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument in each case to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP (it being understood that the amount of any such obligation shall be calculated in each case, in accordance with GAAP); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless

of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person (provided that if the recourse to such Person in respect of such indebtedness is limited solely to the property subject to such Lien, the amount of such indebtedness shall be deemed to be the fair market value (as determined in good faith by such Person) of the property subject to such Lien or the amount of such indebtedness if less); (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; provided such letter of credit is issued by a Person other than the U.S. Borrower and its Subsidiaries; (vii) Disqualified Equity Interests, (viii) the net payments that such Person would have to make in the event of any early termination, on the date Indebtedness of such Person is being determined, in respect of any exchange traded or over the counter derivative transaction, including any Hedge Agreement, in each case, whether entered into for hedging or speculative purposes; provided, that in no event shall obligations under any derivative transaction be deemed “Indebtedness” for any purpose under Section 6.07 or for the purpose of calculating the ~~Incurrence Test or~~ Net Leverage Ratio unless such obligations relate to a derivatives transaction which has been terminated; (ix) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse in a factoring or similar transaction, other than in any such case any thereof sold solely for purposes of collection of delinquent accounts and (x) any Contingent Liability with respect to the foregoing. The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Liabilities” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other necessary response action related to the Release or presence of any Hazardous Materials), expenses and disbursements of any kind or nature whatsoever (including any of the foregoing in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Group Member, its Affiliates or any other Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Credit Extensions, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the Engagement Letter (and any related fee letter) delivered by any Agent or any Lender to the U.S. Borrower with respect to the transactions contemplated by this Agreement; (iii) the Second Amendment Engagement Letter (and any related fee letter) delivered to the U.S. Borrower by the other parties hereto with respect to the transactions contemplated by the Second Amendment; (iv) any

Environmental Claim relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of any Group Member; or (iv) any Loan or the use of proceeds thereof.

“Indemnified Taxes” means any Taxes other than Excluded Taxes.

“Indemnitee” has the meaning set forth in Section 10.03(a).

“Installment” has the meaning set forth in Section 2.12(a).

“Installment Date” has the meaning set forth in Section 2.12(a).

“Intellectual Property” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under the United States, multinational or foreign laws or otherwise, including without limitation, Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks, Trademark Licenses, Trade Secrets, and Trade Secret Licenses (as each such term is defined in the U.S. Pledge and Security Agreement), and the right to sue or otherwise recover for any past, present and future infringement, dilution, misappropriation, or other violation or impairment thereof, including the right to receive all proceeds therefrom, including without limitation license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

“Intellectual Property Security Agreements” has the meaning set forth in the U.S. Pledge and Security Agreement and the CKI Related Assets Pledge and Security Agreement, as applicable.

“Intercreditor Agreements” means the CKI Intercreditor Agreement and the 2023 Debentures Intercreditor Agreement.

“Interest Coverage Ratio” means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Adjusted EBITDA for the four-Fiscal-Quarter period then ended to (ii) Consolidated Cash Interest Expense for such four-Fiscal-Quarter period.

“Interest Payment Date” means with respect to (i) any Loan that is a Base Rate Loan (including any Swing Line Loan) or any Canadian Prime Rate Loan (including any Canadian Swing Line Loan), each March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (ii) any Loan that is a Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan; provided, that in the case of each Interest Period of longer than three months “Interest Payment Date” shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

“Interest Period” means, in connection with a Eurocurrency Rate Loan, an interest period of one, two, three or six months (or, if available to all of the Lenders, nine or 12 months), as selected by the Borrowers in the applicable Borrowing Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, that (a) if an Interest Period would otherwise expire on a day that is not a Business Day,

such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period in respect of a Eurocurrency Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (c) and (d), of this definition, end on the last Business Day of a calendar month; (c) no Interest Period with respect to any portion of any Class of Term Loans shall extend beyond such Class's Term Loan Maturity Date; and (d) no Interest Period with respect to any portion of any Class of Revolving Loans shall extend beyond such Class's Revolving Commitment Termination Date. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the initial Interest Period with respect to any Borrowing of ~~Tranche A Term Loans or Tranche B~~ Term Loans funded on the ~~Restatement Date will be a period commencing on the Restatement Date and ending on the end dates of the Interest Periods in effect with respect to the Tranche A Term Loans or Tranche B Term Loans, respectively, under the Original Credit Agreement.~~ Second Amendment Date will be as set forth in Section 2(c) of the Second Amendment.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with the operations of the Group and not for speculative purposes.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Investment" means (i) any direct or indirect purchase or other acquisition by any Group Member of, or of a beneficial interest in, any of the Securities of any other Person (other than a U.S. Loan Party); (ii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by any Group Member to any other Person (other than a U.S. Loan Party), including all Indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iii) all investments consisting of any exchange traded or over the counter derivative transaction, including any Hedge Agreement, whether entered into for hedging or speculative purposes. The amount of any Investment of the type described in clauses (i) and (ii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"ISP" means, with respect to any standby Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"Issuance Notice" means a notice substantially in the form of Exhibit A-3.

“Issuing Bank” means each of Barclays, Bank of America, N.A. and The Bank of Nova Scotia, as Issuing Bank hereunder, and any other Lender that has notified the Administrative Agent that it has agreed to a request by the Borrower Representative to become an Issuing Bank hereunder with respect to U.S. Letters of Credit, European Letters of Credit or Canadian Letters of Credit, as applicable, together with their respective permitted successors and assigns in such capacity. Unless otherwise specified, in respect of any Letters of Credit, “Issuing Bank” shall refer to the applicable Issuing Bank which has issued such Letter of Credit. An Issuing Bank may perform its obligations hereunder through any applicable branch thereof and such branch shall be treated as the applicable Issuing Bank where applicable.

“Itochu Agreement” means that certain Stockholders’ Agreement, dated as of December 27, 2007, among ITOCHU Corporation, Tommy Hilfiger B.V. (as successor by merger to Tommy Hilfiger Group B.V.), Tommy Hilfiger Japan Corporation and certain other parties signatory thereto.

“Itochu Amount” means, for any period, the payments paid or payable by any Group Member for such period pursuant to the Itochu Agreement.

“Itochu Guarantee” means that certain Guarantee, dated as of January 12, 2012, by the U.S. Borrower of certain obligations of Tommy Hilfiger B.V. (as successor by merger to Tommy Hilfiger Group B.V.) under the Itochu Agreement for the benefit of ITOCHU Corporation.

“Itochu Obligations” means all obligations of any nature of the U.S. Borrower or any of its Subsidiary under or with respect to the Itochu Guarantee, the Itochu Agreement and the preferred shares of Tommy Hilfiger Japan Corporation.

“Japanese Yen” means the lawful currency of Japan.

“Joinder Agreement” means an agreement substantially in the form of Exhibit I.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, that in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“Judgment Currency” has the meaning set forth in Section 10.25.

“Landlord Consent” means, with respect to any Leasehold Property for which a landlord’s consent is required prior to a U.S. Loan Party’s granting of a Mortgage on such Leasehold Property, a letter, certificate or other instrument in writing from the lessor under the related lease, pursuant to which, among other things, the landlord consents to the granting of a Mortgage on such Leasehold Property by the U.S. Loan Party tenant, such Landlord Consent to be in form and substance acceptable to the Collateral Agent in its reasonable discretion and sufficient for the Collateral Agent to obtain a Title Policy with respect to such Mortgage.

“Landlord Personal Property Collateral Access Agreement” means a Landlord Waiver and Consent Agreement substantially in the form of Exhibit H with such amendments or modifications as may be approved by the Collateral Agent.

“Leasehold Property” means any leasehold interest of any U.S. Loan Party as lessee under any lease of real property, other than any lease with respect to retail store locations and any such leasehold interest designated from time to time by the Collateral Agent in its sole discretion as not being required to be included in the Collateral.

“Lender” means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement or a Joinder Agreement. Unless the context clearly indicates otherwise, the term “Lenders” shall include the Swing Line Lender.

“Lender Counterparty” means (a) each Person counterparty to a Hedge Agreement, Cash Management Agreement or Treasury Transaction who is (or at the time such Hedge Agreement, Cash Management Agreement or Treasury Transaction was entered into, was) a Lender, an Agent or an Affiliate of any thereof, (b) any Person counterparty to a Hedge Agreement, Cash Management Agreement or Treasury Transaction who was, at the time such agreement or transaction was entered into, a lender or agent or an Affiliate of any thereof under and pursuant to the Existing PVH Credit Agreement or the Original Credit Agreement, as applicable and (c) any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date or the Restatement Date but subsequently, whether before or after entering into a Hedge Agreement, Cash Management Agreement or Treasury Transaction, ceases to be an Agent or a Lender, as the case may be.

“Letter of Credit” means a U.S. Letter of Credit, a Canadian Letter of Credit and/or a European Letter of Credit, as applicable.

“Lien” means any lien, mortgage, pledge, assignment or transfer for security purpose, security interest, charge or similar encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title (or extended title) retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing; provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Loan” means a Tranche A Term Loan, ~~a Tranche B Term Loan~~, a Revolving Loan, a Swing Line Loan and an Incremental Term Loan, which (i) in the case of Loans denominated in Dollars, may be a Base Rate Loan or a Eurocurrency Rate Loan, (ii) in the case of Loans denominated in Euros or an Other Foreign Currency, shall be a Eurocurrency Rate Loan and (iii) in the case of Loans denominated in Canadian Dollars, may be a Canadian Prime Rate Loan or a Eurocurrency Rate Loan.

“Loan Document” means any of this Agreement, the Notes, if any, the Security Documents, the Intercreditor Agreements, the First Amendment, each Joinder Agreement, any accession or joinder agreement to any Intercreditor Agreement, any documents or certificates executed by the Borrowers in favor of any Issuing Bank relating to Letters of Credit, any Ancillary Document, and all other documents, instruments or agreements executed and delivered by a Loan Party for the benefit of any Agent, any Issuing Bank or any Lender in connection herewith on or after the Closing Date.

“Loan Party” means each Borrower and each Guarantor.

“Mandatory Costs” means the percentage rate *per annum* calculated by the Administrative Agent in accordance with Schedule 1.01(f) hereto.

“Margin Stock” has the meaning given in Regulation U of the Board of Governors as in effect from time to time.

“Market Disruption” means any Interest Rate Determination Date on which (i) the Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), with respect to any Eurocurrency Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted Eurocurrency Rate, or (ii) before the close of business in London on such Interest Rate Determination Date, the Administrative Agent receives notifications from a Lender or Lenders (whose aggregate exposure in respect of any Class of Loans exceeds 50% of that Class of Loans) that the cost to it of obtaining matching deposits in the London interbank market would be in excess of the Adjusted Eurocurrency Rate.

“Material Adverse Effect” means any event, development or circumstance that has had or would reasonably be expected to have a material adverse effect on (i) the business, assets, operations or financial condition of the Group (other than any Securitization Subsidiary) taken as a whole; (ii) the ability of the Loan Parties (taken as a whole) to pay the Obligations; or (iii) the rights and remedies available to, or conferred upon, any Agent and any Lender or any other Secured Party under any Loan Document in any manner (including the legality, validity, binding effect or enforceability of the Loan Documents against the Loan Parties) that would be prejudicial to the interests of the Secured Parties, taken as a whole.

“Material Company” means (i) any Loan Party, (ii) any Group Member that is listed in Schedule 1.01(g) or (iii) any Group Member that has (x) Group Member Adjusted EBITDA or (y) Group Member Assets representing, respectively, 5% or more of Consolidated Adjusted EBITDA or Consolidated Total Assets. For this purpose:

(a) the (i) Group Member Adjusted EBITDA and (ii) Group Member Assets will be determined from its financial statements upon which the latest audited financial statements of the Group have been based;

(b) if a Subsidiary becomes a Group Member after the date on which the latest audited financial statements of the Group have been prepared, the (i) Group Member Adjusted EBITDA or (ii) Group Member Assets of that Subsidiary will be determined from its latest financial statements;

(c) the (i) Consolidated Adjusted EBITDA and (ii) Consolidated Total Assets will be determined from its latest audited financial statements, adjusted (where appropriate) to take into account *pro forma* adjustments of the type described in the definition of “Consolidated Adjusted EBITDA” and “Consolidated Total Assets”, as applicable; and

(d) if a Material Company disposes of all or substantially all of its assets to another Group Member, it will immediately cease to be a Material Company and the other Group Member (if it is not already) will immediately become a Material Company.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit or, for the avoidance of doubt, any CKI Obligations) of any one or more of the Borrowers or any Subsidiary in an individual principal amount (or Net Mark-to-Market Exposure) of \$75,000,000 or more.

“Material Intellectual Property” means any Intellectual Property included in the Collateral that is material to the business of any Group Member.

“Material Real Estate Asset” means any Real Estate Asset in respect of which a U.S. Loan Party has an ownership interest with a fair market value in excess of \$15,000,000 as of the date of the acquisition thereof, but excluding all Leasehold Properties (i) that are retail store locations, (ii) with respect to which the aggregate payments under the terms of the applicable lease are less than \$15,000,000 *per annum* or whose termination dates under the terms of the applicable lease are not greater than five years after the date of the acquisition thereof, (iii) that, by the terms of their respective leases are prohibited from, or the respective landlord does not otherwise grant consent to, recording a Record Document, or (iv) with respect to which, notwithstanding the U.S. Borrower’s commercially reasonable efforts to secure a Landlord Consent pursuant to the terms of Section 5.12(c), such Landlord Consent shall not be forthcoming from the applicable Landlord.

“Merger Sub” means Wand Acquisition Corp., a Delaware corporation.

“MLPFS” has the meaning specified in the preamble hereto.

“Moody’s” means Moody’s Investor Services, Inc.

“Mortgage” means one or more instruments of mortgage or leasehold mortgage substantially in the form of Exhibit G, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Multiemployer Plan” means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

“NAIC” means The National Association of Insurance Commissioners, and any successor thereto.

“Narrative Report” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Group for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

“Net Cash Proceeds” means (a) with respect to any Asset Sale, an amount equal to: (i) cash payments (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by any Group Member from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (1) taxes paid or payable as a result thereof including transfer taxes and income or gains taxes payable as a result of any gain recognized in connection with such Asset Sale, (2) payment

of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (3) a reasonable reserve established in accordance with GAAP retained by the applicable Group Member, including, without limitation for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by any Group Member in connection with such Asset Sale, (4) attorneys' fees, accountants' 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 incurred in connection therewith and (5) in case of any such Asset Sale occurring in a jurisdiction other than the United States, the amount of all taxes paid (or reasonably estimated to be payable) by the Group Members that are directly attributable to the distribution of such cash proceeds from such jurisdiction or to the repatriation of such cash proceeds into the United States, but only to the extent the Group Members have used commercially reasonable efforts to reduce or eliminate such taxes, including by electing to prepay Loans in such a manner that would result in the lowest possible amount of such taxes; provided, that no such net cash proceeds shall constitute Net Cash Proceeds under this clause (a) in any Fiscal Year until the aggregate amount of all such net cash proceeds received by a Group Member in such Fiscal Year, taken together with all net cash payments or proceeds of the type described in clause (b) below received by a Group Member in such Fiscal Year, shall exceed a Dollar Equivalent of \$50,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Cash Proceeds under this clause (a)); (b) (i) any cash payments or proceeds received by any Group Member (1) under any casualty insurance policy in respect of a covered loss thereunder or (2) as a result of the taking of any assets of any Group Member by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (1) any actual and reasonable costs incurred by any Group Member in connection with the adjustment or settlement of any claims of such Group Member in respect thereof, (2) any bona fide direct costs incurred in connection with any sale of such assets as referred to in preceding clause (i)(2), including income taxes payable as a result of any gain recognized in connection therewith and (3) in case of any such event occurring in a jurisdiction other than the United States, the amount of all taxes paid (or reasonably estimated to be payable) by the Group Members that are directly attributable to the distribution of such cash proceeds from such jurisdiction or to the repatriation of such cash proceeds into the United States, but only to the extent the Group Members have used commercially reasonable efforts to reduce or eliminate such taxes, including by electing to prepay Loans in such a manner that would result in the lowest possible amount of such taxes; provided, that (x) no net cash proceeds calculated in accordance with this clause (b) realized in a single transaction or series of transactions shall constitute Net Cash Proceeds under this clause (b) unless such net cash proceeds shall exceed a Dollar Equivalent of \$10,000,000 and (y) no such net cash proceeds shall constitute Net Cash Proceeds under this clause (b) in any Fiscal Year until the aggregate amount of all such net cash proceeds received by a Group Member in such Fiscal Year, taken together with all net cash payments or proceeds of the type described in clause (a) above received by a Group Member in such Fiscal Year, shall exceed a Dollar Equivalent of \$50,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net

Cash Proceeds under this clause (b)); (c) with respect to any issuance or incurrence of Indebtedness (other than in connection with a Qualified Securitization Financing) or any sale of Equity Interests, the cash proceeds thereof, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses; and (d) with respect to any issuance or incurrence of Indebtedness in connection with a Qualified Securitization Financing, the cash proceeds thereof, net of any related Securitization Fees and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses, received directly or indirectly from time to time in connection with such Qualified Securitization Financing from Persons that are not Securitization Subsidiaries, including any such cash proceeds received in connection with an increase in the outstanding program or facility amount with respect to such Qualified Securitization Financing, but excluding any cash collections from the Securitization Assets backing such Qualified Securitization Financing that are reinvested (or deemed to be reinvested) by such Persons in additional Securitization Assets without any increase in the Indebtedness outstanding in connection with such Qualified Securitization Financing.

“Net Leverage Ratio” means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Total Net Debt as of such day to (ii) Consolidated Adjusted EBITDA for the four-Fiscal-Quarter period ending on such date.

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (viii) of the definition thereof. As used in this definition, “unrealized losses” means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date).

“Non-Consenting Lender” has the meaning set forth in Section 2.23.

“Non-Public Information” means information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

“Non-U.S. Lender” has the meaning set forth in Section 2.20(c).

“Note” means a Tranche A Term Loan Note, ~~a Tranche B Term Loan Note~~, an Incremental Term Loan Note, a Revolving Loan Note or a Swing Line Note.

“Notice” means a Borrowing Notice, an Issuance Notice, or a Conversion/ Continuation Notice.

“Obligations” means all obligations of every nature of each Loan Party, including obligations from time to time owed to Secured Parties, under any Loan Document, Hedge Agreement, Cash Management Agreement or Treasury Transaction whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such

interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Hedge Agreements, fees, expenses, indemnification or otherwise; provided, that at no time shall Obligations include any Excluded Swap Obligations.

“Offer” has the meaning set forth in Section 2.13(c).

“Offer Loans” has the meaning set forth in Section 2.13(c).

“Organizational Documents” means with respect to any Person all formation, organizational and governing documents, instruments and agreements, including (i) with respect to any corporation, its certificate or articles of incorporation or organization, its by-laws, any memorandum of incorporation or other constitutional documents, (ii) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement (if any) and (iv) with respect to any limited liability company, its certificate of incorporation or formation (and any amendments thereto), certificate of incorporation on change of name (if any), its memorandum and articles of association (if any), its articles of organization (if any), the shareholders’ list (if any) and its limited liability company agreement or operating agreement. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Original Credit Agreement” has the meaning set forth in the recitals hereto.

“Original Lenders” has the meaning set forth in the recitals hereto.

“Other Foreign Currencies” means Japanese Yen, Pounds Sterling and Swiss Francs, in each case which are readily available in the amount required and freely convertible into Euro in the relevant interbank market.

“Other Taxes” means any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant Register” has the meaning set forth in Section 10.06(g)(iv).

“Patents” has the meaning set forth in the U.S. Pledge and Security Agreement.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56.

“Payment in Full” or “Paid in Full” means the payment in full of all Obligations (other than obligations under Hedge Agreements, Cash Management Agreements or Treasury Transactions not yet due and payable and contingent obligations not yet due and payable) and cancellation, expiration or Cash Collateralization of all Letters of Credit and termination of all Commitments to lend under this Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 or Section 430 of the Internal Revenue Code or Section 302 or Section 303 of ERISA.

“Perfection Certificate” means a certificate in the form attached hereto as Exhibit J (or any other form reasonably satisfactory to the Collateral Agent) that provides information with respect to the personal or mixed property of each U.S. Loan Party.

“Permitted Acquisition” means any ~~acquisition by the U.S. Borrower and/or any of its Wholly Owned Restricted Subsidiaries of, or any transaction that results in the U.S. Borrower and/or any of its Wholly Owned Restricted Subsidiaries owning, whether by purchase, merger, exclusive inbound license, transfer of rights under Copyright or otherwise, all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided, that:~~ Subject Acquisition; provided, that:

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(c) ~~in the case of the acquisition of Equity Interests, all of the Equity Interests (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary of the U.S. Borrower in connection with such acquisition shall be owned 100.0% by the Loan Parties;~~ [Reserved];

(d) the Group shall be in compliance with the financial covenants set forth in Sections 6.07(a) and 6.07(b) on a *pro forma* basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended;

(e) the acquisition shall not result in the Group acquiring any interest, direct or indirect, in any Loan; and

(f) in the case of an acquisition involving Acquisition Consideration in excess of \$40,000,000, the Borrower Representative shall have delivered to the Administrative Agent at least five Business Days prior to such acquisition, a Compliance Certificate evidencing compliance with Sections 6.07(a) and 6.07(b) as required under clause (d) above.

“Permitted Liens” means each of the Liens permitted pursuant to Section 6.02.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person or any Indebtedness incurred or issued to so modify, refinance, refund, renew or extend such Indebtedness; provided, that (i) 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 amounts 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; (ii) (A) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the earlier of (x) the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended and (y) the date that is 90 days after the final maturity date of the Term Loans, and (B) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the earlier of (x) the Indebtedness being modified, refinanced, refunded, renewed or extended and (y) the Term Loans; (iii) at the time thereof, no Default or Event of Default shall have occurred and be continuing; (iv) to the extent such Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended and (v) the obligors in respect of such Indebtedness being modified, refinanced, refunded, renewed or extended are the obligors thereon and to the extent an additional obligor would otherwise be permitted to incur such Indebtedness under another provision of Section 6.01, such additional obligor may be an obligor thereon.

“Permitted Sale and Lease-Back” has the meaning set forth in Section 6.10.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

“Platform” has the meaning set forth in Section 5.01(m).

“Post-Closing Restructuring Transactions” means, collectively, the internal restructuring transactions to be undertaken by the U.S. Borrower and its Restricted Subsidiaries concurrently with, or within the 12-month period following, the Closing Date, including (i) transfers of (x) any assets of any direct or indirect Foreign Subsidiary of the Acquired Business or (y) the Equity Interests of any direct or indirect Foreign Subsidiary of the Acquired Business from the Acquired Business or any U.S. Subsidiary thereof to, in the case of clause (x) or (y), Foreign Subsidiaries (direct or indirect) of the U.S. Borrower, (ii) the formation of a new European holding company as an indirect wholly-owned subsidiary of the U.S. Borrower and the contribution of some or all of the U.S. Borrower’s direct or indirect Foreign Subsidiaries (including, following the Closing Date, the direct and indirect foreign subsidiaries of the Acquired Business) to such entity, (iii) any related incurrence of intercompany Indebtedness (which shall be Subordinated Indebtedness if owed by a U.S. Loan Party to a Foreign Subsidiary) and any related intercompany transactions that the U.S. Borrower deems reasonably necessary or beneficial in connection therewith. The *pro forma* summary corporate structure chart, after giving effect to the Post-Closing Restructuring Transactions, is set forth on Schedule 1.01(h).

“Pounds Sterling” means the lawful currency of the United Kingdom.

“Prime Rate” means the rate of interest publicly announced from time to time by the Administrative Agent as its prime rate in effect at its principal office in New York City. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“Principal Office” means, for each of the Administrative Agent, each Swing Line Lender and each Issuing Bank, such Person’s “Principal Office” which, in the case of the Administrative Agent, may include one or more separate offices with respect to Approved Currencies as set forth on Schedule 1.01(d), or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to the Borrowers, the Administrative Agent and each Lender.

“Projections” has the meaning set forth in Section 4.08.

“Pro Rata Share” means (i) with respect to all payments, computations and other matters relating to the Tranche A Term Loans of any Lender, as the context requires, the percentage obtained by dividing (x) the Tranche A Term Loan Exposure of that Lender by (y) the aggregate Tranche A Term Loan Exposure of all Lenders; (ii) with respect to all payments, ~~computations and other matters relating to all of the Tranche B Term Loans of any Lender, as the context requires, the percentage obtained by dividing (x) the Tranche B Term Loan Exposure of that Lender by (y) the aggregate Tranche B Term Loan Exposure of all Lenders;~~ (iii) ~~with respect to all payments;~~ computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, as the context requires, the percentage obtained by dividing (x) (1) the U.S. Revolving Exposure of that Lender by (2) the aggregate U.S. Revolving Exposure of all Lenders, (y) (1) the European Revolving Exposure of that Lender by (2) the aggregate European Revolving Exposure of all Lenders or (z) (1) the Canadian Revolving Exposure of that Lender by (2) the aggregate Canadian Revolving Exposure of all Lenders; and (iviii) with respect to all payments, computations, and other matters relating to Incremental Term Loan Commitments or Incremental Term Loans of a particular Series, the percentage obtained by dividing (x) the Incremental Term Loan Exposure of that Lender with respect to that Series by (y) the aggregate Incremental Term Loan Exposure of all Lenders with respect to that Series. For all other purposes with respect to each Lender, “Pro Rata Share” means the percentage obtained by dividing (i) an amount equal to the sum of the Tranche A Term Loan Exposure, ~~the Tranche B Term Loan Exposure;~~ the Revolving Exposure and the Incremental Term Loan Exposure of that Lender, by (ii) an amount equal to the sum of the aggregate Tranche A Term Loan Exposure, ~~the aggregate Tranche B Term Loan Exposure;~~ the aggregate Revolving Exposure and the aggregate Incremental Term Loan Exposure of all Lenders.

“Qualified Securitization Financing” means any transaction or series of transactions entered into by a Group Member pursuant to which such Group Member, sells, conveys, contributes, assigns, grants an interest in or otherwise transfers to a Securitization Subsidiary, Securitization Assets (and/or grants a security interest in such Securitization Assets transferred or purported to be transferred to such Securitization Subsidiary), and which Securitization Subsidiary funds the acquisition of

such Securitization Assets (i) with cash, (ii) through the issuance to such Group Member of Seller's Retained Interests or an increase in such Seller's Retained Interests, and/or (iii) with proceeds from the sale, pledge or collection of Securitization Assets.

"Qualifying Acquisition" shall mean any Subject Acquisition with Acquisition Consideration of at least \$200,000,000.

"RBCCM" means RBC Capital Markets.

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

"Record Document" means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to the Collateral Agent.

"Recorded Leasehold Interest" means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in the Collateral Agent's reasonable judgment, to give constructive notice of such Leasehold Property to third party purchasers and encumbrances of the affected real property.

"Refunded Swing Line Loans" has the meaning set forth in Section 2.03(b)(iv).

"Register" has the meaning set forth in Section 2.07(b).

"Regulation" has the meaning set forth in Section 4.23.

"Regulation D" means Regulation D of the Board of Governors, as in effect from time to time.

"Regulation FD" means Regulation FD as promulgated by the SEC under the Securities Act and Exchange Act.

"Regulation U" means Regulation U of the Board of Governors, as in effect from time to time.

"Reimbursement Date" has the meaning set forth in Section 2.04(d)(i).

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Jurisdiction” means, in relation to a Loan Party: (i) its jurisdiction of organization; (ii) any jurisdiction where any asset subject to or intended to be subject to the Security Documents to be created by it is situated; and (iii) any jurisdiction where it conducts its business.

“Replacement Lender” has the meaning set forth in Section 2.23.

~~“Repricing Event” means (i) any prepayment or repayment of Tranche B Term Loans with the proceeds of, or any conversion of Tranche B Term Loans into, any new or replacement tranche of term loans bearing interest with an “effective yield” (taking into account, for example, upfront fees, interest rate spreads, interest rate benchmarks floors and original interest discount, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all lenders or holders of such new or replacement loans and without taking into account any fluctuations in the Adjusted Eurocurrency Rate or comparable rate) less than the “effective yield” applicable to the Tranche B Term Loans (as such comparative yields are determined consistent with generally accepted financial practices) and (ii) any amendment to this Agreement which reduces the “effective yield” applicable to the Tranche B Term Loans (it being understood that (x) any prepayment premium with respect to a Repricing Event shall apply to any required assignment by a Non-Consenting Lender in connection with any such amendment pursuant to Section 2.23(c), (y) in each case, the yield shall exclude any structuring, commitment and arranger fees or other fees unless such similar fees are paid to all lenders generally in the primary syndication of such new or replacement tranche of term loans and shall include any rate floors and any upfront or similar fees paid to all lenders generally in the primary syndication of such new or replacement tranche of term loans or original issue discount payable with respect to such new or replacement tranche of term loans) and (z) any such repayment, prepayment, conversion or amendment shall only constitute a Repricing Event to the extent that the primary purpose of such repayment, prepayment, conversion or amendment, as reasonably determined by the U.S. Borrower in good faith, is to reduce the “effective yield” applicable to the Tranche B Term Loans.~~

“Required Lenders” means one or more Lenders having or holding Tranche A Term Loan Exposure, ~~Tranche B Term Loan Exposure~~, Incremental Term Loan Exposure and/or Revolving Exposure and representing more than 50.0% of the sum of (i) the aggregate Tranche A Term Loan Exposure of all Lenders, (ii) the aggregate ~~Tranche B Term Loan~~ Revolving Exposure of all Lenders, ~~(iii) the aggregate Revolving Exposure of all Lenders and (iv and (iii)~~ the aggregate Incremental Term Loan Exposure of all Lenders.

“Required Prepayment Date” has the meaning set forth in Section 2.15(d).

“Restatement Date” means the date on which the conditions set forth in Section 3 of the First Amendment have been satisfied, which date is March 21, 2014.

“Restatement Transactions” means the redemption, defeasance, satisfaction and discharge, repurchase or other repayment of up to \$600,000,000 in aggregate principal amount of the 2020 Notes, the entry into the First Amendment and all transactions in connection therewith and related thereto and the payment of fees, costs and expenses related to each of the foregoing.

“Restricted Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of any Group Member now or hereafter outstanding, except (x) a dividend payable solely in shares of Equity Interests (other than Disqualified Equity Interests) and (y) for the avoidance of doubt, any dividend equivalent paid in respect of restricted stock units issued by the U.S. Borrower pursuant to the 2006 Stock Incentive Plan, as it may be amended, restated, supplemented or otherwise modified from time to time, or any successor plan thereto; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of any Group Member now or hereafter outstanding, except any such payment, purchase or acquisition payable solely in shares of Equity Interests (other than Disqualified Equity Interests); (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of any Group Member now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement or similar payment with respect to Subordinated Indebtedness (other than if such Subordinated Indebtedness is owed by the U.S. Borrower to any Restricted Subsidiary or owed by any Restricted Subsidiary to the U.S. Borrower or any other Restricted Subsidiary and, with respect to amounts owing to Restricted Subsidiaries that are not Loan Parties, in the ordinary course of business).

“Restricted Subsidiary” means any Subsidiary of the U.S. Borrower other than an Unrestricted Subsidiary.

“Revolving Commitment” means a U.S. Revolving Commitment, a Canadian Revolving Commitment and/or a European Revolving Commitment, as applicable.

“Revolving Commitment Period” means the U.S. Revolving Commitment Period, the Canadian Revolving Commitment Period or the European Revolving Commitment Period, as applicable.

“Revolving Commitment Termination Date” means the U.S. Revolving Commitment Termination Date, the Canadian Revolving Commitment Termination Date or the European Revolving Commitment Termination Date, as applicable.

“Revolving Exposure” means, with respect to any Lender as of any date of determination, the sum of such Lender’s U.S. Revolving Exposure, Canadian Revolving Exposure and European Revolving Exposure.

“Revolving Lenders” means the Lenders having Revolving Exposure.

“Revolving Loan” means a U.S. Revolving Loan, a Canadian Revolving Loan and/or a European Revolving Loan, as applicable.

“Revolving Loan Note” means a promissory note substantially in the form of Exhibit B-3, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Royal Bank” has the meaning specified in the preamble hereto.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc.

“Sale and Lease-Back” has the meaning set forth in Section 6.10.

“Screen Rate” means, in relation to a Loan denominated in Dollars or Other Foreign Currency, the ICE Benchmark Administration London Interbank Offered Rate for the relevant currency and Interest Period, in relation to a Loan denominated in Canadian Dollars, the Canadian Dealer Offered Rate for the relevant Interest Period and in relation to a Loan denominated in Euros, the percentage rate *per annum* determined by the Banking Federation of the European Union for the relevant period, in each case, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Administrative Agent may specify another page or service displaying the appropriate rate.

“SEC” means the United States Securities and Exchange Commission and any successor Governmental Authority performing a similar function.

“Second Amendment” means the Second Amendment to this Agreement, dated as of May 19, 2016, among the Borrowers, the Guarantors, the Administrative Agent, the Collateral Agent and the Lenders party thereto.

“Second Amendment Date” means the date on which the Second Amendment became effective pursuant to its terms, which date is May 19, 2016.

“Second Amendment Incremental Tranche A Term Loans” means the Incremental Tranche A Term Loans extended pursuant to Section 2.1(a)(iii) of this Agreement and Section 2(a) of the Second Amendment.

“Second Amendment Engagement Letter” means that certain engagement letter, dated as of April 11, 2016, among U.S. Borrower and Barclays Bank PLC, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., JPMorgan Chase Bank, N.A. and Royal Bank of Canada.

“Second Amendment Tranche A Term Loan Commitment” means the commitment of a Lender to make or otherwise to fund an Incremental Tranche A Term Loan (as defined in the Second Amendment) on the Second Amendment Date. The amount of each Lender’s Second Amendment Tranche A Term Loan Commitment, if any, is set forth on Schedule 1.01(a) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Second Amendment Tranche A Term Loan Commitments as of the Second Amendment Date is \$581,991,410.42.

“Secured Parties” means the Agents, Lenders, Issuing Banks, the Lender Counterparties and the Ancillary Lenders and shall include, without limitation, all former Agents, Lenders, Issuing Banks, Lender Counterparties and Ancillary Lenders to the extent that any Obligations owing to such Persons were incurred while such Persons were Agents, Lenders, Issuing Banks, Lender Counterparties or Ancillary Lenders and such Obligations have not been paid or satisfied in full.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of Indebtedness, secured or unsecured, convertible,

subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Securitization Assets” means any accounts receivable owed to a Group Member (whether now existing or arising or acquired in the future) arising in the ordinary course of business from the sale of goods or services, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, all proceeds of such accounts receivable and other assets (including contract rights) which are of the type customarily transferred or in respect of which security interests are customarily granted in connection with securitizations of accounts receivable and which are sold, conveyed, contributed, assigned, pledged or otherwise transferred by such Group Member to a Securitization Subsidiary.

“Securitization Fees” means, with respect to any Qualified Securitization Financing, distributions or payments made, or fees paid, directly or by means of discounts with respect to any Indebtedness issued or sold in connection with such Qualified Securitization Financing, to a Person that is not a Securitization Subsidiary in connection with such Qualified Securitization Financing.

“Securitization Repurchase Obligation” means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant with respect to such Securitization Assets, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off set, counterclaim or other dilution 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, but in each case, not as a result of such receivable being or becoming uncollectible for credit reasons.

“Securitization Subsidiary” means a wholly owned Subsidiary of the U.S. Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which any Group Member makes an Investment and to which such Group Member transfers, contributes, sells, conveys or grants a security interest in Securitization Assets) that engages in no activities other than in connection with the acquisition and/or financing of Securitization Assets of the Group, all proceeds thereof and all rights (contingent and other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the U.S. Borrower (or a duly authorized committee thereof) or such other Person (as provided below) as a Securitization Subsidiary and (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by any Group Member, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates any Group Member, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset (other than Securitization Assets) of any Group Member, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings, (b) with which no Group Member, other than

another Securitization Subsidiary, has any material contract, agreement, arrangement or understanding other than (i) the applicable receivables purchase agreements and related agreements, in each case, having reasonably customary terms, or (ii) on terms which the U.S. Borrower reasonably believes to be no less favorable to the applicable Group Member than those that might be obtained at the time from Persons that are not Affiliates of the Group and (c) to which no Group Member other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the U.S. Borrower (or a duly authorized committee thereof) or such other Person shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a certified copy of the resolution of the Board of Directors of the U.S. Borrower (or a duly authorized committee thereof) or such other Person giving effect to such designation and a certificate executed by an Authorized Officer certifying that such designation complied with the foregoing conditions.

“Security Documents” means the U.S. Security Agreements, the Mortgages, the Intellectual Property Security Agreements, the Landlord Personal Property Collateral Access Agreements, if any, and all other instruments, documents and agreements delivered by any U.S. Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to the Collateral Agent, for the benefit of Secured Parties, a Lien on any assets or property of that U.S. Loan Party as security for all or certain of the Obligations, including UCC financing statements and amendments thereto and filings with the United States Patent and Trademark Office and the United States Copyright Office; provided that no Dutch Security Agreement shall be considered a Security Document (or, by virtue of being a Security Document, a Loan Document), other than for purposes of Article IX and Sections 10.02 and 10.03.

“Seller's Retained Interests” means the debt or equity interests held by any Group Member in a Securitization Subsidiary to which Securitization Assets have been transferred, including any such debt or equity received as consideration for or as a portion of the purchase price for the Securitization Assets transferred, or any other instrument through which such Group Member has rights to or receives distributions in respect of any residual or excess interest in the Securitization Assets.

“Senior Secured Net Debt” means, at any date of determination, an amount equal to (x) Consolidated Total Net Debt as of such date, minus (y) the aggregate outstanding principal amount of any unsecured Indebtedness as of such date.

“Senior Secured Net Leverage Ratio” means the ratio as of the last day of any Fiscal Quarter of (i) Senior Secured Net Debt as of such day to (ii) Consolidated Adjusted EBITDA for the four-Fiscal-Quarter period ending on such date.

“Series” has the meaning set forth in Section 2.24.

“Series A Preferred Stock” means the Series A Convertible Preferred Stock of the U.S. Borrower issued and outstanding as of the Closing Date.

“Software” means computer software of whatever kind or purpose, including code, tools, developers kits, utilities, graphical user interfaces, menus, images, icons, and forms, and all software stored or contained therein or transmitted thereby, and related documentation.

“Solvency Certificate” means a Solvency Certificate of the principal financial officer of the Borrower Representative substantially in the form of Exhibit E-2.

“Solvent” means, with respect to the Group on a consolidated basis, that as of the date of determination, (a) the sum of the Group’s debt (including contingent liabilities) does not exceed the present fair saleable value of the Group’s present assets; (b) the Group’s capital is not unreasonably small in relation to its business as of the date of determination; and (c) the Group has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise). For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Specified Representations” means those representations and warranties of the Borrowers and the Guarantors in Sections 4.01(a), 4.01(b), 4.01(c)(i), 4.03, 4.04(a)(i), 4.04(a)(ii), 4.04(b) (solely with respect to the 2020 Notes and the 2023 Debentures), 4.06, 4.15, 4.16, 4.18, 4.19(b) and 4.22(b) (subject to the proviso in Section 3.01(e)).

“Standard Securitization Undertakings” means representations, warranties, covenants, Securitization Repurchase Obligations and indemnities entered into by any Group Member that are reasonably customary in accounts receivable securitization transactions.

“Subject Acquisition” means any acquisition by the U.S. Borrower and/or any of its Wholly-Owned Restricted Subsidiaries of, or any transaction that results in the U.S. Borrower and/or any of its Wholly-Owned Restricted Subsidiaries owning, whether by purchase, merger, exclusive inbound license, transfer of rights under Copyright or otherwise, all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person.

“Subordinated European Intercompany Obligations” has the meaning set forth in Section 7.07.

“Subordinated Indebtedness” means, with respect to the Obligations, any Indebtedness of any Loan Party that is by its terms subordinated in right of payment to any of the Obligations.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50.0% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding; provided, further, that for purposes of Articles IV and V, no Securitization Subsidiary shall be considered a Subsidiary of the U.S. Borrower; provided, further, that, notwithstanding anything contained herein or otherwise, for purposes of this Agreement and

any other Loan Document, the CKI Trust shall not be considered a Subsidiary of the U.S. Borrower; and provided, further, that unless the context otherwise requires, a Subsidiary shall mean a direct or indirect Subsidiary of the U.S. Borrower.

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

“Swing Line Lender” means each of the Canadian Swing Line Lender and the U.S. Swing Line Lender.

“Swing Line Loan” means a Canadian Swing Line Loan or a U.S. Swing Line Loan, as applicable.

“Swing Line Note” means a promissory note substantially in the form of Exhibit B-4, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Syndication Agent” has the meaning set forth in the preamble.

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (and interest, fines, penalties and additions related thereto) of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

“Term Lenders” means the Lenders having Tranche A ~~Term Loan Exposure, Tranche B~~ Term Loan Exposure and Incremental Term Loan Exposure of each applicable Series.

“Term Loan” means a Tranche A ~~Term Loan, a Tranche B~~ Term Loan and an Incremental Term Loan.

“Term Loan Commitment” means the Tranche A ~~Term Loan Commitment, the Tranche B~~ Term Loan Commitment or the Incremental Term Loan Commitment of a Lender, and “Term Loan Commitments” means such commitments of all Lenders.

“Term Loan Maturity Date” means the Tranche A Term Loan Maturity Date, ~~the Tranche B Term Loan Maturity Date~~ and the Incremental Term Loan Maturity Date of any Series of Incremental Term Loans.

“Terminated Lender” has the meaning set forth in Section 2.23.

“Title Company” has the meaning set forth in Section 5.12(d).

“Title Policy” has the meaning set forth in Section 5.12(d).

“Total Utilization of Canadian Revolving Commitments” means, as at any date of determination, the Dollar Equivalent of the sum of (i) the aggregate principal amount of all outstanding Canadian Revolving Loans (other than Canadian Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the applicable Issuing Bank for any amount drawn

under any Canadian Letter of Credit, but not yet so applied), (ii) the aggregate principal amount of all outstanding Canadian Swing Line Loans and (iii) the Canadian Letter of Credit Usage.

“Total Utilization of European Revolving Commitments” means, as at any date of determination, the Euro Equivalent of the sum of (i) the aggregate principal amount of all outstanding European Revolving Loans (other than European Revolving Loans made for the purpose of reimbursing the applicable Issuing Bank for any amount drawn under any European Letter of Credit, but not yet so applied) and (ii) the European Letter of Credit Usage.

“Total Utilization of U.S. Revolving Commitments” means, as at any date of determination, the Dollar Equivalent of the sum of (i) the aggregate principal amount of all outstanding U.S. Revolving Loans (other than U.S. Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the applicable Issuing Bank for any amount drawn under any U.S. Letter of Credit, but not yet so applied), (ii) the aggregate principal amount of all outstanding U.S. Swing Line Loans and (iii) the U.S. Letter of Credit Usage.

“Trademarks” has the meaning set forth in the U.S. Pledge and Security Agreement.

“Tranche A Term Loan” means a Tranche A Term Loan made by a Lender to the U.S. Borrower (i) on the Closing Date pursuant to the Original Credit Agreement ~~or~~, (ii) on the Restatement Date pursuant to Section 2.01(a)(i, or (iii) on the Second Amendment Date pursuant to Section 2.01(a). The aggregate amount of Tranche A Term Loans as of the ~~Restatement~~Second Amendment Date after giving effect to the making of the Tranche A Term Loans ~~as of~~on the ~~Restatement~~Second Amendment Date, is ~~\$1,986,250,000~~2,347,380,000.

“Tranche A Term Loan Commitment” means the commitment of a Lender to make or otherwise to fund a Tranche A Term Loan and “Tranche A Term Loan Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Tranche A Term Loan Commitment as of the ~~Closing Date and as of the Restatement~~Second Amendment Date, if any, is set forth on Schedule 1.01(a) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof.

“Tranche A Term Loan Exposure” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Tranche A Term Loans of such Lender; provided, that at any time prior to the making of the Tranche A Term Loans, the Tranche A Term Loan Exposure of any Lender shall be equal to such Lender’s Tranche A Term Loan Commitment.

“Tranche A Term Loan Maturity Date” means, the earlier of (i) the ~~sixth~~fifth anniversary of the ~~Closing~~Second Amendment Date, which date is ~~February 13, 2019~~May 19, 2021, and (ii) the date on which all Tranche A Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise .

“Tranche A Term Loan Note” means a promissory note substantially in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Tranche B Term Loan” means a Tranche B Term Loan made by a Lender to the U.S. Borrower (i) on the Closing Date pursuant to the Original Credit Agreement or (ii) on the Restatement Date

pursuant to ~~Section 2.01(a)(ii)~~. The aggregate amount of Tranche B Term Loans as of the ~~Restatement~~Second Amendment Date after giving effect to the ~~making~~prepayment of the Tranche B Term Loans on such date, is \$~~1,188,562,500.0~~.

“Tranche B Term Loan Commitment” means the commitment of a Lender to make or otherwise to fund a Tranche B Term Loan and “Tranche B Term Loan Commitments” means such commitments of all Lenders in the aggregate. The amount of ~~each Lender’s~~ Tranche B Term Loan Commitment as of the ~~Closing Date and as of the Restatement Date, if any, is set forth on Schedule 1.01(b) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof.~~Second Amendment Date is \$0.

~~“Tranche B Term Loan Exposure” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Tranche B Term Loans of such Lender; provided, that at any time prior to the making of the Tranche B Term Loans, the Tranche B Term Loan Exposure of any Lender shall be equal to such Lender’s Tranche B Term Loan Commitment.~~

~~“Tranche B Term Loan Maturity Date” means the earlier of (i) the seventh anniversary of the Closing Date, which date is February 13, 2020, and (ii) the date on which all Tranche B Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.~~

~~“Tranche B Term Loan Note” means a promissory note substantially in the form of Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.~~

“Treasury Transaction” means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and not for speculative purposes.

“Type of Loan” means (i) with respect to either Term Loans or Revolving Loans, a Base Rate Loan, a Eurocurrency Rate Loan or a Canadian Prime Rate Loan and (ii) with respect to Swing Line Loans, a Base Rate Loan or a Canadian Prime Rate Loan.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

“UCP” means, with respect to any commercial Letter of Credit, the “Uniform Customs and Practice for Documentary Credits” published by the International Chamber of Commerce as Publication No. 600 (or such later version thereof as may be in effect at the time of issuance of such commercial Letter of Credit).

“UK” means the United Kingdom.

“Unrestricted Cash” means, with respect to any Person, as of any date of determination, cash or Cash Equivalents of such Person and its Restricted Subsidiaries that would not appear as “restricted”, in accordance with GAAP, on a consolidated balance sheet of such Person and its Restricted Subsidiaries as of such date.

“Unrestricted Subsidiary” means any Subsidiary of the U.S. Borrower designated by the Board of Directors of the U.S. Borrower (or a duly authorized committee thereof) as an Unrestricted Subsidiary pursuant to Section 6.03 hereof subsequent to the Closing Date, and any Subsidiary

formed or acquired by an Unrestricted Subsidiary following such Unrestricted Subsidiary's designation.

"U.S. Borrower" has the meaning specified in the preamble hereto.

"U.S. Contributing Guarantors" has the meaning set forth in Section 7.02(b).

"U.S. Grantor" has the meaning specified in the U.S. Pledge and Security Agreement or the CKI Related Assets Pledge and Security Agreement, as applicable.

"U.S. Guaranteed Obligations" has the meaning set forth in Section 7.01(a).

"U.S. Guarantor" means each Guarantor that is a U.S. Subsidiary.

"U.S. Issuing Bank" means an Issuing Bank that has agreed to issue U.S. Letters of Credit.

"U.S. Lender" has the meaning set forth in Section 2.20(c).

"U.S. Letter of Credit" means any commercial or standby letter of credit issued or to be issued by an Issuing Bank for the account of the U.S. Borrower or any of its Subsidiaries pursuant to Section 2.04(a)(i) of this Agreement, and any letter of credit issued and outstanding as of the Closing Date and designated by the Borrower Representative as a "U.S. Letter of Credit" pursuant to a written notice delivered to the Administrative Agent on or prior to the Closing Date; provided that the issuer thereof is a Revolving Lender hereunder or was, at the time such letter of credit was issued, a lender under the Existing PVH Credit Agreement. Each such letter of credit so designated shall be deemed to constitute a U.S. Letter of Credit and a Letter of Credit issued hereunder on the Closing Date (or, in the case of any letter of credit that was issued under the Existing PVH Credit Agreement, such later date (if any) as specified in a written notice delivered to the Administrative Agent on or prior to the Closing Date (it being understood that the Administrative Agent may extend such later date upon reasonable request by the Borrower Representative)) for all purposes under this Agreement and the other Loan Documents.

"U.S. Letter of Credit Sublimit" means the lesser of (a) \$370,000,000 and (b) the aggregate unused amount of the U.S. Revolving Commitments then in effect.

"U.S. Letter of Credit Usage" means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all U.S. Letters of Credit then outstanding, and (ii) the aggregate amount of all drawings under U.S. Letters of Credit honored by an Issuing Bank and not theretofore reimbursed by or on behalf of the U.S. Borrower.

"U.S. Loan" means a Tranche A Term Loan, ~~a Tranche B Term Loan~~, and/or a U.S. Revolving Loan, as applicable.

"U.S. Loan Party" means the U.S. Borrower and each U.S. Guarantor.

"U.S.-Owned Holdco" means any entity that (A) is disregarded as an entity separate from its owner for U.S. federal tax purposes and is directly owned by the U.S. Borrower or a U.S. Subsidiary, (B)

is treated as a partnership for U.S. federal tax purposes and all of the partners of which are domestic corporations for U.S. federal tax purposes or (C) is a domestic corporation for U.S. federal tax purposes, and, in the case of ~~clause (A), (B) or (C)~~, directly owns Equity Interests in a Foreign Subsidiary and does not own any significant asset other than Equity Interests and Securities of Foreign Subsidiaries.

“U.S. Pledge and Security Agreement” means the U.S. Pledge and Security Agreement, dated as of the Closing Date, executed by the U.S. Borrower and each U.S. Guarantor (other than CKI and the CKI Affiliates), as it may be amended, restated, supplemented or otherwise modified from time to time.

“U.S. Refunded Swing Line Loans” has the meaning set forth in Section 2.03(b)(iv).

“U.S. Revolving Commitment” means the commitment of a Lender to make or otherwise fund any U.S. Revolving Loan and to acquire participations in U.S. Letters of Credit and Swing Line Loans hereunder and “U.S. Revolving Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s U.S. Revolving Commitment, if any, is set forth on Schedule 1.01(c) or in the applicable Assignment Agreement or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the U.S. Revolving Commitments as of the ~~Restatement~~Second Amendment Date is \$475,000,000.

“U.S. Revolving Commitment Period” means the period from and including the Closing Date to but excluding the U.S. Revolving Commitment Termination Date.

“U.S. Revolving Commitment Termination Date” means the earliest to occur of (i) the ~~sixth~~fifth anniversary of the ~~Closing~~Second Amendment Date, which date is ~~February 13, 2019~~May 19, 2021, (ii) the date ~~the~~such U.S. Revolving Commitments are permanently reduced to zero pursuant to Section 2.13(b) or 2.14 and (iii) the date of the termination of ~~the~~such U.S. Revolving Commitments pursuant to Section 8.01.

“U.S. Revolving Exposure” means, with respect to any Lender as of any date of determination, (i) prior to the termination of ~~the~~such Lender’s U.S. Revolving Commitments, that Lender’s U.S. Revolving Commitment; and (ii) after the termination of ~~the~~such Lender’s U.S. Revolving Commitments, the sum of (a) the aggregate outstanding principal amount of the U.S. Revolving Loans of that Lender, (b) in the case of an Issuing Bank, the aggregate U.S. Letter of Credit Usage in respect of all U.S. Letters of Credit issued by such Issuing Bank (net of any participations by Lenders in such U.S. Letters of Credit), (c) the aggregate amount of all participations by that Lender in any outstanding U.S. Letters of Credit or any unreimbursed drawing under any U.S. Letter of Credit, (d) in the case of the U.S. Swing Line Lender, the aggregate outstanding principal amount of all U.S. Swing Line Loans (net of any participations therein by other Lenders), and (e) the aggregate amount of all participations therein by that Lender in any outstanding U.S. Swing Line Loans.

“U.S. Revolving Loan” means Loans made by a Lender in respect of its U.S. Revolving Commitment to the U.S. Borrower pursuant to Section 2.02(a) and/or Section 2.24.

“U.S. Security Agreements” means the U.S. Pledge and Security Agreement and the CKI Related Assets Pledge and Security Agreement.

“U.S. Subsidiary” means any Restricted Subsidiary other than a Foreign Subsidiary.

“U.S. Swing Line Lender” means Barclays in its capacity as the U.S. Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

“U.S. Swing Line Loan” means a Loan made by the U.S. Swing Line Lender to the U.S. Borrower pursuant to Section 2.03(a)(i).

“U.S. Swing Line Sublimit” means the lesser of (i) \$~~25,000,000~~50,000,000 and (ii) the aggregate unused amount of U.S. Revolving Commitments then in effect.

“Valuation Date” means (i) the date two Business Days prior to the making, continuing or converting of any Revolving Loan or the date of issuance or continuation of any Letter of Credit and (ii) any other date designated by the Administrative Agent or Issuing Bank.

“Waivable Mandatory Prepayment” has the meaning set forth in Section 2.15(d).

“Warnaco Material Adverse Effect” means any fact, circumstance, occurrence, effect, change, event or development that (i) materially adversely affects the business, properties, financial condition or results of operations of the Acquired Business and its Subsidiaries, taken as a whole; provided, however, that any fact, circumstance, occurrence, effect, change, event or development arising from or related to (except, in the case of clause (a), (b), (c), (d), (e), (f) or (j) below, to the extent disproportionately affecting the Acquired Business and its Subsidiaries, taken as a whole, relative to other companies in the industries in which the Acquired Business and its Subsidiaries operate, in which case only the incremental disproportionate effect shall be taken into account): (a) conditions affecting the United States economy, or any other national or regional economy or the global economy generally, (b) political conditions (or changes in such conditions) in the United States or any other country or region in the world or acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in the United States or any other country or region of the world occurring after October 29, 2012, (c) changes in the financial, credit, banking or securities markets in the United States or any other country or region in the world (including any disruption thereof and any decline in the price of any security or any market index), (d) changes required by GAAP or other accounting standards (or interpretations thereof), (e) changes in any Laws (as defined in the Acquisition Agreement) or other binding directives issued by any Governmental Entity (as defined in the Acquisition Agreement) (or interpretations thereof), (f) changes that are generally applicable to the industries in which the Acquired Business and its Subsidiaries operate, (g) any failure by the Acquired Business to meet any internal or published projections, forecasts or revenue or earnings predictions for any period ending on or after the date of the Acquisition Agreement or any decline in the market price or trading volume of the stock of the Acquired Business (provided that the underlying causes of any such failure or decline may be considered in determining whether a Warnaco Material Adverse Effect has occurred or would reasonably be expected to occur to the extent not otherwise excluded by another exception herein), (h) the public announcement (including as to the identity of the parties hereto) or consummation of the Acquisition or any of the transactions contemplated by the Acquisition Agreement, (i) changes

in the credit rating of the Acquired Business (provided that the underlying causes of such decline may be considered in determining whether a Warnaco Material Adverse Effect has occurred or would reasonably be expected to occur to the extent not otherwise excluded by another exception herein), (j) the occurrence of natural disasters or (k) any action required by the terms of the Acquisition Agreement or with the prior written consent or at the direction of the other party, shall not be taken into account in determining whether a Warnaco Material Adverse Effect has occurred or would reasonably be expected to occur, or (ii) would prevent the Acquired Business from consummating the transactions contemplated by the Acquisition Agreement.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) 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 (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness.

“Wholly-Owned Restricted Subsidiary” means, with respect to any Person, any other Person all of the Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) are owned by such Person directly and/or indirectly through other wholly-owned Restricted Subsidiaries of such Person.

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

**Section 1.02 Accounting Terms.** Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower Representative to Lenders pursuant to Sections 5.01(a) and 5.01(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.01(d), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in material conformity with ~~those used to prepare the Historical Financial Statements of the U.S. Borrower; provided that in the event of any change in accounting principles or policies with respect to the Group’s pension and postretirement plans such calculations shall utilize those accounting principles or policies with respect to the Group’s pension and postretirement plans in effect at the time such calculations are made; provided, further~~GAAP; provided, that if a change in GAAP would materially change the calculation of the financial covenants, standards or terms of this Agreement, (i) the Borrower Representative shall provide prompt notice of such change to the Administrative Agent and (ii) the Borrower Representative or the Administrative Agent may request that such calculations continue to be made in accordance with GAAP without giving effect to such change (in which case the Borrower Representative, the Administrative Agent and the Lenders agree to negotiate in good faith to amend the provisions hereof to eliminate the effect of such change in GAAP, but until such amendment is entered into,

the calculations shall be made in accordance with ~~those used to prepare the Historical Financial Statements of the U.S. Borrower~~ GAAP without giving effect to such change).

**Section 1.03 Interpretation, Etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Article, Section, Schedule or Exhibit shall be to an Article, a Section, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The word “will” shall be construed to have the same meaning and effect as the word “shall”; and the words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Securities, accounts and contract rights. The terms lease and license shall include sub-lease and sub-license, as applicable. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein or therein, any reference in this Agreement or any other Loan Document to any agreement, document or instrument shall mean such agreement, document or instrument as amended, restated, supplemented or otherwise modified from time to time, in each case, in accordance with the express terms of this Agreement or such Loan Document.

**Section 1.04 Exchange Rates; Currency Equivalents; Basket Calculations.**

(a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Exchange Rates as of each Valuation Date to be used for calculating Euro Equivalent and Dollar Equivalent amounts of Credit Extensions and amounts outstanding hereunder denominated in other Approved Currencies. Such Exchange Rates shall become effective as of such Valuation Date and shall be the Exchange Rates employed in converting any amounts between the applicable currencies until the next Valuation Date to occur. Except for purposes of financial statements delivered by the Borrower Representative hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be the Dollar Equivalent of such currency as so determined by the Administrative Agent or the Issuing Bank, as applicable.

(b) Whenever in this Agreement in connection with a borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or a Canadian Prime 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 or Euros, but such borrowing, Eurocurrency Rate Loan, Canadian Prime Rate Loan or Letter of Credit is denominated in another Approved Currency, such amount shall be the relevant Foreign Currency Equivalent of such Dollar or Euro amount (rounded to the nearest unit of such other Approved Currency, with 0.5 or a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

(c) Notwithstanding the foregoing, for purposes of determining compliance with Sections 6.01, 6.02, 6.04, 6.06, 6.08 and 6.10, (i) with respect to any amount of cash on deposit, Indebtedness, Investment, Restricted Payment, Lien, Asset Sale or Attributable Indebtedness (each, a “Covenant Transaction”) in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Covenant Transaction is incurred or made, and (ii) with respect to any Covenant Transaction incurred or made in reliance on a provision that makes reference to a percentage of Consolidated Total Assets, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in the amount of Consolidated Total Assets occurring after the time such Covenant Transaction is incurred or made in reliance on such provision.

(d) For purposes of determining compliance with the Net Leverage Ratio, the amount of any Indebtedness denominated in any currency other than Dollars will be converted into Dollars based on the relevant currency exchange rate in effect on the date of the financial statements on which the applicable Consolidated Adjusted EBITDA is calculated. For purposes of determining compliance with Sections 6.01, 6.02, 6.04, 6.06, 6.08 and 6.10, with respect to the amount of any Covenant Transaction in a currency other than Dollars, such amount (i) if incurred or made in reliance on a fixed Dollar basket, will be converted into Dollars based on the relevant currency exchange rate in effect on the ClosingSecond Amendment Date, and (ii) if incurred in reliance on a percentage basket, will be converted into Dollars based on the relevant currency exchange rate in effect on the date such Covenant Transaction is incurred or made and such percentage basket will be measured at the time such Covenant Transaction is incurred or made.

(e) For the avoidance of doubt, in the case of a Loan denominated in an Approved Currency other than Dollars, except as expressly provided herein, all interest and fees shall accrue and be payable thereon based on the actual amount outstanding in such Approved Currency (without any translation into the Dollar Equivalent thereof).

(f) If at any time on or following the Closing Date all of the Participating Member States that had adopted the Euro as their lawful currency on or prior to the Closing Date cease to have the Euro as their lawful national currency unit, then the U.S. Borrower, the Administrative Agent, and the Lenders will negotiate in good faith to amend the Loan Documents to (a) follow any generally accepted conventions and market practice with respect to redenomination of obligations originally denominated in Euro, and (b) otherwise appropriately reflect the change in currency.

**Section 1.05 Dutch Terms.** In this Agreement, where it relates to a European Loan Party, a reference to:

- (a) a necessary action to authorize where applicable, includes without limitation: any action requires to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*);
- (b) gross negligence means *grove schuld*;
- (c) willful misconduct means *opzet*;
- (d) a dissolution includes a Dutch entity being dissolved (*ontbonden*);

- (e) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
- (f) any step or procedure taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the 1990 Dutch Tax Collection Act (*Invorderingswet 1990*);
- (g) a receiver includes a *curator*;
- (h) an administrator includes a *bewindvoerder*; and
- (i) an attachment includes a *beslag*.

**ARTICLE II.**  
**LOANS AND LETTERS OF CREDIT**

**Section 2.01 Term Loans.**

(a) Loan Commitments. On the Closing Date, the Original Lenders made Tranche A Term Loans to the U.S. Borrower in an aggregate principal amount equal to \$1,700,000,000 and Tranche B Term Loans to the U.S. Borrower in an aggregate principal amount equal to \$1,375,000,000. On the Restatement Date, the Lenders made Tranche A Term Loans and Tranche B Term Loans to the U.S. Borrower in the amounts equal to their applicable First Amendment Tranche A Term Loan Commitments and First Amendment Tranche B Term Loan Commitments. Subject to the terms and conditions hereof,

~~(i)~~—each Lender severally agrees to make, on the ~~Restatement~~Second Amendment Date, a Second Amendment Incremental Tranche A Term Loan to the U.S. Borrower in an amount equal to its ~~First~~Second Amendment Tranche A Term Loan ~~Commitment~~; and ~~(ii)~~—each Lender severally agrees to make, on the ~~Restatement Date~~, a ~~Tranche B Term Loan to the U.S. Borrower in an amount equal to its First Amendment Tranche B Term~~ Commitment.

The U.S. Borrower may make only one borrowing under each of the First Amendment Tranche A Term Loan Commitments and the First Amendment Tranche B Term Loan Commitments, which shall be on the Restatement Date. The U.S. Borrower may make only one borrowing under the Second Amendment Tranche A Term Loan Commitment which shall be on the Second Amendment Date. Any amount borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Tranche A Term Loans ~~and the Tranche B Term Loans~~ shall be paid in full no later than the applicable Tranche A Term Loan Maturity Date ~~and the Tranche B Term Loan Maturity Date, respectively~~. Each Lender's ~~First~~Second Amendment Tranche A Term Loan ~~Commitments and First Amendment Tranche B Term Loan Commitments~~Commitment shall terminate immediately and without further action on the ~~Restatement~~Second Amendment Date after giving effect to the funding of such Lender's Second Amendment Incremental Tranche A Term ~~Loans and Tranche B Term Loans~~Loan on such date.

(b) Borrowing Mechanics for Term Loans on the ~~Restatement~~Second Amendment Date.

(i) [Reserved]

(ii) [Reserved]

(iii) ~~(i)~~ The Borrower Representative shall deliver to the Administrative Agent a fully executed Borrowing Notice no later than one Business Day prior to the ~~Restatement~~Second Amendment Date in the case of a Second Amendment Incremental Tranche A Term Loan that is a Base Rate Loan and that is to be made on the ~~Restatement~~Second Amendment Date as described in Section 2.01(a) and three Business Days prior to the ~~Restatement~~Second Amendment Date in the case of a Second Amendment Incremental Tranche A Term Loan that is a Eurocurrency Rate Loan and that is to be made on the ~~Restatement~~Second Amendment Date as described in Section 2.01(a), which notice shall, in each case, be revocable prior to the ~~Restatement~~Second Amendment Date by the Borrower Representative in its sole discretion subject to Section 2.18(c)(i) below. Promptly upon receipt by the Administrative Agent of such Borrowing Notice, the Administrative Agent shall notify each Lender of the proposed borrowing.

(iv) ~~(ii)~~ Each Lender shall make its Second Amendment Incremental Tranche A Term Loans ~~and/or Tranche B Term Loans, as the case may be, to be made on the Restatement Date pursuant to Section 2.01(a);~~ available to the Administrative Agent not later than 9:00 a.m. (New York City time) on the ~~Restatement~~Second Amendment Date by wire transfer of same day funds in Dollars at the Principal Office designated by the Administrative Agent. The Administrative Agent shall make the proceeds of such Second Amendment Incremental Tranche A ~~Term Loans and Tranche B~~ Term Loans available to the U.S. Borrower on the ~~Restatement~~Second Amendment Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by the Administrative Agent from Lenders to be credited to the account of the U.S. Borrower at the Principal Office designated by the Administrative Agent or to such other account as may be designated in writing to the Administrative Agent by the U.S. Borrower.

## **Section 2.02 Revolving Loans.**

(a) U.S. Revolving Commitments. During the U.S. Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make U.S. Revolving Loans to the U.S. Borrower in an aggregate amount up to but not exceeding such Lender's U.S. Revolving Commitment; provided, that after giving effect to the making of any U.S. Revolving Loans in no event shall the Total Utilization of U.S. Revolving Commitments exceed the U.S. Revolving Commitments then in effect. Loans in respect of the U.S. Revolving Commitments shall be drawn in Dollars. Amounts borrowed pursuant to this Section 2.02(a) may be repaid and reborrowed during the applicable Revolving Commitment Period. Each Lender's U.S. Revolving Commitments shall expire on the U.S. Revolving Commitment Termination Date and all U.S. Revolving Loans extended with respect to such U.S. Revolving Commitments and all other amounts

owed hereunder with respect to the U.S. Revolving Loans and the U.S. Revolving Commitments shall be paid in full no later than such date.

(b) European Revolving Commitments. During the European Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make European Revolving Loans to the European Borrower in an aggregate amount up to but not exceeding such Lender's European Revolving Commitment; provided, that after giving effect to the making of any European Revolving Loans in no event shall the Total Utilization of European Revolving Commitments exceed the European Revolving Commitments then in effect. Loans in respect of the European Revolving Commitments may be drawn in Euros or an Other Foreign Currency, as specified in the Borrowing Notice. Amounts borrowed pursuant to this Section 2.02(b) may be repaid and reborrowed during the applicable Revolving Commitment Period. Each Lender's European Revolving Commitments shall expire on the European Revolving Commitment Termination Date and all European Revolving Loans and all other amounts owed hereunder with respect to the European Revolving Loans and the European Revolving Commitments shall be paid in full no later than such date. Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to the European Borrower or an Ancillary Borrower in place of all or part of its European Revolving Commitments.

(c) Canadian Revolving Commitments. During the Canadian Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Canadian Revolving Loans to the U.S. Borrower in an aggregate amount up to but not exceeding such Lender's Canadian Revolving Commitment; provided, that after giving effect to the making of any Canadian Revolving Loans in no event shall the Total Utilization of Canadian Revolving Commitments exceed the Canadian Revolving Commitments then in effect. Loans in respect of the Canadian Revolving Commitments may be drawn in Dollars or Canadian Dollars. Amounts borrowed pursuant to this Section 2.02(c) may be repaid and reborrowed during the applicable Revolving Commitment Period. Each Lender's Canadian Revolving Commitments shall expire on the Canadian Revolving Commitment Termination Date and all Canadian Revolving Loans and all other amounts owed hereunder with respect to the Canadian Revolving Loans and ~~the~~such Canadian Revolving Commitments shall be paid in full no later than such date.

(d) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.04(d), (x) U.S. Revolving Loans that are Base Rate Loans and Canadian Revolving Loans that are Base Rate Loans or Canadian Prime Rate Loans shall be made in a minimum amount of \$5,000,000 (or, with regard to Loans denominated in Canadian Dollars, the applicable Foreign Currency Equivalent) and integral multiples of \$1,000,000 (or, with regard to Loans denominated in Canadian Dollars, the applicable Foreign Currency Equivalent) in excess of that amount, (y) U.S. Revolving Loans and Canadian Revolving Loans that are Eurocurrency Rate Loans shall be in a minimum amount of \$1,000,000 (or, with regard to Loans denominated in Canadian Dollars, the applicable Foreign Currency Equivalent) and integral multiples of \$1,000,000 (or, with regard to Loans denominated in Canadian Dollars, the applicable Foreign Currency Equivalent) in excess of that amount and (z) European Revolving Loans shall be in a minimum amount of €1,000,000 (or, with regard to Loans denominated in Other

Foreign Currencies, the applicable Foreign Currency Equivalent) and integral multiples of €1,000,000 (or, with regard to Loans denominated in Other Foreign Currencies, the applicable Foreign Currency Equivalent) in excess of that amount.

(ii) Whenever the U.S. Borrower desires that Lenders make Revolving Loans to it, it shall deliver to the Administrative Agent a fully executed Borrowing Notice no later than 10:00 a.m. (New York City time) (x) at least three Business Days in advance of the proposed Credit Date in the case of a Eurocurrency Rate Loan denominated in Dollars or Canadian Dollars and (y) at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan denominated in Dollars or a Revolving Loan that is a Canadian Prime Rate Loan denominated in Canadian Dollars. Whenever the European Borrower desires that Lenders make European Revolving Loans, it shall deliver to the Administrative Agent a fully executed Borrowing Notice no later than 10:00 a.m. (London, England time) at least three Business Days in advance of the proposed Credit Date. Except as otherwise provided herein, a Borrowing Notice for a Revolving Loan that is a Eurocurrency Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the applicable Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Borrowing Notice in respect of U.S. Revolving Loans or Canadian Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided the Administrative Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 2:00 p.m. (New York City time) on the same day as the Administrative Agent's receipt of such Notice from the U.S. Borrower. Each Lender shall make the amount of its U.S. Revolving Loan or Canadian Revolving Loan, as applicable, available to the Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in the requested Approved Currency, at the Principal Office designated by the Administrative Agent.

(iv) Notice of receipt of each Borrowing Notice in respect of European Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided the Administrative Agent shall have received such notice by 10:00 a.m. (London, England time)) not later than 2:00 p.m. (London, England time) on the same day as the Administrative Agent's receipt of such Notice from the European Borrower. Each Lender shall make the amount of its European Revolving Loan available to the Administrative Agent not later than 12:00 p.m. (London, England time) on the applicable Credit Date by wire transfer of same day funds in the requested Approved Currency, at the Principal Office designated by the Administrative Agent.

(v) Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of Revolving

Loans available to the applicable Borrower on the applicable Credit Date by causing an amount of same day funds in the requested Approved Currency equal to the proceeds of all such Revolving Loans received by the Administrative Agent from Lenders to be credited to the account of the applicable Borrower at the Principal Office designated by the Administrative Agent or such other account as may be designated in writing to the Administrative Agent by the applicable Borrower or the Borrower Representative.

**Section 2.03 Swing Line Loans.**

(a) Swing Line Loans Commitments.

(i) From time to time during the U.S. Revolving Commitment Period, subject to the terms and conditions hereof, the U.S. Swing Line Lender hereby agrees to make U.S. Swing Line Loans to the U.S. Borrower in the aggregate amount up to but not exceeding the U.S. Swing Line Sublimit; provided, that after giving effect to the making of any U.S. Swing Line Loan, in no event shall the Total Utilization of U.S. Revolving Commitments exceed the U.S. Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.03(a)(i) may be repaid and reborrowed during the U.S. Revolving Commitment Period. The U.S. Swing Line Lender's Revolving Commitment shall expire on the U.S. Revolving Commitment Termination Date. All U.S. Swing Line Loans and all other amounts owed hereunder with respect to the U.S. Swing Line Loans shall be paid in full on the earlier of (i) the date which is three days after the incurrence thereof and (ii) the U.S. Revolving Commitment Termination Date; and

(ii) From time to time during the Canadian Revolving Commitment Period, subject to the terms and conditions hereof, the Canadian Swing Line Lender hereby agrees to make Canadian Swing Line Loans to the U.S. Borrower in the aggregate amount up to but not exceeding the Canadian Swing Line Sublimit; provided, that after giving effect to the making of any Canadian Swing Line Loan, in no event shall the Total Utilization of Canadian Revolving Commitments exceed the Canadian Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.03(a)(ii) may be repaid and reborrowed during the Canadian Revolving Commitment Period. The Canadian Swing Line Lender's Canadian Revolving Commitment shall expire on the Canadian Revolving Commitment Termination Date. All Canadian Swing Line Loans and all other amounts owed hereunder with respect to the Canadian Swing Line Loans shall be paid in full on the earlier of (i) the date which is three days after the incurrence thereof and (ii) the Canadian Revolving Commitment Termination Date.

(b) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans shall be made in a minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount.

(ii) Whenever the U.S. Borrower desires that the U.S. Swing Line Lender make a U.S. Swing Line Loan, the U.S. Borrower shall deliver to the Administrative Agent a

Borrowing Notice no later than ~~10:30~~2:00 p.m. (New York City time) on the proposed Credit Date. Whenever the U.S. Borrower desires that the Canadian Swing Line Lender make a Canadian Swing Line Loan, the U.S. Borrower shall deliver to the Administrative Agent a Borrowing Notice no later than ~~10~~12:00 a.p.m. (Noon) (New York City time) on the proposed Credit Date.

(iii) The applicable Swing Line Lender shall make the amount of its Swing Line Loan available to the Administrative Agent not later than ~~(i) 3:00~~ p.m. (New York City time) in the case of a U.S. Swing Line Lender, or (ii) 3:00 p.m. (New York City time) in the case of a Canadian Swing Line Lender, in each case on the applicable Credit Date by wire transfer of same day funds in Dollars or Canadian Dollars (as applicable), at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Swing Line Loans available to the U.S. Borrower promptly upon receipt from such Swing Line Lender on the applicable Credit Date by causing an amount of same day funds in Dollars or Canadian Dollars equal to the proceeds of all such Swing Line Loans received by the Administrative Agent from the applicable Swing Line Lender to be credited to the account of the U.S. Borrower at the Administrative Agent's Principal Office, or to such other account as may be designated in writing to the Administrative Agent by the U.S. Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by the U.S. Borrower pursuant to Section 2.13(a) or repaid pursuant to Section 2.03(a), the applicable Swing Line Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the U.S. Borrower), no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Borrowing Notice given by the U.S. Borrower) requesting that (x) with regard to any U.S. Swing Line Loan, each Lender holding a U.S. Revolving Commitment make U.S. Revolving Loans that are Base Rate Loans to the U.S. Borrower on such Credit Date in an amount equal to the amount of such U.S. Swing Line Loans (the "U.S. Refunded Swing Line Loans") outstanding on the date such notice is given which the U.S. Swing Line Lender requests Lenders to prepay, and (y) with regard to any Canadian Swing Line Loan, each Lender holding a Canadian Revolving Commitment make Canadian Revolving Loans that are Base Rate Loans or Canadian Prime Rate Loans, as applicable, to the U.S. Borrower on such Credit Date in an amount equal to the amount of such Canadian Swing Line Loans (the "Canadian Refunded Swing Line Loans") and, together with the U.S. Refunded Swing Line Loans, the "Refunded Swing Line Loans") outstanding on the date such notice is given which the Canadian Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the applicable Swing Line Lender shall be immediately delivered by the Administrative Agent to the applicable Swing Line Lender (and not to the U.S. Borrower) and applied to repay a corresponding portion of the applicable Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, the applicable Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall

be deemed to be paid with the proceeds of a Revolving Loan made by the applicable Swing Line Lender to the U.S. Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the applicable Swing Line Note of the applicable Swing Line Lender but shall instead constitute part of the applicable Swing Line Lender's outstanding Revolving Loans to the U.S. Borrower and shall be due under the applicable Revolving Loan Note issued by the U.S. Borrower to the applicable Swing Line Lender. If any portion of any such amount paid (or deemed to be paid) to the applicable Swing Line Lender should be recovered by or on behalf of the U.S. Borrower from the applicable Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by [Section 2.17](#).

(v) If for any reason Revolving Loans are not made pursuant to [Section 2.03\(b\)\(iv\)](#) in an amount sufficient to repay any amounts owed to the applicable Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by the applicable Swing Line Lender, (x) each Lender holding a U.S. Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding U.S. Swing Line Loans in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon, and (y) each Lender holding a Canadian Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Canadian Swing Line Loans in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day's notice from the applicable Swing Line Lender, each Lender ~~holding a U.S. Revolving Commitment or a Canadian Revolving Commitment, as applicable,~~ [deemed to have purchased a participation pursuant to the immediately preceding sentence](#) shall deliver to the applicable Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of such Swing Line Lender. In order to evidence such participation each Lender holding such a Revolving Commitment agrees to enter into a participation agreement at the request of the applicable Swing Line Lender in form and substance reasonably satisfactory to the applicable Swing Line Lender. In the event any Lender ~~holding such a Revolving Commitment~~ [deemed to have purchased a participation pursuant to the first sentence of this clause \(v\)](#) fails to make available to the applicable Swing Line Lender the amount of such Lender's participation as provided in this paragraph, the applicable Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by the applicable Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate or the Canadian Prime Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to [Section 2.03\(b\)\(iv\)](#) and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right

which such Lender may have against the applicable Swing Line Lender, any Loan Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided, that such obligations of each Lender are subject to the condition that the applicable Swing Line Lender had not received prior notice from the U.S. Borrower or the Required Lenders that any of the conditions under Section 3.02 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans were not satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made; and (2) no Swing Line Lender shall be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in good faith believe that all conditions under Section 3.02 to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when any Lender is a Defaulting Revolving Lender with U.S. Revolving Commitments or Canadian Revolving Commitments, as applicable, unless the applicable Swing Line Lender has entered into arrangements satisfactory to it and the U.S. Borrower to eliminate the applicable Swing Line Lender's risk with respect to the Defaulting Revolving Lender's participation in such Swing Line Loan, including by the U.S. Borrower cash collateralizing such Defaulting Revolving Lender's Pro Rata Share of the outstanding Swing Line Loans.

**Section 2.04 Issuance of Letters of Credit and Purchase of Participations Therein.**

(a) Letters of Credit.

(i) During the U.S. Revolving Commitment Period, subject to the terms and conditions hereof, each U.S. Issuing Bank agrees to issue U.S. Letters of Credit for the account of the U.S. Borrower or any Restricted Subsidiary thereof in the aggregate amount up to but not exceeding the U.S. Letter of Credit Sublimit; provided, that (i) each U.S. Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each U.S. Letter of Credit shall not be less than \$2,000 or such lesser amount as is acceptable to the applicable Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of U.S. Revolving Commitments exceed the U.S. Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the U.S. Letter of Credit Usage exceed the U.S. Letter of Credit Sublimit then in effect; (v) in no event shall any standby U.S. Letter of Credit have an expiration date later than the earlier of (1) the U.S. Revolving Commitment Termination Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit; and (vi) in no event shall any commercial U.S. Letter of Credit have an expiration date later than the earlier of (1) the U.S. Revolving Commitment Termination Date and (2) the date which is 180 days from the date of issuance of such commercial Letter of Credit.

(ii) During the European Revolving Commitment Period, subject to the terms and conditions hereof, each European Issuing Bank agrees to issue European Letters of

Credit for the account of any Foreign Subsidiary in the aggregate amount up to but not exceeding the European Letter of Credit Sublimit; provided, that (i) each European Letter of Credit shall be denominated in Euros or an Other Foreign Currency; (ii) the stated amount of each European Letter of Credit shall not be less than €1,500 (or the applicable Foreign Currency Equivalent) or such lesser amount as is acceptable to the applicable Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of European Revolving Commitments exceed the European Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the European Letter of Credit Usage exceed the European Letter of Credit Sublimit then in effect; (v) in no event shall any standby European Letter of Credit have an expiration date later than the earlier of (1) the European Revolving Commitment Termination Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit; and (vi) in no event shall any commercial European Letter of Credit have an expiration date later than the earlier of (1) the European Revolving Commitment Termination Date and (2) the date which is 180 days from the date of issuance of such commercial Letter of Credit.

(iii) During the Canadian Revolving Commitment Period, subject to the terms and conditions hereof, each Canadian Issuing Bank agrees to issue Canadian Letters of Credit for the account of the U.S. Borrower or any Restricted Subsidiary thereof in the aggregate amount up to but not exceeding the Canadian Letter of Credit Sublimit; provided, that (i) each Canadian Letter of Credit shall be denominated in Dollars or Canadian Dollars; (ii) the stated amount of each Canadian Letter of Credit shall not be less than \$2,000 (or the applicable Foreign Currency Equivalent) or such lesser amount as is acceptable to the applicable Issuing Bank; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Canadian Revolving Commitments exceed the Canadian Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Canadian Letter of Credit Usage exceed the Canadian Letter of Credit Sublimit then in effect; (v) in no event shall any standby Canadian Letter of Credit have an expiration date later than the earlier of (1) the Canadian Revolving Commitment Termination Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit; and (vi) in no event shall any commercial Canadian Letter of Credit have an expiration date later than the earlier of (1) the Canadian Revolving Commitment Termination Date and (2) the date which is 180 days from the date of issuance of such commercial Letter of Credit.

Subject to the foregoing, (i) an Issuing Bank may agree that a standby Letter of Credit shall automatically be extended for one or more successive periods not to exceed one year each; provided, that no Issuing Bank shall extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time such Issuing Bank must elect to allow such extension; (ii) if the applicable Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date on any Letter of Credit may extend beyond the applicable Revolving Commitment Termination Date; provided, that if any such Letter of Credit is outstanding or the expiration date is extended to a date after the date that is five Business Days prior to the applicable Revolving Commitment Termination Date, the applicable Borrower shall Cash Collateralize such Letter of Credit on or prior to the date that is five Business Days prior to the

applicable Revolving Commitment Termination Date; and (iii) in the event that any Lender is a Defaulting Revolving Lender, the applicable Issuing Bank shall not be required to issue any Letter of Credit under the applicable Revolving Commitment unless such Issuing Bank has entered into arrangements satisfactory to it and the applicable Borrower to eliminate such Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Revolving Lender, including by cash collateralizing such Defaulting Revolving Lender's Pro Rata Share of the applicable Letter of Credit Usage. Notwithstanding the foregoing, Barclays shall have no obligation to issue commercial Letters of Credit unless separately agreed to by Barclays and the Borrower Representative.

(b) Notice of Issuance.

(i) Whenever the U.S. Borrower or any Restricted Subsidiary thereof desires the issuance of a Letter of Credit, the U.S. Borrower shall (x) in the case of standby Letters of Credit, deliver to the Administrative Agent and the applicable Issuing Bank an Issuance Notice (or such other notice as may be agreed by such Issuing Bank) no later than 12:00 p.m. (New York City time) at least three Business Days in advance of the proposed date of issuance, or such shorter period as may be agreed to by the Issuing Bank in any particular instance and (y) in the case of commercial Letters of Credit, deliver to the applicable Issuing Bank an application therefor on the proposed date of issuance. Such Issuance Notice shall specify if such Letter of Credit is requested under the U.S. Revolving Commitments or the Canadian Revolving Commitments. Upon satisfaction or waiver of the conditions set forth in Section 3.02, the Issuing Bank shall issue the requested Letter of Credit only in accordance with the Issuing Bank's standard operating procedures. Upon the issuance of any U.S. Letter of Credit or amendment or modification to a U.S. Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Lender with a U.S. Revolving Commitment, of such issuance, or amendment or modification and the amount of such Lender's respective participation in such U.S. Letter of Credit pursuant to Section 2.04(e). Upon the issuance of any Canadian Letter of Credit or amendment or modification to a Canadian Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Lender with a Canadian Revolving Commitment, of such issuance, amendment or modification to such Canadian Letter of Credit and the amount of such Lender's respective participation in such Canadian Letter of Credit pursuant to Section 2.04(e).

(ii) Whenever any Foreign Subsidiary desires the issuance of a Letter of Credit, the European Borrower or the Borrower Representative shall (x) in the case of standby Letters of Credit, deliver to the Administrative Agent and the applicable Issuing Bank an Issuance Notice (or such other notice as may be agreed by such Issuing Bank) no later than 12:00 p.m. (London, England time) at least three Business Days in advance of the proposed date of issuance, or such shorter period as may be agreed to by the Issuing Bank in any particular instance and (y) in the case of commercial Letters of Credit, deliver to the applicable Issuing Bank an application therefor on the proposed date of issuance. Upon satisfaction or waiver of the conditions set forth in Section 3.02, the Issuing Bank shall issue the requested Letter of Credit only in accordance with the Issuing Bank's standard

operating procedures. Upon the issuance of any European Letter of Credit or amendment or modification to a European Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent and each Lender with a European Revolving Commitment of such issuance, or amendment or modification and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.04(e).

(c) Responsibility of the Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the applicable Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. As between the Borrowers and the applicable Issuing Bank, each Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the applicable Issuing Bank by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of the Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, no action taken or omitted by an Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith and in the absence of gross negligence or willful misconduct (as determined by a final, non-appealable judgment of a court of competent jurisdiction), shall give rise to any liability on the part of such Issuing Bank to any Borrower; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrowers to the extent of any direct damages suffered by the Borrowers or any of their Subsidiaries that are determined by a final, non-appealable judgment of a court of competent jurisdiction to have been caused by such Issuing Bank's gross negligence or willful misconduct.

(d) Reimbursement by the Borrowers of Amounts Drawn or Paid Under Letters of Credit.

(i) In the event an Issuing Bank has determined to honor a drawing under a U.S. Letter of Credit or Canadian Letter of Credit, it shall immediately notify the U.S. Borrower and the Administrative Agent, and the U.S. Borrower shall reimburse the applicable Issuing Bank on or before the Business Day immediately following the date on which such notice

is received by the U.S. Borrower (the “Reimbursement Date”) in an amount in the Approved Currency in which such Letter of Credit was issued and in same day funds equal to the amount of such honored drawing; provided, that anything contained herein to the contrary notwithstanding, (x) unless the U.S. Borrower shall have notified the Administrative Agent and the applicable Issuing Bank prior to 10:00 a.m. (New York City time) on the Reimbursement Date that the U.S. Borrower intends to reimburse the applicable Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower Representative shall be deemed to have given a timely Borrowing Notice to the Administrative Agent requesting (A) in the case of a U.S. Letter of Credit, Lenders with U.S. Revolving Commitments to make U.S. Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing and (B) in the case of a Canadian Letter of Credit, Lenders with Canadian Revolving Commitments to make Canadian Revolving Loans that are Canadian Prime Rate Loans or Base Rate Loans, as applicable, on the Reimbursement Date in an amount in Canadian Dollars or Dollars, as applicable, equal to the amount of such honored drawing (provided that, in respect of any honored drawing in an amount less than \$250,000 (or the Canadian Dollar equivalent), the U.S. Borrower shall reimburse the applicable Issuing Bank for such amount in cash and shall not be entitled to reimburse such drawing in accordance with this clause (x)) and (y) subject to satisfaction or waiver of the conditions specified in Section 3.02, (A) Lenders with U.S. Revolving Commitments shall, on the Reimbursement Date for any U.S. Letter of Credit, make U.S. Revolving Loans that are Base Rate Loans in the amount of such honored drawing and (B) Lenders with Canadian Revolving Commitments shall, on the Reimbursement Date for any Canadian Letter of Credit, make Canadian Revolving Loans that are Canadian Prime Rate Loans or Base Rate Loans, as applicable, in an amount of such honored drawing, in each case, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for the amount of such honored drawing; provided, further, that if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the U.S. Borrower shall reimburse the Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received.

(ii) In the event the Issuing Bank has determined to honor a drawing under a European Letter of Credit, it shall immediately notify the applicable Foreign Subsidiary, the European Borrower and the Administrative Agent, and the European Borrower shall reimburse the Issuing Bank on or before the Reimbursement Date in an amount in the Approved Currency in which such Letter of Credit was issued and in same day funds equal to the amount of such honored drawing; provided, that anything contained herein to the contrary notwithstanding, (i) unless the European Borrower shall have notified the Administrative Agent and the Issuing Bank prior to 10:00 a.m. (London, England time) on the Reimbursement Date that the European Borrower intends to reimburse the Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower Representative shall be deemed to have given a timely

Borrowing Notice to the Administrative Agent requesting Lenders with European Revolving Commitments to make European Revolving Loans that are Eurocurrency Rate Loans with an Interest Period of one month on the Reimbursement Date in an amount in the applicable Approved Currency equal to the amount of such honored drawing (provided that, in respect of any honored drawing in an amount less than €250,000, the European Borrower shall reimburse the applicable Issuing Bank for such amount in cash and shall not be entitled to reimburse such drawing in accordance with this clause (i)), and (ii) subject to satisfaction or waiver of the conditions specified in Section 3.02, Lenders with European Revolving Commitments shall, on the Reimbursement Date for any European Letter of Credit, make European Revolving Loans that are Eurocurrency Rate Loans with an Interest Period of one month in the amount of such honored drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the Issuing Bank for the amount of such honored drawing; provided, further, that if for any reason proceeds of European Revolving Loans are not received by the Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the European Borrower shall reimburse the Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such European Revolving Loans, if any, which are so received.

Nothing in this Section 2.04(d) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and each Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.04(d).

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each U.S. Letter of Credit, each Lender having a U.S. Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from the applicable Issuing Bank a participation in such U.S. Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the U.S. Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. Immediately upon the issuance of each Canadian Letter of Credit, each Lender having a Canadian Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from the applicable Issuing Bank a participation in such Canadian Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Canadian Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. Immediately upon the issuance of each European Letter of Credit, each Lender having a European Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from the applicable Issuing Bank a participation in such European Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the European Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the applicable Borrower shall fail for any reason to reimburse the applicable Issuing Bank as provided in Section 2.04(d), such Issuing Bank shall promptly notify each Lender with an applicable Revolving Commitment of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the

applicable Revolving Commitments. Each Lender with a U.S. Revolving Commitment shall make available to the applicable Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 p.m. (New York City time) on the first Business Day (under the laws of the jurisdiction in which such office of the Issuing Bank is located) after the date notified by the Issuing Bank. Each Lender with a Canadian Revolving Commitment shall make available to the applicable Issuing Bank an amount equal to its respective participation, in Dollars or Canadian Dollars, as applicable, and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 p.m. (New York City time) on the first Business Day (under the laws of the jurisdiction in which such office of the Issuing Bank is located) after the date notified by the Issuing Bank. Each Lender with a European Revolving Commitment shall make available to the applicable Issuing Bank an amount equal to its respective participation, in Euros or such Other Foreign Currency, as applicable, and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 p.m. (London, England time) on the first Business Day (under the laws of the jurisdiction in which such office of the Issuing Bank is located) after the date notified by the Issuing Bank. In the event that any Lender with a U.S. Revolving Commitment, Canadian Revolving Commitment or European Revolving Commitment, as applicable, fails to make available to the applicable Issuing Bank on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.04(e), the applicable Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by the Issuing Bank for the correction of errors among banks and thereafter, in respect of U.S. Letters of Credit, at the Base Rate, in respect of Canadian Letters of Credit denominated in Canadian Dollars, at the Canadian Prime Rate, in respect of Canadian Letters of Credit denominated in Dollars, at the Base Rate, and in respect of European Letters of Credit, at the Eurocurrency Rate for an Interest Period of one month. In the event the applicable Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.04(e) for all or any portion of any drawing honored by the Issuing Bank under a Letter of Credit, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.04(e) with respect to such honored drawing such Lender's Pro Rata Share (with respect to the applicable Revolving Commitments) of all payments subsequently received by the applicable Issuing Bank from the applicable Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Schedule 1.01(d) or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of (i) the U.S. Borrower to reimburse each applicable Issuing Bank for drawings honored under the U.S. Letters of Credit or Canadian Letters of Credit issued by it and to repay any U.S. Revolving Loans or Canadian Revolving Loans made by Lenders pursuant to Section 2.04(d), (ii) the European Borrower to reimburse the Issuing Bank for drawings honored under the European Letters of Credit issued by it and to repay any European Revolving Loans made by Lenders pursuant to Section 2.04(d) and (iii) the Lenders under Section 2.04(e), in each case shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which any Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be

acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against any Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any 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; (iv) payment by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, general affairs, assets, liabilities, operations, management, condition (financial or otherwise), stockholders' equity, results of operations or value of any Loan Party; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) the fact that an Event of Default or a Default shall have occurred and be continuing; or (viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; provided that in each case payment by the Issuing Bank under the applicable Letter of Credit shall not have been determined by a final, non-appealable judgment of a court of competent jurisdiction to have constituted gross negligence, bad faith or willful misconduct of the Issuing Bank under the circumstances in question.

(g) Indemnification. Without duplication of any obligation of the Borrowers under Section 10.02 or 10.03, in addition to amounts payable as provided herein, each Borrower hereby agrees to protect, indemnify, pay and save harmless the Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel) which any Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by such Issuing Bank for the account of such Borrower, other than as a result of (1) the gross negligence, bad faith or willful misconduct of the Issuing Bank or (2) the dishonor by the Issuing Bank of a demand for payment made in compliance with the provisions hereunder or under the Letter of Credit, in each case, as determined by a final, non-appealable judgment of court of competent jurisdiction, or (ii) the failure of such Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) Resignation and Removal of Issuing Bank. An Issuing Bank may resign as Issuing Bank upon 60 days prior written notice to the Administrative Agent, the Lenders and the Borrower Representative. An Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank (provided that no consent of the replaced Issuing Bank will be required if the replaced Issuing Bank has no Letters of Credit or reimbursement Obligations with respect thereto outstanding) and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank. At the time any such replacement or resignation shall become effective, the applicable Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto to the extent that Letters of Credit

issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit or to renew existing Letters of Credit.

(i) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable Issuing Bank and the applicable Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

#### **Section 2.05 Pro Rata Shares; Availability of Funds; Affiliates.**

(a) Pro Rata Shares. Except with respect to Tranche A Term Loans and Tranche B Term Loans ~~to be~~ made on the Restatement Date pursuant to Section 2.01(a), which Loans shall be ~~were~~ made by Lenders ~~simultaneously and~~ proportionately to their First Amendment Tranche A Term Loan Commitments and First Amendment Tranche B Term Loan Commitments; ~~respectively, as of the Restatement~~ as of the Restatement Date, respectively, and except with respect to the Second Amendment Incremental Tranche A Term Loans to be made on the Second Amendment Date pursuant to Section 2.01(a), which Loans shall be made by Lenders proportionately to their Second Amendment Tranche A Term Loan Commitments as of the Second Amendment Date, all Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares of the applicable Class of Loans, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitments or any Revolving Commitments of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless the Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Borrowers a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three Business Days and thereafter, if such Loan is in Dollars, at the Base Rate, if such Loan is in Canadian Dollars, at the Canadian Prime Rate, and if such Loan is in Euros or any Other Foreign Currency, at the rate certified by the Administrative Agent to be its cost of funds (from any source which it may reasonably select). If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower Representative and the applicable Borrower shall immediately pay such corresponding amount to the Administrative

Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent at the Base Rate if such Loan is in Dollars, at the Canadian Prime Rate if such Loan is in Canadian Dollars, and at the rate certified by the Administrative Agent to be its cost of funds (from any source which it may reasonably select) if such Loan is in Euros or any Other Foreign Currency. Nothing in this [Section 2.05\(b\)](#) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments and Revolving Commitments hereunder or to prejudice any rights that the Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(c) [Affiliates](#). Each Lender may, at its option, make any Loan available to the European Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; provided that (i) any exercise of such option shall not affect the obligation of the European Borrower to repay such Loan in accordance with the terms of this Agreement and (ii) any Lender that exercises such option shall not be entitled to receive any greater payment under [Section 2.19](#) or [2.20](#) than such Lender would have been entitled to receive had such option not been exercised.

**Section 2.06 Use of Proceeds.** The proceeds of the Loans on the Closing Date were applied by the U.S. Borrower, (a) together with proceeds from the issuance of the 2022 Notes and cash on hand, to finance the Closing Date Transactions and (b) for working capital or other general corporate purposes. The proceeds of the Revolving Loans, Swing Line Loans, Letters of Credit and any loans under any Ancillary Facility made after the Closing Date shall be applied by the applicable Borrower for working capital or other general corporate purposes of the U.S. Borrower or any of its Subsidiaries, including Permitted Acquisitions. The proceeds of the Term Loans borrowed on the Restatement Date ~~shall be used~~ used to finance the Restatement Transactions. [The proceeds of the Term Loans borrowed on the Second Amendment Date shall be used to prepay all Tranche B Term Loans outstanding immediately prior to the making of such Term Loans on the Second Amendment Date and to pay related fees, costs and expenses.](#) The proceeds of the Incremental Term Loans shall be applied by the applicable Borrower for working capital or other general corporate purposes of the U.S. Borrower and its Subsidiaries, including Permitted Acquisitions. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

**Section 2.07 Evidence of Debt; Register; Notes.**

(a) [Lenders' Evidence of Debt](#). Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of each Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof.

(b) [Register](#). The Administrative Agent (or its agent or sub-agent appointed by it) acting for this purpose as an agent of the Borrowers shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Commitment and Loans of each Lender from time to time (the "[Register](#)"). The Register shall be available for inspection by the Borrower Representative at any reasonable time and from time to time upon reasonable prior notice and upon request (which may not be made more than once per month) the Administrative Agent shall provide a copy of the information in the Register to the Borrower. The Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and

the Loans in accordance with the provisions of Section 10.06, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on each Borrower and each Lender, absent manifest error. Each Borrower hereby designates the Administrative Agent to serve as such Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.07, and each Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents, sub-agents and Affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to the Borrower Representative (with a copy to the Administrative Agent) at least five Business Days prior to the ~~Restatement~~Second Amendment Date, or at any time thereafter, each applicable Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.06) on the ~~Restatement~~Second Amendment Date (or, if such notice is delivered after the ~~Restatement~~Second Amendment Date, promptly after such Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Tranche A Term Loans, ~~Tranche B Term Loans~~, Incremental Term Loans, Revolving Loans or Swing Line Loans, as the case may be.

### **Section 2.08 Interest on Loans.**

(a) Except as otherwise set forth herein, each Class of Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Tranche A Term Loans and Revolving Loans (other than a European Revolving Loan):

(A) if a Base Rate Loan, at the Base Rate plus the Applicable Margin;

(B) if a Eurocurrency Rate Loan, at the Adjusted Eurocurrency Rate plus the Applicable Margin; or

(C) if a Canadian Prime Rate Loan, at the Canadian Prime Rate plus the Applicable Margin;

(ii) in the case of European Revolving Loans, at the Adjusted Eurocurrency Rate plus the Applicable Margin and plus Mandatory Costs, if any; and

(iii) in the case of Swing Line Loans, at the Base Rate or the Canadian Prime Rate, as applicable, plus the Applicable Margin; ~~and~~

~~(iv) in the case of Tranche B Term Loans:~~

~~(A) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or (B) if a Eurocurrency Rate Loan, at the Adjusted Eurocurrency Rate plus the Applicable Margin.~~

(b) The Type of Loan (except a Swing Line Loan, which can be made and maintained as a Base Rate Loan or Canadian Prime Rate Loan only), and the Interest Period with respect to any Eurocurrency Rate Loan shall be selected by the applicable Borrower and notified to the

Administrative Agent and Lenders pursuant to the applicable Borrowing Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Borrowing Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan, if a Loan denominated in Dollars or Canadian Dollars, shall be a Base Rate Loan or a Canadian Prime Rate Loan, as applicable, and, if a Loan denominated in any other Approved Currency, shall be a Eurocurrency Rate Loan having an Interest Period of one month.

(c) In connection with Eurocurrency Rate Loans there shall be no more than five Interest Periods outstanding at any time in respect of each of the Tranche A ~~Term Loans and the Tranche B~~ Term Loans, no more than 10 Interest Periods outstanding at any time in respect of the U.S. Revolving Loans, no more than five Interest Periods outstanding at any time in respect of the Canadian Revolving Loans, and no more than 10 Interest Periods outstanding at any time in respect of the European Revolving Loans. In the event the Borrower Representative fails to specify between a Base Rate Loan or a Eurocurrency Rate Loan in the applicable Borrowing Notice or Conversion/Continuation Notice for any Loan denominated in Dollars, such Loan (if outstanding as a Eurocurrency Rate Loan) shall be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan shall remain as, or (if not then outstanding) shall be made as, a Base Rate Loan). In the event the Borrower Representative fails to specify an Interest Period for any Eurocurrency Rate Loan in the applicable Borrowing Notice or Conversion/Continuation Notice, such Borrower shall be deemed to have selected an Interest Period of one month. The Interest Periods in effect immediately prior to the Restatement Date [or Second Amendment Date, as applicable](#), shall remain in effect with respect to Loans outstanding immediately prior to the Restatement Date [or Second Amendment Date, as applicable](#) (or if new Interest Periods are entered into in connection with the Restatement Date [or Second Amendment Date, as applicable](#), with respect to such Loans outstanding immediately prior to the Restatement Date [or Second Amendment Date, as applicable](#), the end dates of such new Interest Periods shall be the same as the Interest Period end dates with respect to such Loans immediately prior to the Restatement Date [or Second Amendment Date, as applicable](#)). As soon as practicable after 10:00 a.m. (New York City time) or, with respect to Loans in respect of European Revolving Commitments, 10:00 a.m. (London, England time), on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurocurrency Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower Representative and each Lender. In the event that the Borrower Representative fails to specify between a Canadian Prime Rate Loan and a Eurocurrency Rate Loan in the applicable Borrowing Notice or Conversion/Continuation Notice for any Loan denominated in Canadian Dollars, such Loan (if outstanding as a Eurocurrency Rate Loan) shall be automatically converted into a Canadian Prime Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Canadian Prime Rate Loan shall remain as, or (if not then outstanding) shall be made as, a Canadian Prime Rate Loan).

(d) Interest payable pursuant to [Section 2.08\(a\)](#) shall be computed (i) in the case of Base Rate Loans and Canadian Prime Rate Loans on the basis of a 365-day or 366-day year, as the case

may be and (ii) in the case of Eurocurrency Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Term Loan, the last Interest Payment Date with respect to such Term Loan or, with respect to a Base Rate Loan or Canadian Prime Rate Loan being converted from a Eurocurrency Rate Loan, the date of conversion of such Eurocurrency Rate Loan to such Base Rate Loan or Canadian Prime Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan or Canadian Prime Rate Loan being converted to a Eurocurrency Rate Loan, the date of conversion of such Base Rate Loan or Canadian Prime Rate Loan to such Eurocurrency Rate Loan, as the case may be, shall be excluded; provided, that if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall accrue on a daily basis and shall be payable in arrears (i) on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) upon any prepayment of such Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; provided, that with respect to any voluntary prepayment of a Base Rate Loan and a Canadian Prime Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date and (iii) at maturity of such Loan, including final maturity of such Loan.

(f) The applicable Borrower agrees to pay to the Issuing Bank, with respect to drawings honored under a Letter of Credit, interest on the amount paid by the Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of the applicable Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans (or if such Letter of Credit is denominated in Canadian Dollars, the Canadian Prime Rate) or, with respect to Letters of Credit denominated in a currency other than Dollars or Canadian Dollars, Eurocurrency Rate Loans with an Interest Period of one month, and (ii) thereafter, a rate which is 2.00% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to such Revolving Loans.

(g) Interest payable pursuant to Section 2.08(f) shall be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Issuing Bank of any payment of interest pursuant to Section 2.08(f), the Issuing Bank shall distribute to each Lender, out of the interest received by the Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which the Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.04(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by the Issuing Bank in respect of

that portion of such honored drawing so reimbursed by Lenders for the period from the date on which the Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the applicable Borrower.

(h) The rate and time of payment of interest in respect of any Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower under such Ancillary Facility based on normal market rates and terms.

(i) For purposes of disclosure pursuant to the *Interest Act* (Canada), (i) whenever any interest under this Agreement is calculated using a rate based on a year of 360 days or 365 days, as the case may be, the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 360 days or 365 days, as the case may be, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (z) divided by 360 or 365, as the case may be, (ii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement, and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

#### **Section 2.09 Conversion/Continuation.**

(a) Subject to Section 2.18 and so long as no Default or Event of Default shall have occurred and then be continuing, the Borrowers shall have the option:

(i) to convert at any time all or any part of any Term Loan or Revolving Loan denominated in Dollars or Canadian Dollars equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, that a Eurocurrency Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurocurrency Rate Loan unless the U.S. Borrower shall pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurocurrency Rate Loan, to continue all or any portion of such Loan equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount as a Eurocurrency Rate Loan;

provided that, for the avoidance of doubt, no conversion or continuation of any Loan pursuant to this Section 2.09 shall affect the currency in which such Loan is denominated prior to any such conversion or continuation and each such Loan shall remain outstanding denominated in the currency originally issued.

(b) The Borrower Representative shall deliver a Conversion/Continuation Notice to the Administrative Agent no later than 10:00 a.m. (New York City time) or, with respect to Loans in respect of European Revolving Commitments, 10:00 a.m. (London, England time), at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan or Canadian Prime Rate Loan) and at least three Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a Eurocurrency Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurocurrency Rate Loans, shall be irrevocable on and after the related Interest Rate Determination Date, and each Borrower shall be bound to effect a conversion or continuation in accordance therewith.

**Section 2.10 Default Interest.** Upon the occurrence and during the continuance of an Event of Default under Section 8.01(a), 8.01(c) (in the case of a failure to perform or comply with any term or condition contained in Section 6.07(a) or 6.07(b)), 8.01(f), 8.01(g) or 8.01(h) and, at the request of the Required Lenders, any other Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate (the “Default Rate”) that is 2.00% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.00% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans); provided, that in the case of Eurocurrency Rate Loans denominated in Dollars and Canadian Dollars, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurocurrency Rate Loans shall thereupon become Base Rate Loans or Canadian Prime Rate Loans, as applicable, and shall thereafter bear interest payable upon demand at a rate which is 2.00% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

**Section 2.11 Fees.**

(a) The U.S. Borrower agrees to pay to Lenders (other than Defaulting Lenders) having U.S. Revolving Exposure and Canadian Revolving Exposure, as applicable:

(i) commitment fees equal to (1) the average of the daily difference between (a) the U.S. Revolving Commitments and (b) the aggregate principal amount of (x) all outstanding U.S. Revolving Loans plus (y) the U.S. Letter of Credit Usage, times (2) the Applicable Revolving Commitment Fee Percentage;

(ii) commitment fees equal to (1) the average of the daily difference between (a) the Canadian Revolving Commitments and (b) the Dollar Equivalent of the aggregate principal amount of (x) all outstanding Canadian Revolving Loans plus (y) the Canadian Letter of Credit Usage, times (2) the Applicable Revolving Commitment Fee Percentage;

(iii) letter of credit fees equal to (1) the Applicable Margin for U.S. Revolving Loans that are Eurocurrency Rate Loans, times (2) the average aggregate daily maximum amount available to be drawn under all such U.S. Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination); and

(iv) letter of credit fees equal to (1) the Applicable Margin for Canadian Revolving Loans that are Eurocurrency Rate Loans, times (2) the Dollar Equivalent of the average aggregate daily maximum amount available to be drawn under all such Canadian Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.11(a) shall be paid in Dollars to the Administrative Agent at its Principal Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender that has Revolving Exposure its Pro Rata Share thereof.

(b) The European Borrower agrees to pay to Lenders (other than Defaulting Lenders) having European Revolving Exposure:

(i) commitment fees equal to (1) the average of the daily difference between (a) the European Revolving Commitments and (b) the Euro Equivalent of the aggregate principal amount of (x) all outstanding European Revolving Loans plus (y) the European Letter of Credit Usage, times (2) the Applicable Revolving Commitment Fee Percentage; and

(ii) letter of credit fees equal to (1) the Applicable Margin for European Revolving Loans, times (2) the Euro Equivalent of the average aggregate daily maximum amount available to be drawn under all such European Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.11(b) shall be paid in Euros to the Administrative Agent at its applicable Principal Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender that has Revolving Exposure its Pro Rata Share thereof.

(c) Letter of Credit Fronting Fees.

(i) The U.S. Borrower agrees to pay directly to the applicable Issuing Bank, for its own account, with respect to any standby U.S. Letters of Credit and standby Canadian Letters of Credit a fronting fee in Dollars equal to 0.125% *per annum* (or such lesser amount as may be agreed to by the Borrower Representative and the applicable Issuing Bank), times the average aggregate daily maximum amount available to be drawn under all such U.S. Letters of Credit and Canadian Letters of Credit (determined as of the close of business on any date of determination).

(ii) The European Borrower agrees to pay directly to the applicable Issuing Bank, for its own account, with respect to any standby European Letters of Credit a fronting fee in Euros equal to 0.125% *per annum* (or such lesser amount as may be agreed to by the Borrower Representative and the applicable Issuing Bank), times the average aggregate daily maximum amount available to be drawn under all such European Letters of Credit (determined as of the close of business on any date of determination).

(iii) The applicable Borrower agrees to pay fees to be agreed with the applicable Issuing Bank in respect of all commercial Letters of Credit.

(iv) The applicable Borrower agrees to pay such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with the applicable Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(d) All fees referred to in Sections 2.11(a), 2.11(b), 2.11(c)(i) and 2.11(c)(ii) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year during the applicable Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and on the applicable Revolving Commitment Termination Date.

(e) In addition to any of the foregoing fees, the Borrowers agree to pay to Agents such other fees (such as administrative agency fees) in the amounts and at the times separately agreed upon. The rate and timing of fees in respect of any Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower under such Ancillary Facility based on normal market rates and terms. ~~Certain fees separately agreed, if any, shall be payable to the Lenders on the Closing Date as fee compensation for the funding of such Lender's Loans or availability of such Lender's unfunded Revolving Commitment. Such closing fees, if any, shall be in all respect earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.~~

**Section 2.12 Scheduled Payments.**

(a) (i) The principal amounts of the Tranche A Term Loans shall be repaid in consecutive quarterly installments (each, an “Installment”) in the aggregate amounts set forth below on the dates set forth below (each, an “Installment Date”), commencing on June 30, ~~2014~~2016:

<b>Installment Date</b>	<b>Tranche A Term Loan Installments</b>
<del>June 30, 2014</del>	<del>\$24,828,125</del>
<del>September 30, 2014</del>	<del>\$24,828,125</del>
<del>December 31, 2014</del>	<del>\$24,828,125</del>
<del>March 31, 2015</del>	<del>\$24,828,125</del>
<del>June 30, 2015</del>	<del>\$24,828,125</del>
<del>September 30, 2015</del>	<del>\$24,828,125</del>
<del>December 31, 2015</del>	<del>\$24,828,125</del>
<del>March 31, 2016</del>	<del>\$24,828,125</del>
June 30, 2016	\$ <del>37,242,187.50</del> <u>29,342,250.00</u>
September 30, 2016	\$ <del>37,242,187.50</del> <u>29,342,250.00</u>
December 31, 2016	\$ <del>37,242,187.50</del> <u>29,342,250.00</u>
March 31, 2017	\$ <del>37,242,187.50</del> <u>29,342,250.00</u>
June 30, 2017	\$ <del>49,656,250</del> <u>29,342,250.00</u>
September 30, 2017	\$ <del>49,656,250</del> <u>29,342,250.00</u>
December 31, 2017	\$ <del>49,656,250</del> <u>29,342,250.00</u>

<b>Installment Date</b>	<b>Tranche A Term Loan Installments</b>
March 31, 2018	\$ <del>49,656,250</del> <u>29,342,250.00</u>
June 30, 2018	\$ <del>49,656,250</del> <u>44,013,375.00</u>
September 30, 2018	\$ <del>49,656,250</del> <u>44,013,375.00</u>
December 31, 2018	\$ <del>49,656,250</del> <u>44,013,375.00</u>
<u>March 31, 2019</u>	<u>\$44,013,375.00</u>
<u>June 30, 2019</u>	<u>\$58,684,500.00</u>
<u>September 30, 2019</u>	<u>\$58,684,500.00</u>
<u>December 31, 2019</u>	<u>\$58,684,500.00</u>
<u>March 31, 2020</u>	<u>\$58,684,500.00</u>
<u>June 30, 2020</u>	<u>\$58,684,500.00</u>
<u>September 30, 2020</u>	<u>\$58,684,500.00</u>
<u>December 31, 2020</u>	<u>\$58,684,500.00</u>
<u>March 31, 2021</u>	<u>\$58,684,500.00</u>
Tranche A Term Loan Maturity Date	Remainder

(b) ~~The principal amount of the Tranche B Term Loans outstanding on the Tranche B Term Loan Maturity Date shall be repaid on such date, it being understood and agreed that, as of the Restatement Date, the U.S. Borrower has, through voluntary and mandatory prepayments of the Tranche B Term Loans under the Original Credit Agreement prior to the Restatement Date, applied as provided for in Section 2.15, reduced the Installments set forth in the Original Credit Agreement such that the only remaining installment is the outstanding principal amount of the Tranche B Term Loans as of the Tranche B Term Loan Maturity Date.~~ [Reserved].

(c) Notwithstanding the foregoing, (x) such Installments shall be reduced in connection with any voluntary or mandatory prepayments of the Tranche A Term Loans in accordance with Section 2.15; and (y) the Tranche A Term Loans ~~and the Tranche B Term Loans~~, together with all other amounts owed hereunder with respect thereto, shall, in any event, be paid in full no later than the Tranche A Term Loan Maturity Date ~~and the Tranche B Term Loan Maturity Date, respectively.~~

### **Section 2.13 Voluntary Prepayments/Commitment Reductions.**

(a) Voluntary Prepayments.

(i) Any time and from time to time (1) with respect to Base Rate Loans or Canadian Prime Rate Loans, the U.S. Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount; (2) with respect to Eurocurrency Rate Loans, the applicable Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of, with respect to Loans denominated in Dollars or Canadian Dollars and U.S. Revolving Loans or Canadian Revolving Loans, \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount, and, with respect

to Loans denominated in Euros and all European Revolving Loans, €5,000,000 and integral multiples of €1,000,000 in excess of that amount; and (3) with respect to Swing Line Loans, the U.S. Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000, and in integral multiples of \$100,000 in excess of that amount, in each case, without premium or penalty except as described in the immediately following sentence. ~~In connection with any Repricing Event that is consummated in respect of all or any portion of the Tranche B Term Loans on or prior to the six-month anniversary of the Restatement Date, the U.S. Borrower shall pay to the Administrative Agent, for the ratable benefit of the Term Lenders having Tranche B Term Loan Exposure, a fee equal to 1.00% of the aggregate principal amount of the Tranche B Term Loans subject to such Repricing Event (provided, that any prepayment of any Tranche B Term Loans made in connection with a Change of Control shall not require the payment of the 1.00% fee otherwise required by this sentence).~~

(ii) All such prepayments shall be made (1) upon not less than one Business Day's prior written notice in the case of Base Rate Loans or Canadian Prime Rate Loans; (2) upon not less than three Business Days' prior written notice in the case of Eurocurrency Rate Loans and (3) upon written notice on the date of prepayment, in the case of Swing Line Loans;

in each case given to the Administrative Agent or applicable Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) (or, with respect to repayments of European Revolving Loans, 12:00 p.m. (London, England time)) on the date required (and the Administrative Agent or such Swing Line Lender, as the case may be, shall promptly transmit such original notice by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided that such a notice may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative if such condition is not satisfied. Any such voluntary prepayment shall be applied as specified in Section 2.15(a).

(b) Voluntary Commitment Reductions.

(i) The Borrower Representative may, upon not less than three Business Days' prior written notice to the Administrative Agent (which written notice the Administrative Agent shall promptly transmit by telefacsimile or telephone to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the U.S. Revolving Commitments, the Canadian Revolving Commitments and/or the European Revolving Commitments in an amount up to the amount by which (x) the U.S. Revolving Commitments exceed the Total Utilization of U.S. Revolving Commitments, (y) the Canadian Revolving Commitments exceed the Total Utilization of Canadian Revolving Commitments or (z) the European Revolving Commitments exceed the Total Utilization of European Revolving Commitments, as applicable, at the time of such proposed termination or reduction; provided, that any such

partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of, with respect to U.S. Revolving Commitments and Canadian Revolving Commitments, \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount, and, with respect to European Revolving Commitments, €5,000,000 and integral multiples of €1,000,000 in excess of that amount.

(ii) The Borrower Representative's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in the Borrower Representative's notice and shall reduce the applicable Revolving Commitments of each Lender proportionately to its Pro Rata Share thereof; provided that such a notice may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative if such condition is not satisfied. Notwithstanding anything to the contrary contained in this Section 2.13(b)(ii) or any other provision of this Agreement, the Borrower Representative may reduce the Revolving Commitment of any Defaulting Lender to an amount not less than the applicable Revolving Exposure of such Defaulting Lender with respect to such Revolving Commitment (it being understood that for purposes of determining such Defaulting Lender's Revolving Exposure pursuant to this sentence, such Defaulting Lender's Revolving Commitments shall be deemed to be terminated), such reduction to be subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed).

(c) Below-Par Purchases. Notwithstanding anything to the contrary contained in this Section 2.13 or any other provision of this Agreement and without otherwise limiting the rights in respect of prepayments of the Loans of the U.S. Borrower and its Subsidiaries, so long as no Default or Event of Default has occurred and is continuing, the U.S. Borrower may repurchase outstanding Term Loans pursuant to this Section 2.13(c) on the following basis:

(i) The U.S. Borrower may make one or more offers (each, an "Offer") to repurchase all or any portion of the Tranche A Term Loans ~~and/or Tranche B Term Loans~~ (such Term Loans, the "Offer Loans"); provided that, (A) the U.S. Borrower delivers notice of its intent to make such Offer to the Administrative Agent at least five Business Days in advance of the launch of any proposed Offer, (B) upon the launch of such proposed Offer, the U.S. Borrower delivers an irrevocable notice of such Offer to all applicable Term Lenders (with a copy to the Administrative Agent) indicating (1) the last date on which such Offer may be accepted, (2) the maximum Dollar amount of such Offer, and (3) the repurchase price per Dollar of principal amount of such Offer Loans at which the U.S. Borrower is willing to repurchase such Offer Loans (which price shall be below par), (C) the maximum Dollar amount of each Offer shall be an amount reasonably determined by the U.S. Borrower in consultation with the Administrative Agent prior to the making of any such Offer; (D) the U.S. Borrower shall hold such Offer open for a minimum period of days to be reasonably determined by the Administrative Agent and the U.S. Borrower prior to the making of any such Offer; (E) a Term Lender who elects to participate in the

Offer may choose to sell all or part of such Term Lender's Offer Loans; (F) such Offer shall be made to all Term Lenders holding the Offer Loans on a *pro rata* basis in accordance with the respective principal amount then due and owing to the Term Lenders; provided, further that, if any Term Lender elects not to participate in the Offer, either in whole or in part, the amount of such Term Lender's Offer Loans not being tendered shall be excluded in calculating the *pro rata* amount applicable to the balance of such Offer Loans and (G) such Offer shall be conducted pursuant to such procedures the Administrative Agent may establish in consultation with the U.S. Borrower (which shall be consistent with this Section 2.13(c)) and that a Lender must follow in order to have its Offer Loans repurchased, which procedures may include a requirement that the U.S. Borrower represent and warrant that it does not have any material non-public information with respect to any Loan Party (or its Subsidiaries) that could be material to a Lender's decision to participate in such Offer;

(ii) With respect to all repurchases made by the U.S. Borrower, such repurchases shall be deemed to be voluntary prepayments pursuant to this Section 2.13 in an amount equal to the aggregate principal amount of such Term Loans; provided that such repurchases shall not be subject to the provisions of Section 2.13(a), 2.13(b) or 2.17;

(iii) Upon the purchase by the U.S. Borrower of any Term Loans, (A) automatically and without the necessity of any notice or any other action, all principal and accrued and unpaid interest on the Term Loans so repurchased shall be deemed to have been paid for all purposes and shall be cancelled and no longer outstanding for all purposes of this Agreement and all other Loan Documents (and in connection with any Term Loan purchased pursuant to this Section 2.13(c), the Administrative Agent is authorized to make appropriate entries in the Register to reflect such cancellation) and (B) the U.S. Borrower will promptly advise the Administrative Agent of the total amount of Offer Loans that were repurchased from each Lender who elected to participate in the Offer;

(iv) Failure by the U.S. Borrower to make any payment to a Lender required by an agreement permitted by this Section 2.13(c) shall not constitute an Event of Default under Section 8.01(a);

(v) No proceeds of any Revolving Loans may be used to purchase any Offer Loans, and all amounts used to purchase Offer Loans shall be deemed to be a use of the Available Amount; and

(vi) The amount of such repurchases (based on the face value of the Term Loans purchased thereby) shall be applied on a *pro rata* basis to reduce the remaining Installments on the applicable Class of Term Loans pursuant to Section 2.12.

#### **Section 2.14 Mandatory Prepayments/Commitment Reductions.**

(a) Asset Sales. No later than 10 Business Days following the date of receipt by any Group Member of any Net Cash Proceeds in respect of any Asset Sale pursuant to Section 6.08(d), 6.08(j)(ii) or 6.08(k), the Term Loans shall be repaid as set forth in Section 2.15(b) in an aggregate amount equal to such Net Cash Proceeds; provided, that so long as no Default or Event of Default

shall have occurred and be continuing, the Borrower Representative shall have the option, upon written notice to the Administrative Agent, directly or through one or more of its Subsidiaries, to invest or commit in writing to invest such Net Cash Proceeds within 365 days of receipt thereof in assets useful in the business of one or more Group Members, which investment may include the repair, restoration or replacement of the applicable assets thereof or Permitted Acquisitions to the extent such investments are otherwise permitted under this Agreement; provided, further, that in the event such Net Cash Proceeds are committed in writing to be invested prior to such 365<sup>th</sup> day, the Borrower Representative shall have the option to invest such Net Cash Proceeds within 180 days after the expiration of such initial 365-day period. Notwithstanding the foregoing, no Group Member shall be required to repay the Term Loans with any such Net Cash Proceeds to the extent the repatriation of such Net Cash Proceeds to fund such repayments would, in the good faith judgment of the U.S. Borrower, result in material adverse tax consequences to the U.S. Borrower or any of its Subsidiaries or conflict with applicable law; provided that, in any event, the U.S. Borrower shall use commercially reasonable efforts to eliminate such tax effects in order to make such prepayments.

(b) Insurance/Condemnation Proceeds. No later than 10 Business Days following the date of receipt by any Group Member, or the Administrative Agent as loss payee, of any Net Cash Proceeds of the type described in clause (b) of the definition thereof, the Term Loans shall be repaid as set forth in Section 2.15(b) in an aggregate amount equal to such Net Cash Proceeds; provided, that so long as no Default or Event of Default shall have occurred and be continuing, the Borrower Representative shall have the option, upon written notice to the Administrative Agent, directly or through one or more of its Subsidiaries to invest or commit in writing to invest such Net Cash Proceeds within 365 days of receipt thereof in assets useful in the business of one or more Group Member, which Investment may include the repair, restoration or replacement of the applicable assets thereof or Permitted Acquisitions; provided, further, that in the event such Net Cash Proceeds are committed in writing to be invested prior to such 365<sup>th</sup> day, the Borrower Representative shall have the option to invest such Net Cash Proceeds within 180 days after the expiration of such initial 365-day period. Notwithstanding the foregoing, no Group Member shall be required to repay the Term Loans with any such Net Cash Proceeds to the extent the repatriation of such Net Cash Proceeds to fund such repayments would, in the good faith judgment of the U.S. Borrower, result in material adverse tax consequences to the U.S. Borrower or any of its Subsidiaries or conflict with applicable law; provided that, in any event, the U.S. Borrower shall use commercially reasonable efforts to eliminate such tax effects in order to make such prepayments.

(c) Issuance or Incurrence of Debt. No later than one Business Day following the date of receipt by any Group Member of any Net Cash Proceeds from the issuance or incurrence of any Indebtedness of any Group Member (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.01, but including Indebtedness permitted to be incurred pursuant to Sections 6.01(n)(i) and 6.01(n)(ii)), the Net Cash Proceeds of which are required to prepay Term Loans, which Net Cash Proceeds shall be applied not later than five Business Days after receipt to the extent necessary to allow the Borrowers to comply with Section 2.15(d)), the Term Loans shall be prepaid by the U.S. Borrower as set forth in Section 2.15(b) in an aggregate amount equal to 100.0% of such Net Cash Proceeds.

(d) Consolidated Excess Cash Flow. In the event that there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending February 1, 2015), no later than 95 days after the end of such Fiscal Year, the Term Loans shall be prepaid by the U.S. Borrower as set forth in Section 2.15(b) in an aggregate amount equal to (i) 50% of such Consolidated Excess Cash Flow minus (ii) voluntary repayments of the Term Loans in such Fiscal Year pursuant to Section 2.13(a) and voluntary repayments of Revolving Loans or Swing Line Loans in such Fiscal Year to the extent the Revolving Commitments are permanently reduced in connection with such repayments; provided, that if, as of the last day of the most recently ended Fiscal Year, the Net Leverage Ratio (determined for any such period by reference to the Compliance Certificate delivered pursuant to Section 5.01(c) calculating the Net Leverage Ratio as of the last day of such Fiscal Year) shall be (x) less than ~~2.75~~3.00:1.00 but greater than or equal to ~~2.25~~2.50:1.00, the U.S. Borrower shall only be required to make the prepayments and/or reductions otherwise required hereby in an amount equal to (i) 25% of such Consolidated Excess Cash Flow minus (ii) voluntary repayments of the Term Loans in such Fiscal Year pursuant to Section 2.13(a) and voluntary repayments of Revolving Loans or Swing Line Loans in such Fiscal Year to the extent the Revolving Commitments are permanently reduced in connection with such repayments or (y) less than ~~2.25~~2.50:1.00, no such payment shall be required.

(e) Revolving Loans, Swing Line Loans and Letters of Credit. The applicable Borrower shall from time to time (i) prepay *first*, the Swing Line Loans, and *second*, the Revolving Loans and (ii) if all such Loans are prepaid without exhausting the excess referred to below, Cash Collateralize outstanding Letters of Credit, in each case, to the extent necessary so that (x) the Total Utilization of U.S. Revolving Commitments shall not at any time exceed the U.S. Revolving Commitments then in effect, (y) the Total Utilization of Canadian Revolving Commitments shall not at any time exceed the Canadian Revolving Commitments then in effect and (z) the Total Utilization of European Revolving Commitments shall not at any time exceed the European Revolving Commitments then in effect. Notwithstanding the foregoing, mandatory prepayments of Swing Line Loans and Revolving Loans and Cash Collateralization of Letters of Credit that would otherwise be required pursuant to this Section 2.14(e) solely as a result of fluctuations in Exchange Rates from time to time shall only be required to be made on the last Business Day of each month on the basis of the Exchange Rate in effect on such Business Day.

(f) Prepayment Certificate. Concurrently with any prepayment of the Term Loans pursuant to Sections 2.14(a) through 2.14(d), the Borrower Representative shall deliver to the Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable Net Cash Proceeds or Consolidated Excess Cash Flow, as the case may be. In the event that the Borrower Representative shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, the U.S. Borrower shall promptly make an additional prepayment of the Term Loans in an amount equal to such excess, and the Borrower Representative shall concurrently therewith deliver to the Administrative Agent a certificate of an Authorized Officer describing such excess.

#### **Section 2.15 Application of Prepayments/Reductions; Application of Proceeds of Collateral.**

(a) Application of Voluntary Prepayments by Type of Loans. Any prepayment of any Loan pursuant to Section 2.13(a) shall be applied to the Loans and Installments, if applicable, as

specified by the applicable Borrower in the applicable notice of prepayment (and shall not be required to be applied *pro rata* to all Loans or Installments); provided, further, that in the event the applicable Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied as follows:

*first*, to repay outstanding Swing Line Loans on a *pro rata* basis until paid in full;

*second*, to repay outstanding Revolving Loans on a *pro rata* basis until paid in full; and

*third*, to prepay the Term Loans on a *pro rata* basis (in accordance with the respective outstanding principal amounts thereof, which prepayments shall be applied to the scheduled Installments of principal in accordance with Section 2.15(c));

in each case, for the avoidance of doubt, allocated on a *pro rata* basis among the applicable U.S. Loans, Canadian Revolving Loans and European Revolving Loans.

(b) Application of Mandatory Prepayments by Type of Loans. Any amount required to be paid pursuant to Sections 2.14(a) through 2.14(d) shall be applied to prepay Term Loans on a *pro rata* basis (in accordance with the respective outstanding principal amounts thereof, which prepayments shall be applied to the scheduled Installments of principal in accordance with Section 2.15(c)).

(c) Application to Installments. Any prepayment of the Tranche A Term Loans pursuant to Sections 2.14(a) through 2.14(d), as applicable, shall be applied to reduce in direct order of maturity the next four scheduled Installments of the Tranche A Term Loans due and thereafter shall be applied on a *pro rata* basis to reduce the scheduled remaining Installments of the Tranche A Term Loans. ~~Any prepayment of the Tranche B Term Loans pursuant to Sections 2.14(a) through 2.14(d), as applicable, shall be applied to reduce in direct order of maturity the next four scheduled Installments of the Tranche B Term Loans due and thereafter shall be applied on a *pro rata* basis to reduce the scheduled remaining Installments of the Tranche B Term Loans (it being understood and agreed that, as of the Restatement Date, the U.S. Borrower has, through voluntary and mandatory prepayments of the Tranche B Term Loans under the Original Credit Agreement prior to the Restatement Date, applied as provided for in Section 2.15, reduced the Installments set forth in the Original Credit Agreement such that the only remaining Installment is the outstanding principal amount of the Tranche B Term Loans as of the Tranche B Term Loan Maturity Date).~~

(d) ~~Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, so long as any Tranche A Term Loans are outstanding, in the event the Borrower Representative is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Tranche B Term Loans pursuant to Section 2.14, not less than five Business Days prior to the date (the "Required Prepayment Date") on which the Borrower Representative is required to make such Waivable Mandatory Prepayment, the Borrower Representative shall notify the Administrative Agent of the amount of such prepayment, and the Administrative Agent shall promptly thereafter notify each Lender holding an outstanding Tranche B Term Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option~~

~~to refuse such amount. Each such Lender may exercise such option by giving written notice to the Borrower Representative and the Administrative Agent of its election to do so on or before the third Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify the Borrower Representative and the Administrative Agent of its election to exercise such option on or before the third Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the U.S. Borrower shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Tranche B Term Loans of such Lenders (which prepayment shall be applied to the scheduled Installments of principal of the Tranche B Term Loans in accordance with Section 2.15(c)), and (ii) in an amount equal to that portion of the Waivable Mandatory Prepayment otherwise payable to those Lenders that have elected to exercise such option, to prepay the Tranche A Term Loans (which prepayment shall be applied to the scheduled Installments of principal of the Tranche A Term Loans in accordance with Section 2.15(c) and further applied to the scheduled Installments of principal of the Tranche B Term Loans in accordance with Section 2.15(c)); [Reserved].~~

(e) Application of Prepayments of Loans to Base Rate Loans, Canadian Prime Rate Loans and Eurocurrency Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment of U.S. Loans or Canadian Loans shall be applied first to Base Rate Loans and Canadian Prime Rate Loans to the full extent thereof before application to Eurocurrency Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by the U.S. Borrower pursuant to Section 2.18(c).

(f) Application of Proceeds.

(i) Except as expressly set forth in clause (ii) below, all proceeds received by the Administrative Agent from the Collateral Agent in respect of any sale of, any collection from, or other realization upon all or any part of the Collateral or any asset pledged by any U.S. Loan Party pursuant to a Dutch Security Agreement shall be applied in full or in part by the Administrative Agent against, the Obligations in the following order of priority: *first*, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to the Administrative Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith, and all amounts for which the Administrative Agent is entitled to indemnification hereunder (in its capacity as the Administrative Agent and not as a Lender) and all advances made by the Administrative Agent hereunder for the account of the applicable Loan Party, and to the payment of all costs and expenses paid or incurred by the Administrative Agent in connection with the exercise of any right or remedy hereunder, all in accordance with the terms hereof; *second*, to the extent of any excess of such proceeds, to repay any outstanding Swing Line Loans and amounts drawn under Letters of Credit and not reimbursed by the applicable Borrower or the applicable Revolving Lenders; *third*, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders and the Lender Counterparties holding such Obligations; and *fourth*, to the extent of any excess of such proceeds, to the

payment to or upon the order of the applicable Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(ii) Subject to any security or quasi-security arising in connection with any cash pooling, netting or set-off arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances, all proceeds received by the Administrative Agent in respect of any collection from, or other realization upon all or any part of the assets of the European Borrower or the European Guarantor shall be applied in full or in part by the Administrative Agent against, the European Obligations in the following order of priority: *first*, to the payment of all costs and expenses of such collection or other realization, including reasonable compensation to the Administrative Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith, and all amounts for which the Administrative Agent is entitled to indemnification hereunder (in its capacity as the Administrative Agent and not as a Lender) and all advances made by the Administrative Agent hereunder for the account of the applicable Loan Party, and to the payment of all costs and expenses paid or incurred by the Administrative Agent in connection with the exercise of any right or remedy hereunder, all in accordance with the terms hereof; *second*, to the extent of any excess of such proceeds, to repay any outstanding amounts drawn under European Letters of Credit and not reimbursed by the European Borrower or the applicable Revolving Lenders; *third*, to the extent of any excess of such proceeds, to the payment of all other European Obligations for the ratable benefit of the Lenders and the Lender Counterparties holding such European Obligations; and *fourth*, to the extent of any excess of such proceeds, to the payment to or upon the order of the applicable Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(iii) It is acknowledged and agreed that the Collateral Agent will distribute proceeds of Collateral or asset pledged by any U.S. Loan Party pursuant to a Dutch Security Agreement to the Administrative Agent and, as applicable, the 2023 Debentures Trustee, as required by the terms of the Security Documents or the 2023 Debentures Intercreditor Agreement.

#### **Section 2.16 General Provisions Regarding Payments.**

(a) All payments by the Borrowers of principal, interest, fees and other Obligations shall be made, (i) with respect to U.S. Loans, Canadian Revolving Loans denominated in Dollars, U.S. Revolving Commitments or Canadian Revolving Commitments, in Dollars, (ii) with respect to Canadian Revolving Loans denominated in Canadian Dollars, in Canadian Dollars, and (iii) with respect to European Revolving Loans denominated in Euros or European Revolving Commitments (including any commitment fees with respect to the undrawn portion thereof), in Euros or, with respect to European Revolving Loans denominated in an Other Foreign Currency, in the Other Foreign Currency in which such European Revolving Loans are denominated, in each case in same day funds, without defense, setoff or counterclaim, free of any restriction or condition (other than any security or quasi-security arising in connection with any cash pooling, netting or set-off

arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances (including any security or quasi-security granted in favor of the financial institution with whom such arrangements are entered into in order to secure obligations under such arrangements and including an ancillary facility which is an overdraft comprising more than one account)), and delivered to the Administrative Agent not later than 12:00 p.m. (New York City time) or, with respect to European Revolving Loans or European Revolving Commitments, 12:00 p.m. (London, England time), on the date due at the Principal Office designated by the Administrative Agent for the account of Lenders. For purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date shall be deemed to have been paid by the Borrowers on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan (other than voluntary prepayments of Revolving Loans, Base Rate Loans or Canadian Prime Rate Loans) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurocurrency Rate Loans, the Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period" as they may apply to Revolving Loans, whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and, with respect to Revolving Loans only, such extension of time shall be included in the computation of the payment of interest hereunder or of the Revolving Commitment fees hereunder.

(f) The Administrative Agent shall deem any payment by or on behalf of any Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) or, with respect to European Revolving Loans or European Revolving Commitments, 12:00 p.m. (London, England time), to be a non-conforming payment. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt telephonic notice to the Borrower Representative and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.01(a).

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.01, all payments or proceeds received by Agents hereunder in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 2.15(e).

(h) If a CKI Blockage Event has occurred and is continuing, any payment, including any prepayments or distribution of any kind or character (whether required by this Agreement or optionally made by any Loan Party) shall be accompanied by a certificate, duly executed by an Authorized Officer of the U.S. Borrower stating that no part of such payment or distribution constitutes a CK Distribution made in contravention of the CK Intercreditor Agreement, and such reasonable evidence as the Administrative Agent may reasonably request supporting such certification.

**Section 2.17 Ratable Sharing.** The Lenders to the U.S. Borrower agree among themselves, on the one hand, and the Lenders to the European Borrower hereby agree among themselves, on the other hand, that, except as otherwise provided in the Security Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify the Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, that if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of any Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The provisions of this Section 2.17 shall not be construed to apply to (a) any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or payments made with proceeds of Collateral applied as set forth in Section 2.15(e) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it. For the avoidance of doubt (a) no Lender to the European Borrower shall make payments to a Lender to the U.S. Borrower pursuant to this Section 2.17 and (b) the provisions of this Section 2.17 are subject to any security or quasi-security arising in connection with any cash pooling, netting or set-off arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.

## **Section 2.18 Making or Maintaining Eurocurrency Rate Loans.**

(a) Inability to Determine Applicable Interest Rate. In the event of any Market Disruption, the Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower Representative and each Lender of such determination, whereupon (i) with respect to Loans denominated in Dollars or Canadian Dollars, (x) no Loans may be made as, or converted to, Eurocurrency Rate Loans until such time as the Administrative Agent notifies the Borrower Representative and Lenders that the circumstances giving rise to such notice no longer exist and (y) any Borrowing Notice or Conversion/Continuation Notice given by the Borrower Representative with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower Representative, and (ii) with respect to Loans denominated in Euros or Other Foreign Currency, if the Administrative Agent or the Borrower Representative so require, the Administrative Agent and the Borrower Representative will negotiate in good faith for a period of not more than 30 days in order to agree on a mutually acceptable substitute basis for calculating the interest payable on the affected Eurocurrency Rate Loans and, (x) if a substitute basis is agreed within that period between the Administrative Agent and the Borrower Representative, then it shall apply in accordance with its terms (and may be retrospective to the beginning of the relevant Interest Period) and (y) unless and until a substitute basis is so agreed, the interest payable to such Lenders on the applicable Eurocurrency Rate Loans for the relevant Interest Period will be the rate confirmed in writing to the Administrative Agent by that Lender to be its cost of funds (from any source which it may reasonably select) plus the Applicable Margin and, if applicable, Mandatory Costs.

(b) Illegality. Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, governmental rules, regulation or guideline or order, or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurocurrency Rate Loans as contemplated by this Agreement (such Lender an "Affected Lender"), (i) the Commitment of such Lender hereunder to make Eurocurrency Rate Loans, continue Eurocurrency Rate Loans as such and convert Base Rate Loans or Canadian Prime Rate Loans to Eurocurrency Rate Loans shall forthwith be suspended until such time as it shall no longer be unlawful for such Lender to make or maintain the affected Loan and (ii) any such Lender's Loans then outstanding as Eurocurrency Rate Loans denominated in Dollars or Canadian Dollars, if any, shall be converted automatically to Base Rate Loans or Canadian Prime Rate Loans, respectively, on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurocurrency Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the applicable Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.18(c).

(c) Compensation for Breakage or Non-Commencement of Interest Periods. The applicable Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to Lenders of funds borrowed by it to make or carry its Eurocurrency Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender actually sustains as a direct result of any of the following

circumstances: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurocurrency Rate Loan does not occur on a date specified therefor in a Borrowing Notice, or a conversion to or continuation of any Eurocurrency Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurocurrency Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurocurrency Rate Loans is not made on any date specified in a notice of prepayment given by the applicable Borrower or the Borrower Representative.

(d) Booking of Eurocurrency Rate Loans. Any Lender may make, carry or transfer Eurocurrency Rate Loans at, to or for the account of any of its branch offices or the office of an Affiliate of such Lender.

## **Section 2.19 Increased Costs; Capital Adequacy.**

(a) Compensation For Increased Costs. In the event that any Lender (which term shall include the Issuing Bank for purposes of this Section 2.19(a)) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including, notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith regardless of the date enacted, adopted or issued (but only to the extent actually implemented)), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law and including 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, regardless of the date enacted, adopted or issued (but only to the extent actually implemented)): (i) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurocurrency Rate Loans that are reflected in the definition of Adjusted Eurocurrency Rate); or (ii) imposes any other condition on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market or the relevant off-shore interbank market for any Approved Currency; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or acquiring participations in, issuing or maintaining Letters of Credit hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, the applicable Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder.

Such Lender shall deliver to the Borrower Representative (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, this Section 2.19(a) shall not apply to any Taxes, which shall be governed by Section 2.20.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term shall include the Issuing Bank for purposes of this Section 2.19(b)) shall have determined that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof in each case that becomes effective after the date hereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive issued or made after the date hereof regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency (including, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case, pursuant to Basel III, regardless in the case of clauses (i) and (ii) of the date enacted, adopted or issued (but in the case of clauses (i) and (ii) only to the extent actually implemented)), has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Revolving Commitment or Letters of Credit, or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit, to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by the Borrower Representative from such Lender of the statement referred to in the next sentence, the applicable Borrower shall pay to such Lender such additional amount or amounts as shall compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to the Borrower Representative (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

#### **Section 2.20 Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Loan Party hereunder and under any other Loan Document shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding for or on account of, any Indemnified Tax or Other Tax imposed, levied, collected, withheld or assessed by any Governmental Authority.

(b) Withholding of Taxes. If any Loan Party or any other Person is required by law to make any deduction or withholding for or on account of any Indemnified Tax from any sum paid or payable by or on behalf of any Loan Party to the Administrative Agent or any Lender (which term shall include the Issuing Bank for purposes of this Section 2.20(b)) under any of the Loan Documents: (i) the applicable Loan Party shall notify the Administrative Agent in writing of any such requirement or any change in any such requirement as soon as the applicable Loan Party becomes aware of it; (ii) the applicable Borrower shall pay any such Indemnified Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Administrative Agent or such Lender) on behalf of and in the name of the Administrative Agent or such Lender, as the case may be; (iii) the sum payable by such Loan Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made (after taking into account any additional deduction, withholding or payment of any Indemnified Taxes on such increased payment); and (iv) within 30 days after the due date of payment of any Indemnified Tax which it is required by clause (ii) above to pay, the applicable Loan Party shall deliver to the Administrative Agent evidence satisfactory to the Administrative Agent and other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Evidence of Exemption From Withholding Tax. Any Lender (which term shall include the Issuing Bank for purposes of this Section 2.20(c)) that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to such Borrower and the Administrative Agent, at the time or times prescribed by applicable requirements of law and reasonably requested by such Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable requirements of law and any other information as will permit such payments to be made without withholding or at a reduced rate of withholding. If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers 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 Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of the foregoing sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Without limiting the generality of the foregoing, each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal

income tax purposes and that is a Lender to a U.S. Loan (a “Non-U.S. Lender”) (for this purpose, including any Commitment with respect thereto) shall, to the extent it is legally entitled to do so, deliver to the Administrative Agent for transmission to the Borrower Representative, on or prior to the Closing Date (and, in the case of each Lender listed on the signature pages of the First Amendment or Second Amendment, on or prior to the Restatement Date or Second Amendment Date, as applicable) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be prescribed by law or as may be necessary in the determination of the Borrower Representative or the Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN (claiming the benefits of any applicable income tax treaty), W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code or reasonably requested by the Borrower Representative or the Administrative Agent to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents or (ii) if such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code and is relying on the so-called “portfolio interest exemption,” a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code or reasonably requested by the Borrower Representative or the Administrative Agent to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Loan Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a “U.S. Lender”) shall deliver to the Administrative Agent and the Borrower Representative on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.20(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to the Administrative Agent and the Borrower Representative two new original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8IMY, W-8EXP and/or W-9 (or, in each case, any successor form), or a Certificate re Non-Bank Status, as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Borrower Representative or the Administrative Agent to confirm or establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to payments to such Lender under the Loan Documents, or notify the Administrative Agent and the Borrower Representative of its inability to deliver any such forms,

certificates or other evidence. No Borrower shall be required to pay any additional amount to any Non-U.S. Lender under Section 2.20(b)(iii) with respect to Indemnified Taxes imposed by reason of such Lender's failure (1) to deliver the forms, certificates or other evidence required by this Section 2.20(c) or (2) to notify the Administrative Agent and the Borrower Representative of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, that if such Lender shall have satisfied the requirements to deliver forms, certificates or other evidence under this Section 2.20(c) on the Restatement Date, the Second Amendment Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.20(c) shall relieve any Loan Party of its obligation to pay any additional amounts pursuant to this Section 2.20 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof that becomes effective after such date, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

(d) Without limiting the provisions of Section 2.20(b), each Loan Party shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law. Each Loan Party or the Borrower Representative shall deliver to the Administrative Agent official receipts or other evidence of such payment reasonably satisfactory to the Administrative Agent in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(e) If the Administrative Agent or a Lender (which term shall include the Issuing Bank for purposes of this Section 2.20(e)) receives a refund of any amount as to which a Borrower has made any payments pursuant to this Section 2.20, the Administrative Agent or such Lender shall pay over any such refund to such Borrower, net of such Lender's expenses and out-of-pocket costs; provided that such Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (including any applicable interest, fees and penalties) in the event that the Administrative Agent or such Lender is required to repay such refund to the relevant Governmental Authority.

(f) The Loan Parties shall jointly and severally indemnify the Administrative Agent and any Lender (which term shall include Issuing Bank for purposes of this Section 2.20(f)) for the full amount of Indemnified Taxes for which additional amounts are required to be paid pursuant to Section 2.20(b) and Other Taxes, in each case arising in connection with this Agreement or any other Loan Document (including any such Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) paid by the Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other 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 such Loan Party shall be conclusive absent manifest error. Such payment shall be due within 30 days of such Loan Party's receipt of such certificate.

**Section 2.21 Obligation to Mitigate.** Each Lender (which term shall include the Issuing Bank for purposes of this Section 2.21) agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section

2.18, 2.19 or 2.20, it shall, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions through another office of such Lender or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect the interests of such Lender in any material respect; provided, that such Lender shall not be obligated to utilize such other office pursuant to this Section 2.21 unless the Borrower Representative agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Borrower Representative pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower Representative (with a copy to the Administrative Agent) shall be conclusive absent manifest error. For the avoidance of doubt, nothing in this Section 2.21 shall relieve any Lender from its obligations pursuant to Section 2.20(c) of this Agreement.

**Section 2.22** **Defaulting Lenders**. Notwithstanding anything to the contrary contained in this Agreement, if any obligations of any Lender to purchase participations in or otherwise refinance or support any Swing Line Loans or Letters of Credit exist at the time any Lender having a Revolving Commitment becomes a Defaulting Lender (such Lender, a “Defaulting Revolving Lender”) then:

(a) all obligations of the applicable Defaulting Revolving Lender to purchase participations in or otherwise refinance or support such Swing Line Loans and Letters of Credit shall be reallocated among the non-Defaulting Revolving Lenders of the applicable Class in accordance with their respective Pro Rata Share thereof, but only to the extent (i) (x) with respect to U.S. Swing Line Loans and U.S. Letters of Credit, the sum of the non-Defaulting Revolving Lenders’ Pro Rata Shares of the Total Utilization of U.S. Revolving Commitments plus such Defaulting Revolving Lender’s Pro Rata Share of U.S. Revolving Exposure does not exceed the total of all non-Defaulting Revolving Lenders’ U.S. Revolving Commitments, (y) with respect to Canadian Swing Line Loans and Canadian Letters of Credit, the sum of the non-Defaulting Revolving Lenders’ Pro Rata Shares of the Total Utilization of Canadian Revolving Commitments plus such Defaulting Revolving Lender’s Pro Rata Share of Canadian Revolving Exposure does not exceed the total of all non-Defaulting Revolving Lenders’ Canadian Revolving Commitments and (z) with respect to European Letters of Credit, the sum of the non-Defaulting Revolving Lenders’ Pro Rata Shares of the Total Utilization of European Revolving Commitments plus such Defaulting Revolving Lender’s Pro Rata Share of European Revolving Exposure does not exceed the total of all non-Defaulting Revolving Lenders’ European Revolving Commitments and (ii) in each case, the conditions set forth in Section 3.02 are satisfied at such time; it being understood that no reallocation will be made with respect to any non-Defaulting Revolving Lender to the extent such reallocation causes such non-Defaulting Revolving Lender’s Pro Rata Share of the Total Utilization of U.S. Revolving Commitments, Total Utilization of Canadian Revolving Commitments or Total Utilization of European Revolving Commitments, as applicable, to exceed such Non-Defaulting

Lender's U.S. Revolving Commitment, Canadian Revolving Commitment or European Revolving Commitment, as applicable;

(b) if the reallocation described in Section 2.22(a) cannot, or can only partially, be effected, the applicable Borrower shall (i) first, within one Business Day following notice by the Administrative Agent, prepay any outstanding Swing Line Loans to the extent the obligations of the applicable Defaulting Revolving Lender to purchase participations in or otherwise refinance or support Swing Line Loans have not been reallocated pursuant to Section 2.22(a) and (ii) second, within three Business Days following notice by the Administrative Agent, Cash Collateralize such Defaulting Revolving Lender's Pro Rata Share of the obligations to purchase participations in or otherwise refinance or support Letters of Credit (after giving effect to any partial reallocation pursuant to Section 2.22(a)) for so long as such obligations are outstanding; and

(c) if the obligations of the applicable Defaulting Revolving Lender to purchase participations in or otherwise refinance or support Letters of Credit are reallocated among the non-Defaulting Revolving Lenders pursuant to Section 2.22(a), then the fees payable to the Lenders pursuant to Section 2.11 shall be adjusted in accordance with such non-Defaulting Revolving Lenders' Pro Rata Shares.

**Section 2.23 Removal or Replacement of a Lender.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "Increased-Cost Lender") shall give notice to the Borrower Representative that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after the Borrower Representative's request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) such Defaulting Lender's default remains in effect and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days thereafter; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.05(b), the consent of Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each, a "Non-Consenting Lender") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the "Terminated Lender"), the Borrower Representative may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Commitments, if any, in full to one or more Eligible Assignees (each, a "Replacement Lender") in accordance with the provisions of Section 10.06 and the applicable Borrower shall pay the fees, if any, payable thereunder in connection with any such assignment from an Increased-Cost Lender, a Non-Consenting Lender or a Defaulting Lender; provided, that (1) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings on Letters of Credit that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11, such amounts to be calculated based on the Dollar Equivalent thereof with respect

to the U.S. Term Loans, U.S. Revolving Commitments or Canadian Revolving Commitments and based on the Euro Equivalent thereof with respect to the European Revolving Commitments; (2) on the date of such assignment, the applicable Borrower shall pay any amounts payable to such Terminated Lender pursuant to [Section 2.18\(c\)](#), [2.19](#) or [2.20](#) or otherwise as if it were a prepayment and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; provided, that the applicable Borrower may not make such election with respect to any Terminated Lender that is also the Issuing Bank unless, prior to the effectiveness of such election, the applicable Borrower shall have caused each outstanding Letter of Credit issued thereby to be cancelled, replaced or Cash Collateralized. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Revolving Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, that any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if a Borrower exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with [Section 10.06](#). In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs the Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with [Section 10.06](#) on behalf of a Terminated Lender and any such documentation so executed by the Administrative Agent shall be effective for purposes of documenting an assignment pursuant to [Section 10.06](#).

**Section 2.24 Incremental Facilities.** The Borrower Representative may by written notice to the Administrative Agent at any time after the ~~Restatement~~[Second Amendment](#) Date elect to request (A) prior to the Revolving Commitment Termination Date, an increase to the existing Revolving Commitments (any such increase, the "[Incremental Revolving Commitments](#)") and/or (B) the establishment of one or more new term loan commitments (the "[Incremental Term Loan Commitments](#)"), by an aggregate amount not to exceed (1) the sum of (x) \$1,350,000,000 plus (y) the aggregate amount of all voluntary prepayments of Term Loans and Revolving Loans pursuant to [Section 2.13\(a\)](#) (to the extent, in the case of voluntary prepayments of Revolving Loans, there is an equivalent permanent reduction of the Revolving Commitments pursuant to [Section 2.13\(b\)](#)), plus (z) the aggregate amount of Revolving Commitments of any Lender that was a Defaulting Lender that have been terminated, plus (2) an additional unlimited amount so long as, after giving *pro forma* effect to the incurrence of such Incremental Revolving Commitments and/or Incremental Term Loan Commitments and the consummation of any Investment or acquisition, repayment of any Indebtedness or payment or making of any Restricted Payment with the Net Cash Proceeds thereof (assuming a borrowing of the maximum amount of Loans available thereunder, but otherwise excluding the Net Cash Proceeds of any such Incremental Term Loan Commitments or Incremental Revolving Commitments), the Senior Secured Net Leverage Ratio would not exceed 3.00:1.00, and, in each case, not less than \$25,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser amount that shall constitute the maximum amount then permitted to be incurred pursuant to [clauses \(1\) and \(2\)](#) above on such date of determination), and integral multiples of \$10,000,000 in excess of that amount ([it being understood, notwithstanding anything to the contrary set forth herein or in any other Loan Document, that in](#)

no event shall the Second Amendment Incremental Tranche A Term Loans count against or otherwise reduce the amount set forth in sub-clause (1)(x) above, and that the incurrence of the Second Amendment Incremental Tranche A Term Loans shall be deemed permitted by the terms of this Agreement). Each such notice shall specify (A) the date (each, an “Increased Amount Date”) on which the Borrower Representative proposes that the Incremental Revolving Commitments or Incremental Term Loan Commitments, as applicable, shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, an “Incremental Revolving Loan Lender” or “Incremental Term Loan Lender”, as applicable) to whom the Borrower Representative proposes any portion of such Incremental Revolving Commitments or Incremental Term Loan Commitments, as applicable, be allocated and the amounts of such allocations; provided that the Administrative Agent may elect or decline to arrange such Incremental Revolving Commitments or Incremental Term Loan Commitments in its sole discretion and any Lender approached to provide all or a portion of the Incremental Revolving Commitments or Incremental Term Loan Commitments may elect or decline, in its sole discretion, to provide an Incremental Revolving Commitment or an Incremental Term Loan Commitment. Such Incremental Revolving Commitments or Incremental Term Loan Commitments shall become effective as of such Increased Amount Date; provided that: (1) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to such Incremental Revolving Commitments or Incremental Term Loan Commitments, as applicable; (2) both before and after giving effect to the incurrence of such Incremental Revolving Commitments and/or Incremental Term Loan Commitments, each of the conditions set forth in Section 3.02 shall be satisfied; (3) the U.S. Borrower shall be in *pro forma* compliance with each of the covenants set forth in Section 6.07 as of the last day of the most recently ended Fiscal Quarter after giving effect to such Incremental Revolving Commitments or Incremental Term Loan Commitments, as applicable, and the consummation of any Investment or acquisition, repayment of any Indebtedness or payment or making of any Restricted Payment with the Net Cash Proceeds thereof (assuming a borrowing of the maximum amount of Loans available thereunder, but otherwise excluding the Net Cash Proceeds of any such Incremental Term Loan Commitments or Incremental Revolving Commitments); (4) the Incremental Revolving Commitments or Incremental Term Loan Commitments, as applicable, shall be effected pursuant to one or more Joinder Agreements executed and delivered by the applicable Borrower, the Incremental Revolving Loan Lender or Incremental Term Loan Lender, as applicable, and the Administrative Agent, and each of which shall be recorded in the Register and each Incremental Revolving Loan Lender and Incremental Term Loan Lender shall be subject to the requirements set forth in Section 2.20(c); (5) the applicable Borrower shall make any payments required pursuant to Section 2.18(c) in connection with the Incremental Revolving Commitments; (6) the applicable Borrower shall deliver or cause to be delivered any legal opinions or other documents (including modifications of Mortgages and title insurance endorsements or policies) as reasonably requested by the Administrative Agent in connection with any such transaction; and (7) the applicable Borrower shall have paid all fees and expenses owing to the Agents and the Lenders in respect of such Incremental Revolving Commitments or Incremental Term Loan Commitments; provided that, to the extent the proceeds of any Incremental Term Loans are being used to finance a Permitted Acquisition or other Investment permitted hereunder, with the consent of the Borrower Representative and the applicable Incremental Term Loan Lender(s), clauses (1) and (2) above shall not apply so long as on the date of the incurrence of such Incremental Term Loans, the Specified Representations shall be true and correct in all material respects as of the date of such incurrence

except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date; (it being understood that to the extent any such representation and warranty is already qualified by materiality or material adverse effect, such representation and warranty will be true and correct in all respects). Any Incremental Term Loans made on an Increased Amount Date shall be designated a separate series (a “Series”) of Incremental Term Loans for all purposes of this Agreement.

On any Increased Amount Date on which Incremental Revolving Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (a) each of the Lenders with Revolving Commitments of the same Class shall assign to each of the Incremental Revolving Loan Lenders, and each of the Incremental Revolving Loan Lenders shall purchase from each of such Lenders, at the principal amount thereof (together with accrued interest), such interests in the applicable Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Lenders with Revolving Commitments of the same Class and Incremental Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such Incremental Revolving Commitments to the Revolving Commitments of the applicable Class, (b) each Incremental Revolving Commitment shall be deemed for all purposes a Revolving Commitment of the applicable Class and each Loan made thereunder (an “Incremental Revolving Loan”) shall be deemed, for all purposes, a Revolving Loan of the applicable Class and (c) each Incremental Revolving Loan Lender shall become a Lender with respect to the Incremental Revolving Commitment and all matters relating thereto. In addition, each Revolving Loan Lender agrees that the Administrative Agent may (subject to the consent of the Borrower Representative) take such additional actions as it deems reasonably necessary to effect the foregoing and such other adjustments to ensure that the U.S. Revolving Exposure, European Revolving Exposure, or Canadian Revolving Exposure, as applicable, is allocated ratably in accordance with the applicable Revolving Commitments after giving effect to the addition of such Incremental Revolving Commitments.

On any Increased Amount Date on which any Incremental Term Loan Commitments of any Series are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each Incremental Term Loan Lender of any Series shall make a Loan to the U.S. Borrower (an “Incremental Term Loan”) in an amount equal to its Incremental Term Loan Commitment of such Series and (ii) each Incremental Term Loan Lender of any Series shall become a Lender hereunder with respect to the Incremental Term Loan Commitment of such Series and the Incremental Term Loans of such Series made pursuant thereto.

The Administrative Agent shall notify the Lenders promptly upon receipt of the Borrower Representative’s notice of each Increased Amount Date and in respect thereof (x) the Incremental Revolving Commitments and the Incremental Revolving Loan Lenders or the Series of Incremental Term Loan Commitments and the Incremental Term Loan Lenders of such Series, as applicable and (y) in the case of each notice to any applicable Lender with Revolving Commitments, the respective interests in such Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section 2.24.

The terms and provisions of the Incremental Term Loans and Incremental Term Loan Commitments of any Series shall be, except as otherwise set forth herein or in the Joinder Agreement,

identical to the Tranche **BA** Term Loans. The terms and provisions of the Incremental Revolving Loans shall be identical to the Revolving Loans of the same Class. In the case of any Incremental Term Loans, (i) the Weighted Average Life to Maturity of all Incremental Term Loans of any Series shall be no shorter than the Weighted Average Life to Maturity of the Tranche **BA** Term Loans, (ii) the applicable Incremental Term Loan Maturity Date of each Series shall be no earlier than the final maturity of the Tranche **BA** Term Loans, and (iii) the yield and all other terms applicable to the Incremental Term Loans of each Series shall be determined by the Borrower Representative and the applicable new Lenders and shall be set forth in each applicable Joinder Agreement; provided, however, that the yield applicable to the Incremental Term Loans of any Series (after giving effect to all rate floors and all fees or original issue discount payable to all Incremental Term Loan Lenders with respect to such Incremental Term Loans) made within ~~126~~ months after the ~~Restatement~~**Second Amendment** Date, as reasonably determined by the Administrative Agent, shall not be greater than the applicable interest rate (including the Applicable Margin and rate floor) payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to the Tranche **BA** Term Loans, plus 0.50% *per annum* unless ~~(i)~~ the interest rate with respect to the Tranche **BA** Term Loans is increased so as to cause the then applicable interest rate under this Agreement on the Tranche **BA** Term Loans to be not more than 0.50% less than the yield then applicable to the Incremental Term Loans of such Series (after giving effect to all rate floors and all fees or original issue discount payable to all Incremental Term Loan Lenders with respect to such Incremental Term Loans) ~~and (ii) the interest rate with respect to Tranche A Term Loans is increased by an amount equal to the amount of any increase in the interest rate for Tranche B Term Loans pursuant to clause (i).~~ Any Incremental Revolving Loans will be documented solely as an increase to the Revolving Commitments of the same Class without any change in terms, other than any change that is more favorable to the Revolving Lenders and applies equally to all Revolving Loans and Revolving Commitments of the same Class. Each Joinder Agreement may, without the consent of any Lender other than the applicable Incremental Revolving Loan Lender or Incremental Term Loan Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent to effect the provisions of this Section 2.24.

**Section 2.25 Appointment of Borrower Representative.** Each Borrower hereby appoints the Borrower Representative as its agent, attorney-in-fact and representative for the purpose of (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to Borrowers under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by Borrowers under this Agreement, and (iv) all other purposes incidental to any of the foregoing. Each Borrower agrees that any action taken by the Borrower Representative as the agent, attorney-in-fact and representative of the Borrowers shall be binding upon each Borrower to the same extent as if directly taken by such Borrower.

**Section 2.26 Ancillary Facilities.**

(a) Type of Facility. An Ancillary Facility may be by way of: (i) an overdraft facility; (ii) a guarantee, bonding, documentary or stand-by letter of credit facility; (iii) a term loan facility; (iv) a derivatives facility; (v) a foreign exchange facility; or (vi) any other facility or accommodation reasonably necessary or useful in connection with the business of the Group or any member thereof and which is agreed by the Borrower Representative with an Ancillary Lender.

(b) Availability.

(i) If the European Borrower or any other Ancillary Borrower and a Lender agree and except as otherwise provided in this Agreement, such Lender may provide an Ancillary Facility on a bilateral basis in place of all or part of that Lender's unutilized European Revolving Commitment (which, except for the purposes of determining the Required Lenders and for the purpose of Section 2.23, shall be reduced by the amount of the Ancillary Commitment under that Ancillary Facility).

(ii) An Ancillary Facility shall not be made available unless, not later than five Business Days prior to the Ancillary Commencement Date for such Ancillary Facility, the Administrative Agent has been notified in writing by the Borrower Representative that such Ancillary Facility has been established and specifying (1) the proposed Ancillary Commencement Date and expiration date of the Ancillary Facility; (2) the proposed type of Ancillary Facility to be provided; (3) the proposed Ancillary Lender and Ancillary Borrower; (4) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account, its maximum gross amount (that amount being the "Designated Gross Amount") and its maximum net amount (that amount being the "Designated Net Amount"); and (5) the proposed currency of the Ancillary Facility (if not denominated in Euros).

(iii) The Administrative Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility. Subject to compliance with clause (b)(ii) above, (x) the Lender concerned will become an Ancillary Lender and (y) the Ancillary Facility will be available, with effect from the date agreed by the Borrower Representative, the applicable Ancillary Borrower and the Ancillary Lender.

(iv) No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Lender other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Section 2.26). In such a case, the provisions of this Agreement with regard to amendments and waivers will apply.

(c) Terms of Ancillary Facilities.

(i) Except as provided below, the terms of any Ancillary Facility will be those agreed by the applicable Ancillary Lender and the applicable Ancillary Borrower; provided that such terms (1) must be based upon normal commercial terms at that time (except as varied by this Agreement); (2) may allow only the applicable Ancillary Borrower to use the Ancillary Facility; (3) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment; (4) may not allow the Ancillary Commitment of a Lender to exceed the European Revolving Commitment of that Lender; and (5) shall require that the Ancillary Commitment shall be reduced to zero, and that all Ancillary Outstandings shall be repaid (or cash collateralized in a manner acceptable to the applicable Ancillary Lender) not later

than the European Revolving Commitment Termination Date (or such earlier date as the European Revolving Commitment of the relevant Ancillary Lender is reduced to zero).

(ii) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (x) Sections 2.08(d), 2.08(g), and 2.11(d) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility; (y) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to the extent required to permit the netting of balances on those accounts; and (z) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.

(iii) Interest, commission and fees on Ancillary Facilities are dealt with in Sections 2.08(h) and 2.11(e).

(d) Repayment of Ancillary Facility.

(i) An Ancillary Facility shall cease to be available on the European Revolving Commitment Termination Date or such earlier date on which its expiration occurs or on which it is cancelled in accordance with the terms of this Agreement or the applicable Ancillary Facility.

(ii) If an Ancillary Facility expires in accordance with its terms, the Ancillary Commitment of the Ancillary Lender shall be reduced to zero (and such Lender's European Revolving Commitment shall be increased accordingly).

(iii) No Ancillary Lender may demand repayment or prepayment of any amounts or demand cash collateralization for any liabilities made available or incurred by it under its Ancillary Facility (except where the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit) unless (x) the European Revolving Commitments have been cancelled in full, or all outstanding European Revolving Loans have become due and payable in accordance with the terms of this Agreement, or the Administrative Agent has declared all outstanding European Revolving Loans immediately due and payable, or the expiration date of the Ancillary Facility occurs; (y) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility; or (z) the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a European Revolving Loan and the Ancillary Lender gives sufficient notice to enable a European Revolving Loan to be made to refinance those Ancillary Outstandings.

(iv) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in clause (d)(iii)(z) above can be refinanced by a European Revolving Loan, (x) the European Revolving Commitment of the Ancillary Lender will be increased by the amount of its Ancillary Commitment; and (y) the European

Revolving Loan may (so long as clause (d)(iii)(x) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether the European Borrower or the Borrower Representative shall have delivered a Borrowing Notice.

(v) On the making of a European Revolving Loan to refinance Ancillary Outstandings, (x) each Lender will participate in such European Revolving Loan on a *pro rata* basis in accordance with its respective European Revolving Commitment (as determined by the Administrative Agent); and (y) the relevant Ancillary Facility shall be cancelled.

(vi) In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to applicable regulatory authorities as netted for capital adequacy purposes.

(e) Ancillary Outstandings. Each Ancillary Borrower and each Ancillary Lender agrees with and for the benefit of each Lender that (i) the Ancillary Outstandings under any Ancillary Facility provided by that Ancillary Lender shall not exceed the Ancillary Commitment applicable to that Ancillary Facility and where the Ancillary Facility is an overdraft facility comprising more than one account, Ancillary Outstandings under that Ancillary Facility shall not exceed the Designated Net Amount in respect of that Ancillary Facility; and (ii) where all or part of the Ancillary Facility is an overdraft facility comprising more than one account, the Ancillary Outstandings (calculated on the basis that the words in parentheses in paragraph (a) of the definition thereof were deleted) shall not exceed the Designated Gross Amount applicable to that Ancillary Facility.

(f) Information. Each Ancillary Borrower and each Ancillary Lender shall, promptly upon request by the Administrative Agent, supply the Administrative Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Administrative Agent may reasonably request from time to time. The Ancillary Borrowers consents to all such information being released to the Administrative Agent and the Lenders.

(g) European Revolving Facility Commitment Amounts. Notwithstanding any other term of this Agreement, each Lender shall ensure that at all times its European Revolving Commitment (excluding for these purposes any reduction in a Lender's European Revolving Commitment attributable to the relevant Ancillary Commitment) is not less than its Ancillary Commitment.

(h) Affiliates of Lenders as Ancillary Lenders.

(i) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender having a European Revolving Commitment of the relevant Lender.

(ii) To become an Ancillary Lender hereunder, an Affiliate of a Lender must be designated in the notice required in respect of the applicable Ancillary Facility pursuant to Section 2.26(b)(ii) hereof or otherwise in a writing signed by an Authorized Officer of the applicable Ancillary Borrower and delivered to the Administrative Agent, and shall deliver to the Administrative Agent such documentation as the Administrative Agent shall reasonably require.

(iii) Each Lender shall ensure that each of its Affiliates that becomes an Ancillary Lender will comply with any obligations imposed upon it pursuant to this Agreement. Where this Agreement imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to this Agreement, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

(i) Closing Date Ancillary Facilities. The parties agree, notwithstanding anything herein to the contrary, that each Closing Date Ancillary Facility shall be an Ancillary Facility, each borrower thereunder shall be an Ancillary Borrower and each lender thereunder shall be an Ancillary Lender, in each case for all purposes hereunder, for so long as the applicable Ancillary Facility is outstanding.

**ARTICLE III.  
CONDITIONS PRECEDENT**

**Section 3.01 Closing Date.** The obligation of each Lender to make a Credit Extension under the Credit Agreement on the Closing Date became effective on the date on which each of the conditions set forth in this Section 3.01 was satisfied (or waived in accordance with Section 10.05), which date was February 13, 2013. All capitalized terms used in this Section 3.01, and all Section references used in this Section 3.01, shall have the meanings assigned to such terms in, and refer to Sections of, the Original Credit Agreement.

(a) Loan Documents. The Administrative Agent shall have received each of the Credit Agreement, the U.S. Security Agreements, the CKI Intercreditor Joinder Agreement, the 2023 Debentures Intercreditor Agreement and the Intellectual Property Security Agreements, in each case, executed and delivered by each applicable Loan Party.

(b) Organizational Documents; Incumbency. The Administrative Agent shall have received in relation to each Loan Party (1) copies of each Organizational Document and, to the extent applicable, certified as of a recent date by the appropriate governmental official; (2) corporate or entity certificates incorporating, without limitation, signature and incumbency certificates of the officers, managers, members and/or directors of such Person executing the Loan Documents to

which it is a party; (3) to the extent applicable, resolutions of the Board of Directors (which, in the case of each European Loan Party, shall be its board of managing directors) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified (to the extent required under applicable law or customary in accordance with local law or practice) as of the Closing Date by its secretary, its assistant secretary, director or any other competent officer or appropriate person as being in full force and effect without modification or amendment; (4) to the extent required under applicable law, the relevant entity's Organizational Documents or internal regulations or, customary in accordance with local law or practice, a copy of resolutions from the general meeting of shareholders or its partners approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (5) to the extent required under applicable law or customary in accordance with local law or practice, a good standing certificate from the applicable Governmental Authority of its jurisdiction of incorporation, organization or formation, dated a recent date prior to the Closing Date.

(c) Representations and Warranties. The Acquisition Agreement Representations shall be true and correct in all respects on the Closing Date and the Specified Representations shall be true and correct in all material respects on the Closing Date (except for Specified Representations already qualified by materiality or material adverse effect, which Specified Representations will be true and correct in all respects).

(d) Existing Indebtedness. The Administrative Agent shall have received customary payoff letters and security releases confirming the repayment in full of (1) the Indebtedness outstanding under the Existing PVH Credit Agreement and (2) any U.S. secured indebtedness of the Acquired Business that the U.S. Borrower elects to repay in connection with the Closing Date Transactions and the termination or release of all liens and security interests related thereto.

(e) Collateral.

(1) The Collateral Agent shall have received all certificates representing securities pledged under the U.S. Pledge and Security Agreement to the extent certificated, accompanied by instruments of transfer and undated stock powers endorsed in blank;

(2) All Uniform Commercial Code or other applicable personal property and financing statements reasonably requested by the Collateral Agent to be filed, registered or recorded to perfect the Liens intended to be created by any Security Document shall have been delivered to the Collateral Agent for filing, registration or recording;

(3) The U.S. Borrower shall deliver to the Collateral Agent a completed Perfection Certificate, executed and delivered by an Authorized Officer of each U.S. Loan Party, together with all attachments contemplated thereby;

(4) The Collateral Agent shall have received the results of a recent lien search in each of the jurisdictions in which UCC financing statements or other filings or recordations are necessary to evidence or perfect security interests in all assets of the U.S. Loan Parties and such lien search shall reveal no Liens on any of the assets of the U.S. Loan Parties, except for Liens permitted by Section 6.02 or Liens to be discharged on or prior to the Closing Date; and

(5) The Collateral Agent shall have received fully executed Intellectual Property Security Agreements, in proper form for filing or recording in the United States Copyright Office or the United States Patent and Trademark Office, as applicable, memorializing and recording the encumbrance of the registrations and applications for United States Trademarks, Copyrights and Patents listed in Schedules II.B.1, II.B.2 and II.B.3 of the Perfection Certificate (including Exhibits B-1, B-2 and B-3 thereto, but excluding, for the avoidance of doubt, those Trademarks, Copyrights and Patents, if any, in the name of the CKI Trust);

provided, however, that to the extent any security interest in the intended Collateral or any deliverable related to the perfection of security interests in the intended Collateral (other than any Collateral the security interest in which may be perfected by the filing of a UCC financing statement, by intellectual property filings with the United States Patent and Trademark Office or the United States Copyright Office or by the possession of stock certificates (or equivalent certificated equity interests) of U.S. Subsidiaries of the U.S. Borrower), is not or cannot be provided and/or perfected on the Closing Date (1) without undue burden or expense or (2) after the U.S. Borrower's use of commercially reasonable efforts to do so, then the provision and/or perfection of such security interest(s) or deliverable shall not constitute a condition precedent to the obligation of any Lender to make a Credit Extension on the Closing Date, but shall be required to be delivered within no later than 90 days after the Closing Date (or such later date as may be reasonably agreed by the Administrative Agent).

(f) Financial Statements. The Administrative Agent shall have received from the U.S. Borrower (1) the Historical Financial Statements of the U.S. Borrower and the Historical Financial Statements of the Acquired Business and (2) (a) a *pro forma* consolidated statement of income of the U.S. Borrower and its Subsidiaries for the Fiscal Year ended January 29, 2012, (b) (x) a *pro forma* consolidated balance sheet of the U.S. Borrower and its Subsidiaries as of the last day of the Fiscal Quarter ended October 28, 2012 and (y) a *pro forma* consolidated statement of income of the U.S. Borrower and its Subsidiaries for the nine-month period ended on October 28, 2012, together with, in the case of this clause (y), a corresponding statement for the corresponding period of the prior year and (c) a *pro forma* consolidated income statement for the twelve-month period ended on October 28, 2012, in each case prepared after giving effect to the Closing Date Transactions as if the Closing Date Transactions had occurred as of such date or at the beginning of such period, as applicable; it being acknowledged and agreed that the U.S. Borrower's or the Acquired Business's, as applicable, filing of any (a) required audited financial statements with respect to the U.S. Borrower or the Acquired Business, as applicable, on Form 10-K or (b) required unaudited financial statements with respect to the U.S. Borrower or the Acquired Business, as applicable, on Form 10-Q, in each case, satisfies the requirements under clause (1) of this Section 3.01(f).

(g) Opinions of Counsel to Loan Parties. The Agents and the Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of Wachtell, Lipton, Rosen & Katz, as New York counsel to the Loan Parties, Prickett, Jones & Elliot, P.A., as Delaware counsel to the Loan Parties, Katten Muchin Rosenman LLP, as California counsel to the Loan Parties, Fennemore Craig Jones Vargas, as Nevada counsel to the Loan Parties, De Brauw Blackstone Westbroek New York B.V., P.C., as Dutch counsel to the Loan Parties, Loyens & Loeff (USA) B.V., as Dutch counsel to the Administrative Agent, the Lenders and the other Secured Parties, Mark D. Fischer, as general counsel of the U.S. Loan Parties, Angela Kranz, as general counsel of the European Loan Parties and Jay Dubiner, as general counsel of the Acquired Business and its Subsidiaries, in each case as to such matters as are customary for financings of this type, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to the Administrative Agent (and each Loan Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders).

(h) Fees. The U.S. Borrower shall have paid all fees and reasonable expenses (including, without limitation, legal fees and expenses) of the Arrangers, the Administrative Agent and the Lenders as and to the extent (1) required pursuant to the terms of the Commitment Letter and that certain amended and restated fee letter, dated November 20, 2012, between the Arrangers, the Bookrunners and the U.S. Borrower and (2) invoiced to the U.S. Borrower at least two Business Days prior to the Closing Date.

(i) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the U.S. Borrower in the form of Exhibit E-2.

(j) Closing Date Certificate. The Borrower Representative shall have delivered to the Administrative Agent an executed Closing Date Certificate, together with all attachments thereto, and which shall include certifications to the effect that:

(i) (1) except as set forth in the Filed Company SEC Documents (as defined in the Acquisition Agreement as in effect on October 29, 2012) (excluding any disclosures in the Filed Company SEC Documents that are set forth under the headings “Risk Factors” or disclosure of risks set forth in any “forward-looking statements” disclaimer or any other statements that are similarly cautionary, nonspecific or predictive in nature; it being understood that any factual information contained within such headings, disclosure or statements shall not be excluded) or in the Warnaco Disclosure Letter (as defined in the Acquisition Agreement as in effect on October 29, 2012), from January 1, 2012 to the date of the Acquisition Agreement, there has not occurred any fact, circumstance, effect, change, event or development that, individually or in the aggregate, has had or would reasonably be expected to have a Warnaco Material Adverse Effect and (2) during the period from the date of the Acquisition Agreement to the Closing Date, there shall not have occurred any fact, circumstance, effect, change, event or development that, individually or in the aggregate, has had or would reasonably be expected to have a Warnaco Material Adverse Effect;

(ii) each of the conditions precedent described in this Section 3.01 shall have been satisfied on the Closing Date (except that no opinion need be expressed as to

Administrative Agent's or Required Lenders' satisfaction with any document, instrument or other matter); and

(iii) the Acquisition shall have been consummated or will be consummated substantially concurrently with the initial funding hereunder in accordance with the Acquisition Agreement and no amendment, modification or waiver of any term thereof that is materially adverse to any interest of the Arrangers or the Lenders shall have been made or granted, as the case may be, without the written consent of at least two Arrangers.

(k) Bank Regulatory Information. To the extent requested in writing to the U.S. Borrower at least 10 Business Days prior to the Closing Date, the Lenders shall have received at least five days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

### **Section 3.02 Conditions to Each Credit Extension**

(a) Conditions Precedent. The obligation of each Lender to make any Loan, or each Issuing Bank to issue any Letter of Credit, on any Credit Date (including with respect to the obligation of each Lender to make a Term Loan on the ~~Restatement~~Second Amendment Date but except with respect to incurrence of Incremental Term Loan Commitments, as provided in the applicable Joinder Agreement), are subject to the satisfaction, or waiver in accordance with Section 10.05, of the following conditions precedent:

(i) the Administrative Agent shall have received a fully executed and delivered Borrowing Notice or Issuance Notice, as the case may be;

(ii) with respect to the making of any Revolving Loan, after making the Credit Extensions requested on such Credit Date, (x) the Total Utilization of U.S. Revolving Commitments shall not exceed the U.S. Revolving Commitments then in effect, (y) the Total Utilization of European Revolving Commitments shall not exceed the European Revolving Commitments then in effect and (z) the Total Utilization of Canadian Revolving Commitments shall not exceed the Canadian Revolving Commitments then in effect, in each case, as applicable;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided, that to the extent any such representation or warranty is already qualified by materiality or Material Adverse Effect, such representation or warranty shall be true and correct in all respects; and

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute a Default or an Event of Default.

(b) Notices. Any Notice shall be executed by an Authorized Officer of the Borrower Representative or the applicable Borrower in a writing delivered to the Administrative Agent.

**Section 3.03 Restatement Date**. This Agreement ~~shall become~~became effective on ~~and as of the first Business Day when each of the conditions set forth in Section 3 of the First Amendment shall have been satisfied~~the Restatement Date.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and the Issuing Bank to enter into this Agreement and to make each Credit Extension to be made thereby, each Borrower and each other Loan Party (in the case of each Loan Party, solely with respect to itself) represents and warrants to each Lender and the Issuing Bank, on the Closing Date and on each Credit Date that the following statements are true and correct:

**Section 4.01 Organization; Requisite Power and Authority; Qualification**. Each Group Member (a) is duly organized, duly incorporated or formed, (b) is validly existing and, if applicable, in good standing under the laws of its jurisdiction of organization, (c) has all requisite power and authority (i) to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby and (ii) except where failure to have such power and authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to own and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted, and (d) is qualified to do business and, if applicable, in good standing in every jurisdiction where any material portion of its assets are located and wherever necessary to carry out its material business and operations, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 4.02 Equity Interests and Ownership**. The Equity Interests of each Group Member have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth on Schedule 4.02, as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement to which any Group Member is a party requiring, and there is no membership interest or other Equity Interests of any Group Member outstanding which upon conversion or exchange would require, the issuance by any Group Member of any additional membership interests or other Equity Interests of any Group Member or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Group Member. Schedule II.A.1 of the Perfection Certificate delivered on the Closing Date sets forth the ownership interest of each Group Member in its respective Subsidiaries as of the Closing Date after giving effect to the Acquisition.

**Section 4.03 Due Authorization**. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of each such Loan Party.

**Section 4.04 No Conflict.** The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to any such Loan Party, (ii) any of the Organizational Documents of any such Loan Party or (iii) any order, judgment or decree of any court or other agency of government binding on such Loan Party, except in the case of each of clauses (a)(i) and (a)(iii) to the extent any such violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of such Loan Party except to the extent such conflict, breach or default would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of such Loan Party (other than any Permitted Liens); or (d) require any approval or consent of the stockholders, members or partners, except for such approvals or consents which have been obtained and except for any such approvals or consents the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 4.05 Governmental Consents.** The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the incurrence by the Loan Parties of their Obligations thereunder, the issuance of Letters of Credit and the granting of security with respect to their Obligations thereunder do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for (i) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing and/or recordation, as of or after the Closing Date, (ii) those that have been obtained or made and are in full force and effect and (iii) those the failure of which to obtain or make, would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 4.06 Binding Obligation.** Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and, assuming due execution by each of the other parties to such Loan Document, is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by (i) public policy or bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally, (ii) equitable principles relating to enforceability (whether considered at a proceeding in law or in equity) or (iii) any general rules of law referred to in any legal opinion provided to any Agent or any Lender (or its respective counsel) with respect to such Loan Document pursuant to this Agreement or any other Loan Document.

**Section 4.07 Historical Financial Statements.** The Historical Financial Statements of the U.S. Borrower (and, to the knowledge of any Authorized Officer of the U.S. Borrower, the Historical Financial Statements of the Acquired Business) were prepared in conformity with GAAP and fairly present, in all material respects, the consolidated financial position, of the U.S. Borrower and its consolidated Subsidiaries and the Acquired Business and its consolidated Subsidiaries, respectively, as of the dates thereof and their consolidated results of operations and cash flows, for

the periods then ended. As of the Closing Date, no Group Member has any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements of the U.S. Borrower or the Historical Financial Statements of the Acquired Business, respectively, or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or financial condition of the Group taken as a whole.

**Section 4.08 Projections.** On and as of the Closing Date, the projections of the Group for Fiscal Year 2013 and each Fiscal Year thereafter through and including Fiscal Year 2018 provided to the Lenders in the Confidential Information Memorandum (or supplement thereto) (the “Projections”) are based on good faith estimates by the management of the U.S. Borrower and the assumptions set forth therein; provided, that the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material.

**Section 4.09 No Material Adverse Change.** Since ~~February 3, 2013~~, January 31, 2016, no event, circumstance or change has occurred that has caused, either individually or in the aggregate, a Material Adverse Effect.

**Section 4.10 Adverse Proceedings, Etc.** There are no Adverse Proceedings pending or, to the knowledge of any Authorized Officer of any Borrower, threatened in writing, individually or in the aggregate, that would reasonably be expected to have a Material Adverse Effect. No Group Member (a) is in violation of any applicable laws (but excluding any Environmental Laws, which are subject to Section 4.13) that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (b) is in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**Section 4.11 Payment of Taxes.** All material Tax returns and reports of the Group required to be filed by any of them have been accurately and timely filed, and all material Taxes due and payable and all assessments, fees, Taxes and other governmental charges upon any Group Members and their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, except Taxes that are being contested in good faith by appropriate proceedings and for which reserves or other appropriate provisions, if any, have been made in accordance with GAAP.

**Section 4.12 Properties.**

(a) Title. Each Group Member has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in Material Intellectual Property) and (iv) good title to (in the case of all other personal property) all of their respective properties and assets reflected in the Historical Financial Statements of the U.S. Borrower or, to the knowledge of any Authorized Officer of the U.S. Borrower, the Historical Financial

Statements of the Acquired Business, as applicable, referred to in Section 4.07 and in the most recent financial statements delivered pursuant to Section 5.01, in each case except for (A) assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.08, (B) minor defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes or (C) where the failure to have such title, interest or rights would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens other than Permitted Liens.

(b) **Real Estate.** As of the Closing Date, Schedule 4.12 contains a true and complete list of all Material Real Estate Assets (other than retail store locations) and a description of each material lease or sublease affecting each Closing Date Mortgaged Property of any Loan Party, of which such Loan Party is the landlord.

(c) **Flood Zone Properties.** As of the Restatement Date, no Mortgage in effect as of the Restatement Date encumbers improved real property that is, as of the Restatement Date, located in a Flood Zone (except any such property as to which flood insurance has been obtained and is in full force and effect as required by this Agreement).

**Section 4.13 Environmental Matters.** Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) each Group Member is in compliance with all applicable Environmental Laws; (b) each Group Member has obtained and maintained in full force and effect all Governmental Authorizations required pursuant to Environmental Laws for the operation of their respective business; (c) there are no conditions, occurrences, violations of Environmental Law, or presence or Releases of Hazardous Materials which would reasonably be expected to form the basis of an Environmental Claim against any Group Member or related to any Real Estate Assets; (d) there are no pending Environmental Claims against any Group Member, and no Group Member has received any written notification of any alleged violation of, or liability pursuant to, Environmental Law or responsibility for the Release or threatened Release of, or exposure to, any Hazardous Materials; and (e) no Lien (other than a Permitted Lien) imposed pursuant to any Environmental Law has attached to any Collateral and, to the knowledge of any Authorized Officer of any Borrower, no conditions exist that would reasonably be expected to result in the imposition of such a Lien on any Collateral.

**Section 4.14 No Defaults.** No Group Member is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, except where the consequences, direct or indirect, of such default or defaults, if any, would not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would reasonably be expected to occur as a result of any Credit Extension or performance of any transaction under the Loan Documents.

**Section 4.15 Governmental Regulation.** No Group Member is subject to regulation under the Investment Company Act of 1940. No Group Member is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

**Section 4.16 Margin Stock.** No Group Member is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying

any Margin Stock. No part of the proceeds of the Loans 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 or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors.

**Section 4.17 Employee Benefit Plans.** Each Group Member and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, other than as would not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, in each case, other than as would not reasonably be expected to have a Material Adverse Effect. No material liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan (other than in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by any Group Member or any of their respective ERISA Affiliates with respect to any Employee Benefit Plan. No ERISA Event or Foreign Plan Event has occurred or is reasonably expected to occur where such ERISA Event or Foreign Plan Event would reasonably be expected to have a Material Adverse Effect. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by any Group Member or any of their respective ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan) did not exceed the aggregate current fair market value of the assets of such Pension Plan, where such circumstance would reasonably be expected to have a Material Adverse Effect. As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Group and its ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, does not exceed \$25,000,000. Each Group Member and each of their ERISA Affiliates have materially complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan. To the extent applicable, each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, rules, regulations and orders of any Governmental Authority and has been maintained, where required, in good standing with applicable regulatory authorities, other than as would reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.17(a), each Foreign Plan which is required under all applicable laws, rules, regulations and orders of any Governmental Authority to be funded satisfies in all material respects any applicable funding standard under all applicable laws, rules, regulations and orders of any Governmental Authority. For each Foreign Plan which is not funded or which is not required to be fully funded under all applicable laws, rules regulations and orders of any Governmental Authority, the unfunded obligations of such Foreign Plan are properly accrued in all material respects. Except as set forth on Schedule 4.17(b), neither any Loan Party nor any of its

Subsidiaries is or has at any time been the employer, or connected or associated with the employer (as those terms are used in the UK Pensions Act 2004) in relation to a UK defined benefit pension plan.

**Section 4.18 Solvency.** On the ~~Restatement~~Second Amendment Date, the U.S. Borrower and each of its Subsidiaries are, on a consolidated basis, Solvent.

**Section 4.19 Compliance with Statutes, Etc.** Each Group Member is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its assets and property (but excluding any Environmental Laws, which are subject to Section 4.13), except such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. To the extent applicable, each Loan Party is in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (b) the PATRIOT Act. No part of the proceeds of the Loans shall be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

**Section 4.20 Disclosure.** No representation or warranty of any Loan Party contained in any Loan Document and made on or after the Second Amendment Date or in any other documents, certificates or written statements furnished to any Agent or Lender by any Group Member (or by its agents on its behalf) for use in connection with the transactions contemplated ~~hereby~~by the Second Amendment contains, when considered together with the information in the U.S. Borrower's Annual Report on Form 10-K for Fiscal Year ~~2012 and the Acquired Business's Annual Report on Form 10-K for fiscal year 2011 and their respective~~ended January 31, 2016 and the Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, in each case as filed with the SEC (in the case of Forms 10-Q and 8-K, after the date of ~~the applicable~~such Form 10-K and prior to the ~~Restatement~~Second Amendment Date)), at the time furnished any untrue statement of a material fact or omits to state a material fact (known to it, or to the Borrower Representative in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein (when furnished and taken as a whole) not materially misleading in light of the circumstances in which the same were made; ~~provided, that this representation with respect to information regarding the Acquired Business provided prior to the Closing Date is made to the best of each Loan Party's knowledge.~~ Any projections and *pro forma* financial information contained in such materials are based upon good faith estimates and assumptions believed by the U.S. Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

**Section 4.21 Intellectual Property.**

(a) Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or except where the failure to do so is a result of a transaction or transactions permitted by this Agreement, each of the Loan Parties (i) as

of the later of the date of the Perfection Certificate and the date of the then-most-recent amendment of or supplement to such Perfection Certificate pursuant to a Counterpart Agreement or pursuant to Section 5.01(j)(ii), 5.13 or otherwise, is the sole and exclusive owner of the entire right, title, and interest in and to all of the Intellectual Property then listed on Schedule II.B of the Perfection Certificate (including Exhibits B-1, B-2 and B-3 thereto) (as such Schedule and such Exhibits may be amended or supplemented from time to time after the Closing Date pursuant to a Counterpart Agreement or pursuant to Section 5.01(j)(ii), 5.13 or otherwise), and possesses all rights to sue at law or in equity for any infringement, misappropriation or other impairment thereof, including the right to receive all royalties, license fees, proceeds and damages therefrom, free and clear of all Liens, claims and licenses, except for Permitted Liens and (ii) owns or, pursuant to written agreement, has the valid right to use and, where such Loan Party does so, sublicense others to use, all other Intellectual Property used in or necessary to conduct its business (including granting of outbound licenses of such rights). All Material Intellectual Property of each Loan Party is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, nor, in the case of Patents, is any of the Intellectual Property the subject of a reexamination proceeding, and each Loan Party has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks of such Loan Party constituting Material Intellectual Property in full force and effect. No holding, decision, ruling, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity, enforceability, or scope of, or any Loan Party's right to register, own or use, any Material Intellectual Property of such Loan Party, and no such action or proceeding is pending or, to the knowledge of any Authorized Officer of any Borrower, threatened, nor does any Loan Party know of any valid basis for any such action, except as would not reasonably be expected to have a Material Adverse Effect. Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) all registrations, issuances and applications for Copyrights, Patents and Trademarks of each Loan Party are standing in the name of such Loan Party (or the CKI Trust), and (ii) all exclusive Copyright Licenses constituting Material Intellectual Property in respect of registered Copyrights, if any, have been properly recorded in the United States Copyright Office or, where appropriate, any foreign counterpart. To the knowledge of any Authorized Officer of any Borrower, the use of Material Intellectual Property by such Loan Party does not infringe or misappropriate the rights of any person, except as would not reasonably be expected to have a Material Adverse Effect.

(b) Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Loan Party has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with its use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights. Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Loan Party has taken commercially reasonable steps to protect the confidentiality of its Trade Secrets in accordance with industry standards. Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Loan Party controls the nature and quality of all products sold and all services rendered by it under or in connection with its Trademarks, in each case consistent with industry practices, and has taken all

commercially reasonable actions necessary to ensure that all licensees of the Trademarks owned by such Loan Party comply with such Loan Party's standards of quality, in each case, to the extent such Trademarks constitute Material Intellectual Property.

(c) To the knowledge of any Authorized Officer of any Borrower, (i) the conduct of such Loan Party's business does not infringe, misappropriate, dilute or otherwise violate any Intellectual Property right of any other Person, except where such infringement, misappropriation, dilution or other violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (ii) no claim exists that the use of any Material Intellectual Property owned or used by any Loan Party (or any of its respective licensees) infringes, misappropriates, dilutes or otherwise violates the asserted rights of any other Person. To the knowledge of any Authorized Officer of any Borrower, no Person is infringing, misappropriating, diluting or otherwise violating any rights in any Intellectual Property owned, licensed or used by such Loan Party, or any of its respective licensees, except where such infringement, misappropriation, dilution or other violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No settlement or consents, covenants not to sue, co-existence agreements, non-assertion assurances, or releases have been entered into by any Loan Party or bind any Loan Party in a manner that could adversely affect such Loan Party's rights to own, license, transfer, or use any of the Material Intellectual Property in a manner consistent with the way such Loan Party conducts its business as of the Closing Date.

(d) Neither the execution, delivery or performance of this Agreement and the other Loan Documents, nor the consummation of the Closing Date Transactions and the other transactions contemplated hereby and thereby, will alter, impair or otherwise affect or require the consent, approval or other authorization of any other person in respect of any ownership, contractual or other right of any Loan Party in any Material Intellectual Property.

(e) Except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Loan Party has taken commercially reasonable actions to maintain the secrecy and security of its and its Subsidiaries material Software, networks and databases, and to the knowledge of any Authorized Officer of any Borrower, none of the Software owned by the Loan Party or its Subsidiaries and material to their businesses contains any open source code where the consequences of containing such code would reasonably be expected to have a Material Adverse Effect.

#### **Section 4.22 Ranking; Security.**

(a) Each Loan Party's obligations under the Loan Documents ranks at least equally in right of payment with all of its unsecured and unsubordinated obligations, other than those that are mandatorily preferred by law applying to companies generally and other than with respect to the CKI Obligations and the 2023 Debentures Obligations to the extent set forth in the CKI Intercreditor Agreement.

(b) Each Security Document creates the security interest that it purports to create and such security interests are valid and effective in all material respects to the extent required therein.

**Section 4.23 Centre of Main Interests and Establishments.** Each Loan Party whose jurisdiction of incorporation is in a member state of the European Union has its "centre of main

interest” (as that term is used in Article 3(l) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “Regulation”)) in its jurisdiction of incorporation and has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

**Section 4.24 European Loan Parties.** As of the Restatement Date, no European Loan Party has established a Works Council (*ondernemingsraad*) nor has it received any request to establish a Works Council, nor is it in the process of establishing one.

**Section 4.25 OFAC.** To the knowledge of the U.S. Borrower, neither the U.S. Borrower nor any of its Subsidiaries nor any of their respective directors or senior officers is on the list of Specially Designated Nationals and Blocked Persons issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

## **ARTICLE V. AFFIRMATIVE COVENANTS**

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until Payment in Full of the Obligations, such Loan Party shall, and shall cause each of its Restricted Subsidiaries to:

**Section 5.01 Financial Statements and Other Reports.** In the case of the Borrower Representative, deliver to the Administrative Agent (which shall furnish to each Lender):

(a) **Quarterly Financial Statements.** As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year (or, if earlier, the date required to be filed with the SEC, giving effect to any extension permitted by the SEC), commencing with the Fiscal Quarter in which the Closing Date occurred, the consolidated balance sheets of the Group as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of the Group for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, commencing with the first Fiscal Quarter for which such corresponding figures are available, and a Narrative Report with respect thereto, all in reasonable detail, together with a Financial Officer Certification (the Borrower Representative being permitted to satisfy the requirements of this Section 5.01(a) by delivery of the U.S. Borrower’s quarterly report on Form 10-Q (or any successor form), and all supplements or amendments thereto, as filed with the SEC);

(b) **Annual Financial Statements.** As soon as available, and in any event within 90 days after the end of each Fiscal Year (or, if earlier, the date required to be filed with the SEC, giving effect to any extension permitted by the SEC), commencing with the Fiscal Year in which the Closing Date occurred, (i) the consolidated balance sheets of the Group as at the end of such Fiscal Year and the related consolidated statements of income, stockholders’ equity and cash flows of the Group for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, commencing with the first Fiscal Year for which such corresponding figures are available, and a Narrative Report with respect thereto, all in reasonable detail, together with a Financial Officer Certification (the Borrower Representative being permitted to satisfy the requirements of this clause (i) by delivery of the U.S. Borrower’s annual report on Form 10-K (or

any successor form), and all supplements or amendments thereto, as filed with the SEC); and (ii) with respect to such consolidated financial statements a report thereon of Ernst & Young LLP or another independent certified public accountant of recognized national standing selected by the U.S. Borrower (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Group as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together, to the extent available pursuant to such accountant's internal policies, with a written statement by such independent certified public accountants (which statement may be limited to accounting matters and disclaim responsibility for legal interpretations) that to the best of such accountant's knowledge, as of the dates of the financial statements being furnished, no Default has occurred under the covenants set forth in Section 6.07 and if such a Default has occurred, specifying the nature and extent thereof;

(c) Compliance Certificate. (i) Together with each delivery of financial statements of the Group pursuant to Sections 5.01(a) and 5.01(b), a duly executed and completed Compliance Certificate, (ii) together with each delivery of financial statements pursuant to Sections 5.01(a) and 5.01(b), consolidated financial statements of income and cash flows and the related consolidated balance sheet covering the same periods reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries, if any, from such financial statements delivered pursuant to Sections 5.01(a) and 5.01(b), and (iii) within 10 Business Days following any CKI Blockage Event, a duly executed and completed Compliance Certificate with respect to the most recently ended Fiscal Quarter for which a Compliance Certificate has been delivered that shall, in the case of this clause (iii), exclude CKI and any CKI Affiliate from any calculation of Consolidated Adjusted EBITDA;

(d) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the financial statements described in clause (i) of the definition of "Historical Financial Statements of the U.S. Borrower" prior to giving effect to the Closing Date Transactions (other than any change in accounting principles or policies with respect to inventory valuation (x) from the weighted average cost method to the first in, first out method or (y) from the first in, first out method to the weighted average cost method), the consolidated financial statements of the Group delivered pursuant to Section 5.01(a) or 5.01(b) shall differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change (or as promptly as practicable thereafter), one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to the Administrative Agent;

(e) Notice of Default. Promptly upon any Authorized Officer of any Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Loan Party with respect thereto; (ii) that any Person has given any notice to any Loan Party or any of its Subsidiaries or taken any other action with respect to any

event or condition set forth in Section 8.01(b); (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect; or (iv) the occurrence of any CKI Blockage Event, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the applicable Group Member has taken, is taking and proposes to take with respect thereto;

(f) Notice of Litigation. Promptly upon any Authorized Officer of any Borrower obtaining knowledge of (i) any Adverse Proceeding not previously disclosed in writing by the Borrower Representative to the Lenders or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii), would be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or the exercise of rights or performance of obligations under any Loan Document, written notice thereof together with such other information as may be reasonably available to the U.S. Borrower to enable the Lenders and their counsel to evaluate such matters;

(g) Pension Plans; ERISA. (i) Promptly (but in any event within three days) upon the occurrence of or upon any Authorized Officer of any Loan Party becoming aware of the forthcoming occurrence of (A) any material ERISA Event, (B) the adoption of any new Pension Plan or Foreign Plan that provides pension benefits by any Loan Party, any of its Subsidiaries or any of their respective ERISA Affiliates, (C) the adoption of an amendment to a Pension Plan or Foreign Plan that provides pension benefits if such amendment results in a material increase in benefits or unfunded liabilities or (D) the commencement of contributions by any Loan Party, any of its Subsidiaries or any of their respective ERISA Affiliates to a Multiemployer Plan or Pension Plan or Foreign Plan that provides pension benefits, a written notice specifying the nature thereof, what action any Loan Party, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) with reasonable promptness (but in any event within three days after filing), copies of all notices received by any Loan Party, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (iii) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent shall reasonably request;

(h) Financial Plan. As soon as practicable and in any event no later than 60 days after the beginning of each Fiscal Year commencing with the Fiscal Year following the Fiscal Year in which the Closing Date occurred, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) thereafter through the final maturity date of the Loans (a "Financial Plan"), including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Group for each Fiscal Quarter of such Fiscal Year and each other Fiscal Year, and an explanation of the assumptions on which such forecasts are based;

(i) Notice Regarding CKI Documents. Promptly, and in any event within 10 Business Days after any CKI Document is amended in any material respect, copies of such amendment to the Administrative Agent;

(j) Information Regarding Collateral.

(i) the Borrower Representative shall furnish to the Collateral Agent prompt written notice of any change (A) in any U.S. Loan Party's corporate or entity name, (B) in any U.S. Loan Party's type of organization, (C) in any U.S. Loan Party's jurisdiction of organization or (D) in any U.S. Loan Party's Federal Taxpayer Identification Number or state organizational identification number. Each U.S. Loan Party agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made (or will be made under any statutory period) under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Security Documents;

(ii) at the time of delivery of annual financial statements pursuant to Section 5.01(b) (commencing with the financial statements delivered with respect to the Fiscal Year ending February 2, 2014), each U.S. Loan Party shall deliver (which delivery may be by electronic means) to the Collateral Agent a supplement to Schedule II.B of the Perfection Certificate (including Exhibits B-1, B-2 and B-3 thereto) which shall list any registrations or applications for registration of Intellectual Property that were acquired after the later of the Closing Date and the date of the most recent supplement (if any) delivered pursuant to this Section 5.01(j)(ii) by any Group Member that is, or pursuant to Section 5.11 becomes, a U.S. Loan Party; provided that this Section 5.01(j)(ii) shall not limit the requirements of Section 5.13; and

(iii) each U.S. Loan Party also agrees promptly to notify (or to have the Borrower Representative notify on its behalf) the Collateral Agent if any material portion of the Collateral is damaged or destroyed;

(k) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.01(b), each U.S. Loan Party shall deliver to the Collateral Agent a certificate of its Authorized Officer confirming that there has been no change in the information set forth in the Perfection Certificate since the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.01(k) and/or identifying such changes; provided, however, that (i) the first such certificate required to be delivered pursuant to this Section 5.01(k) shall be with respect to the Fiscal Year ending February 2, 2014 and (ii) there shall be no requirement to update Schedule II.A.1 or Schedule II.B of the Perfection Certificate;

(l) Management Letters. Promptly after the receipt thereof by the U.S. Borrower, a copy of any "management letter" received by the U.S. Borrower from its certified public accountants and the management's response thereto;

(m) Certification of Public Information. Each Borrower and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to any Group Member or its Securities, and who may be engaged in investment and other market-related activities with respect to such Group Member's Securities) and, if documents or notices required to be delivered pursuant to this Section 5.01 or

otherwise are being distributed through IntraLinks, SyndTrak or another relevant website or other information platform (the “Platform”), any document or notice that the Borrower Representative has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such public-side Lenders. The Borrower Representative hereby agrees that (w) all information that is to be made available to public-side Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking information “PUBLIC,” the Borrower Representative shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders to treat such Information as not containing any Non-Public Information with respect to the Borrowers or their Securities for purposes of United States federal and state securities laws (provided, however, that such information shall be treated as set forth in Section 10.17); (y) all information marked “PUBLIC” is permitted to be made available through a portion of the Platform designated for such public-side Lenders; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Information that is not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated for such public-side Lenders. Notwithstanding the foregoing, the Borrower Representative shall be under no obligation to mark any Information “PUBLIC.”

(n) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by any Group Member to their security holders acting in such capacity and (ii) all regular, periodic and current reports and all registration statements and prospectuses, if any, filed by any Group Member with any Securities exchange or with the SEC; provided that to the extent such information is filed with the SEC such information shall be deemed to have been provided under this clause (ii) and (B) such other information and data with respect to any Group Member as from time to time may be reasonably requested by the Administrative Agent or any Lender through the Administrative Agent.

**Section 5.02 Existence**. Except as otherwise permitted under Section 6.08, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, that no Loan Party (other than any Borrower with respect to existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if (a) failure to do so would not reasonably be expected to result in a Material Adverse Effect, or (b) such Person’s management shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person.

**Section 5.03 Payment of Taxes and Claims**. Pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, that no such Tax or claim need be paid to the extent it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserves or other appropriate provisions as shall be required in conformity with GAAP shall have been made therefor.

**Section 5.04 Maintenance of Properties.** (a) In the case of material tangible properties used in the business of the Loan Parties and their Restricted Subsidiaries, maintain or cause to be maintained such tangible properties in good repair, working order and condition, ordinary wear and tear excepted, and from time to time shall make or cause to be made all appropriate repairs, renewals and replacements thereof; and (b) in the case of intangible material properties that are used or useful in the business of the Loan Parties and their Restricted Subsidiaries, maintain such intangible properties as valid and enforceable, in each case except as would not reasonably be expected to result in a Material Adverse Effect.

**Section 5.05 Insurance.** In the case of the Borrower Representative, maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties and their Restricted Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as are customary for such Persons. Without limiting the generality of the foregoing, the Borrower Representative shall maintain or cause to be maintained (i) flood insurance that covers each Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of Secured Parties, that is located in a Flood Zone, in each case in compliance with any applicable regulations of the Board of Governors, (ii) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance with respect to a Loan Party shall (i) name the Secured Parties as additional insured parties thereunder as their interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee thereunder and (iii) provide that the insurer affording coverage (with respect to property and liability insurance) will provide for at least 30 days' prior written notice to the Collateral Agent of any cancellation of such policy (and to the extent practicable after use of commercially reasonable efforts by the U.S. Borrower, any material modification of such policy).

**Section 5.06 Books and Records; Inspections.** Maintain proper books of record and accounts in conformity in all material respects with GAAP. Each Loan Party shall, and shall cause each of its Subsidiaries to, permit any authorized representatives designated by the Administrative Agent to visit and inspect any of the properties of any Loan Party and any of its respective Subsidiaries, to examine and inspect, its and their financial and accounting records and, with the prior consent of an Authorized Officer of the Loan Party, to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested (but, so long as no Default or Event of Default shall have occurred or be continuing, no more often than once per Fiscal Year).

**Section 5.07 Compliance with Material Contractual Obligations and Laws.** Comply with the requirements of all material Contractual Obligations and all applicable laws, rules,

regulations and orders of any Governmental Authority (including all Environmental Laws), in each case, noncompliance with which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 5.08 Environmental.**

(a) Environmental Disclosure. In the case of the Borrower Representative, deliver to the Administrative Agent and the Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental assessments, audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of any Group Member or by any independent consultants, Governmental Authorities or other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon knowledge of any Authorized Officer of any Borrower thereof, written notice relating to (1) any Release required to be reported to Governmental Authority under any applicable Environmental Laws, (2) any remedial action taken by any Loan Party or any other Person in response to (A) any Hazardous Materials the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, (3) any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws in a manner that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (4) the imposition or written threat of any imposition of any Lien (other than a Permitted Lien) on any Collateral pursuant to any Environmental Law;

(iii) as soon as practicable following the sending or receipt thereof by any Group Member, a copy of (1) any and all material written communications with respect to any Environmental Claims that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, (2) any report sent to any Governmental Authority or other material written communications regarding a Release required to be reported to such Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect and (3) any material written communications responding to any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Group Member may be potentially responsible for any Hazardous Materials Activity that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect;

(iv) written notice (delivered in each instance as soon as practicable) describing in reasonable detail (1) any proposed acquisition of stock, assets, or other property by any Group Member that would reasonably be expected to expose any Group Member to, or result in, Environmental Claims that would reasonably be expected to have, individually

or in the aggregate, a Material Adverse Effect and (2) any proposed action to be taken by any Group Member to modify current operations in a manner that would reasonably be expected to subject any Group Member to Environmental Claims that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.08(a).

(b) Environmental Claims, Etc. Promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Group Member that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (ii) conduct any investigative or remedial action that may be required pursuant to applicable Environmental Laws by such Group Member that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (iii) make an appropriate response to any Environmental Claim against such Group Member and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Environmental Compliance. Use and operate all of its Facilities in compliance with all Environmental Laws, keep all necessary Governmental Authorizations required pursuant to any Environmental Laws, and handle all Hazardous Materials in compliance with all Environmental Laws, in each case except where the failure to comply with the terms of this clause would not reasonably be expected to have a Material Adverse Effect.

**Section 5.09 Maintenance of Ratings.** In the case of the U.S. Borrower, at all times use commercially reasonable efforts to maintain public corporate family and public corporate credit ratings issued by Moody's and S&P and public ratings issued by Moody's and S&P with respect to the credit facilities hereunder.

**Section 5.10 Intellectual Property.**

(a) No Loan Party shall do any act or omit to do any act which would reasonably be expected to cause any Material Intellectual Property, so long as it remains Material Intellectual Property, to lapse, or become abandoned, canceled, dedicated to the public, forfeited, unenforceable or otherwise impaired, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein. No Loan Party shall, with respect to any Trademarks constituting Material Intellectual Property, cease the use of any of such Trademarks, except in the ordinary course of business, or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the Closing Date, and such Loan Party shall take all commercially reasonable steps necessary to insure that licensees of such Trademarks use such consistent standards of quality. Each Loan Party shall, within 30 days of the creation or acquisition or exclusive license of any copyrightable work that is included in the Material Intellectual Property, apply to register the Copyright in the United States Copyright Office or, where appropriate, any foreign counterpart and, in the case of an exclusive Copyright License in respect of a registered Copyright constituting

Material Intellectual Property, record such license, in the United States Copyright Office or, where appropriate, any foreign counterpart. Each Loan Party shall take all reasonable steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration or issuance of each Trademark, Patent, and Copyright owned by any Loan Party and constituting Material Intellectual Property.

(b) Each U.S. Loan Party shall promptly notify the Collateral Agent if it knows that any item of Material Intellectual Property, so long as it remains Material Intellectual Property, has become (i) abandoned or dedicated to the public or placed in the public domain, (ii) invalid or unenforceable, (iii) subject to any adverse determination or development regarding any U.S. Loan Party's ownership, registration or use or the validity or enforceability of such item of Intellectual Property (including any adverse development with respect to any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court) or (iv) the subject of any reversion or termination rights.

(c) Except as provided in or permitted under Section 6.02 or, solely with respect to the creation of a Lien securing the Obligations, Section 6.05, each U.S. Loan Party shall use best efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or may in any way materially impair or prevent the creation of a security interest in, or the assignment of, such U.S. Loan Party's ownership interests in any Intellectual Property acquired under such contracts that would become Material Intellectual Property.

(d) In the event that any Material Intellectual Property owned by any Loan Party is infringed, misappropriated, diluted or otherwise violated by a third party and such infringement, misappropriation, dilution or other violation would reasonably be expected to have a Material Adverse Effect, such Loan Party shall promptly take all commercially reasonable actions to stop such infringement, misappropriation, dilution or other violation and protect its rights in such Material Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages.

#### **Section 5.11 Subsidiaries.**

(a) In the case of the Borrower Representative, in the event that any Person becomes a U.S. Subsidiary of the U.S. Borrower after the Closing Date, (x) promptly cause such Person to become a U.S. Guarantor hereunder and a U.S. Grantor under the U.S. Pledge and Security Agreement or the CKI Related Assets Pledge and Security Agreement, as applicable, by executing and delivering to the Administrative Agent and the Collateral Agent a Counterpart Agreement, and (y) promptly take all such actions and execute and deliver, or cause to be executed and delivered, all documents, as are similar to those described in Section 3.01(b) and clauses (i) and (ii) set forth below, in order to grant and to perfect a First Priority Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, under the applicable Security Documents, in the personal property Collateral of such new U.S. Subsidiary and in the Equity Interests owned by any such new U.S. Subsidiary (provided that in no event shall (1) more than 66% of the voting Equity Interests of any Foreign Subsidiary directly owned by a U.S. Subsidiary or more than 66% of the Equity Interests

of any U.S.-Owned Holdco be required to be so pledged as security for the Obligations of the U.S. Borrower and (2) any pledge of the Equity Interests of any other Foreign Subsidiary be required as security for the Obligations of the U.S. Borrower):

(i) evidence satisfactory to the Collateral Agent of the compliance by each such new U.S. Subsidiary of its obligations under the U.S. Security Agreements (including its obligations to execute and deliver UCC financing statements and originals of securities, instruments and chattel paper as provided therein); and

(ii) fully executed and notarized Intellectual Property Security Agreements, if applicable, in proper form for filing or recording in the United States Copyright Office or the United States Patent and Trademark Office, as applicable, memorializing and recording the encumbrance of the registrations and applications for United States Trademarks, Copyrights and Patents of each such Person.

(b) With respect to each new U.S. Subsidiary, the Borrower Representative shall promptly send to the Collateral Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Group Member and (ii) all of the data required to be set forth in Schedule 4.02 with respect to all Subsidiaries of the U.S. Borrower; and such written notice shall be deemed to supplement Schedule 4.02 for all purposes hereof.

**Section 5.12 Additional Material Real Estate Assets.** In the event that any U.S. Loan Party acquires a Material Real Estate Asset or a Real Estate Asset owned or leased on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Security Documents in favor of the Collateral Agent, for the benefit of Secured Parties, in the case of such U.S. Loan Party, promptly take to the fullest extent commercially practical all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments, agreements, opinions and certificates similar to those described in Sections 5.12(a) through 5.12(e) with respect to each such Material Real Estate Asset that the Collateral Agent shall reasonably request in order to create in favor of the Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets:

(a) a fully executed and notarized Mortgage, in proper form for recording in the appropriate places in the applicable jurisdiction;

(b) an opinion of counsel (which counsel shall be reasonably satisfactory to the Collateral Agent) admitted in the state in which such Material Real Estate Asset is located with respect to the enforceability of the form of Mortgage to be recorded in such state and such other matters as the Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Collateral Agent;

(c) in the case of each Leasehold Property, (i) a Landlord Consent if the applicable landlord has delivered a Landlord Consent after the U.S. Borrower's use of commercially reasonable efforts to obtain such Landlord Consent (provided that the U.S. Borrower shall not be required to expend any funds or grant any concession to obtain such Landlord Consent), and (ii) evidence that such Leasehold Property is a Recorded Leasehold Interest;

(d) an ALTA mortgagee title insurance policy or unconditional commitment therefor issued by one or more title companies (the “Title Company”) reasonably satisfactory to the Collateral Agent with respect to such Material Real Estate Asset (each, a “Title Policy”), in an amount not less than 110% of the fair market value of such Material Real Estate Asset insuring the title to such Material Real Estate Asset vested in the applicable U.S. Loan Party and insuring the Collateral Agent that the relevant Mortgage creates a valid and enforceable First Priority mortgage Lien on such Material Real Estate Asset encumbered thereby, which Title Policy (i) shall include all endorsements reasonably requested by the Collateral Agent and (ii) shall provide for affirmative insurance and such reinsurance as the Collateral Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to the Collateral Agent; and evidence satisfactory to the Collateral Agent that the applicable U.S. Loan Party has (A) delivered to the Title Company all certificates, consents and affidavits required by the Title Company in connection with the issuance of the applicable Title Policy and (B) paid to the Title Company or to the appropriate Governmental Authorities all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the applicable Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgage in the applicable real property records; together with a title report issued by a title company with respect thereto, dated as of a date reasonably satisfactory to the Collateral Agent and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Collateral Agent; and

(e) (i) a completed Flood Certificate with respect to each such Material Real Estate Asset, which Flood Certificate shall (A) be addressed to the Collateral Agent, (B) be completed by a company which has guaranteed the accuracy of the information contained therein, and (C) otherwise comply with the Flood Program; (ii) evidence describing whether the community in which such Material Real Estate Asset is located participates in the Flood Program; (iii) if any Flood Certificate states that such Material Real Estate Asset is located in a Flood Zone, the Borrower Representative’s written acknowledgement of receipt of written notification from the Collateral Agent (A) as to the existence of such Material Real Estate Asset, and (B) as to whether the community in which such Material Real Estate Asset is located is participating in the Flood Program; and (iv) if such Material Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that the applicable U.S. Loan Party has obtained a policy of flood insurance that is in compliance with all applicable regulations of the Board of Governors.

**Section 5.13 Additional Collateral.** With respect to any assets or property acquired after the Closing Date by any Group Member that is, or pursuant to Section 5.11 becomes, a U.S. Loan Party (other than (x) any assets or property described in Section 5.11 or 5.12 and (y) any assets or property subject to a Lien expressly permitted by Section 6.02) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected First Priority Lien, promptly (i) execute and deliver to the Collateral Agent such amendments to the Security Documents or such new Security Documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a perfected First Priority Lien in such assets or property and (ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a perfected First Priority Lien in such assets or property, including without limitation, authorizing the Collateral Agent to file UCC financing

statements in such jurisdictions as may be required by the U.S. Security Agreements, or by law or as may be requested by the Collateral Agent. Notwithstanding anything in this Section 5.13 or in Section 5.11, 5.12 or 5.14 to the contrary, Sections 5.11, 5.12, 5.13 and 5.14 shall not (x) apply to any property or Subsidiary created or acquired after the Closing Date, as applicable, as to which the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein or (y) require a grant or perfection of a security interest in any asset excluded by the applicable security document.

**Section 5.14 Further Assurances.** At any time or from time to time upon the request of the Administrative Agent, at the expense of the U.S. Loan Parties, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or the Collateral Agent may reasonably request in order to effect fully the purposes of the Loan Documents or to more fully perfect or renew the rights of the Administrative Agent or the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by any U.S. Loan Party which may be deemed to be part of the Collateral). In furtherance and not in limitation of the foregoing, each U.S. Loan Party shall take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the U.S. Guarantors and are secured by the assets of each U.S. Loan Party in each case, to the extent otherwise required by this Agreement. Upon the exercise by the Administrative Agent or the Collateral Agent of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which required any consent, approval, recording, qualification or authorization of any Governmental Authority, the U.S. Borrower or the applicable U.S. Loan Party will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or the Collateral Agent may be required to obtain from such U.S. Loan Party for such consent, approval, recording, qualification or authorization.

## ARTICLE VI. NEGATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until Payment in Full of the Obligations, such Loan Party shall not, nor shall it cause or permit any of its Restricted Subsidiaries to:

**Section 6.01 Indebtedness.** Create, incur, assume or guaranty, or otherwise become ~~or remain~~ liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) (i) Indebtedness in respect of the 2023 Debentures, (ii) Indebtedness of the U.S. Borrower in respect of the 2020 Notes in an aggregate principal amount not to exceed \$600,000,000 and guaranty obligations of any U.S. Guarantor in respect of such Indebtedness, (iii) Indebtedness of the U.S. Borrower in respect of the 2022 Notes in an aggregate principal amount not to exceed \$700,000,000 and guaranty obligations of any U.S. Guarantor in respect of such Indebtedness and (iv) any Permitted Refinancing of the Indebtedness described in clause (i), (ii) or (iii);

(c) Indebtedness of any Restricted Subsidiary owed to any Borrower or to any other Restricted Subsidiary, or of any Borrower owed to any Restricted Subsidiary or any other Borrower; provided, that (i) all such Indebtedness owed to a U.S. Loan Party shall, if owed by a U.S. Subsidiary, be evidenced by an intercompany note and be subject to a First Priority Lien pursuant to the Security Documents, (ii) such Indebtedness shall be unsecured and if owed by (x) a U.S. Loan Party to a Foreign Subsidiary or (y) a Foreign Subsidiary to the U.S. Borrower or a U.S. Subsidiary and not subject to a First Priority Lien pursuant to the Security Documents, shall be subordinated in right of payment to the payment in full of the Obligations in a manner consistent with the subordination provisions set forth in Section 7.07 and shall be Subordinated Indebtedness hereunder, (iii) any payment by any such Guarantor under any guaranty of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Guarantor to such Borrower or to any of the other Guarantors for whose benefit such payment is made and (iv) such Indebtedness is permitted as an Investment under Section 6.06;

(d) (1) unsecured Indebtedness of the U.S. Borrower and guaranty obligations of any U.S. Guarantor in respect of such Indebtedness; provided, that such Indebtedness (a) matures at least three months after the maturity date of the Term Loans, (b) has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Term Loans, (c) does not contain maintenance covenants that are more restrictive than Sections 6.07(a) and 6.07(b) and (d) if guaranteed, is guaranteed only by the U.S. Guarantors; provided, that both immediately prior and after giving effect to the incurrence thereof, (x) no Default or Event of Default shall exist or result therefrom and (y) the U.S. Borrower shall be in compliance with the covenants set forth in Sections 6.07(a) and 6.07(b) after giving *pro forma* effect to the incurrence of such Indebtedness and the consummation of any Investment or acquisition, repayment of any Indebtedness or payment or making of any Restricted Payment with the Net Cash Proceeds thereof, but otherwise excluding the Net Cash Proceeds of any such Indebtedness and (2) any Permitted Refinancings of such Indebtedness;

(e) Indebtedness incurred by any Group Member arising from agreements providing for indemnification, adjustment of purchase price, other compensation or similar obligations (including, Indebtedness consisting of the deferred purchase price of assets or property acquired in a Permitted Acquisition), in connection with Permitted Acquisitions, permitted Investments or permitted dispositions of any business, assets or Subsidiary of any Group Member;

(f) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal bonds or similar obligations incurred in the ordinary course of business;

(g) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(h) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of any Group Member;

(i) guaranties by (i) any Borrower of Indebtedness of a Guarantor or any other Borrower or guaranties by a Guarantor of Indebtedness of any Borrower or any other Guarantor with respect, in each case, to Indebtedness otherwise permitted to be incurred by such Borrower or such Guarantor pursuant to this Section 6.01 (other than Sections 6.01(b), 6.01(c), 6.01(d) and 6.01(n)(i)); provided,

that if the Indebtedness that is being guarantied pursuant to clause (i) of this Section 6.01(i) is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations, (ii) any Group Member that is not a Loan Party of Indebtedness of any other Group Member that is not a Loan Party, (iii) the U.S. Borrower of Indebtedness of any Group Member that is not a Loan Party incurred in the ordinary course of business on ordinary business terms so long as such Indebtedness is otherwise permitted to be incurred under Section 6.01(j), 6.01(r) or 6.01(s) to the extent such guaranties are unsecured and otherwise permitted as an Investment under Section 6.06 (other than Section 6.06(q)) and (iv) any Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary;

(j) Indebtedness existing on the ~~Restatement~~Second Amendment Date and drawings in respect of debt commitments under each agreement, in each case, which is described in Schedule 6.01 and any Permitted Refinancing thereof;

(k) Indebtedness (i) in an amount not to exceed at any one time outstanding \$150,000,000 (or 1.50% of Consolidated Total Assets, if greater), which is incurred with respect to Capital Leases or constitutes purchase money Indebtedness to finance the acquisition, lease, construction or improvement of assets or property and any Permitted Refinancing in respect thereof; provided, that any such Indebtedness shall be secured only by the asset acquired, leased, constructed or improved in connection with the incurrence of such Indebtedness, be incurred within 270 days of the acquisition, lease, construction or improvement of the relevant equipment or other asset and constitute not less than 75.0% of the aggregate consideration paid with respect to such acquisition, lease, construction or improvement, (ii) constituting Attributable Indebtedness with respect to any Sale and Lease-Back permitted under Section 6.10 ~~in an amount not to exceed at any one time outstanding \$75,000,000 (or 0.75% of Consolidated Total Assets, if greater)~~ or (iii) consisting of obligations with respect to Capital Leases of property, plant and equipment of any Subsidiary of the U.S. Borrower organized in Japan;

(l) (i) (1) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Loan Party or becomes or is merged into or consolidated with a Subsidiary after the Closing Date or (2) Indebtedness attaching to assets that are acquired by any Group Member after the Closing Date as the result of a Permitted Acquisition; provided, that (x) such Indebtedness existed at the time such Person became a Loan Party or became or was merged into or consolidated with a Subsidiary or at the time such assets were acquired and, in each case, was not created in contemplation thereof and (y) such Indebtedness is not guaranteed in any respect by any Group Member (other than (A) by any such Person that so becomes a Subsidiary or (B) to the extent any Group Member is otherwise permitted to guaranty such Indebtedness under another provision under this Section 6.01) and (ii) any Permitted Refinancing thereof;

(m) Indebtedness of the type described in clause (viii) of the definition thereof with respect to interest rates, commodity exposure or foreign exchange rates, or any Treasury Transaction; provided that in each case such Indebtedness shall not have been entered into for speculation purposes;

(n) (i) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings) to any of the

Borrowers or the Guarantors, (ii) Indebtedness of a Group Member consisting of Standard Securitization Undertakings; provided that, in each case, the Net Cash Proceeds with respect to such Indebtedness are used to repay Term Loans and will be applied as set forth in Section 2.15(c) and (iii) Indebtedness incurred with respect to any disposition of accounts receivable in connection with receivables factoring arrangements in the ordinary course of business;

(o) Indebtedness owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business;

(p) Indebtedness incurred in the ordinary course of business with respect to surety and appeal bonds, performance and insurance bonds and similar obligations;

(q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; provided that such Indebtedness (i) is extinguished within five Business Days of its incurrence or (ii) if in respect of credit or purchase cards, is extinguished within 60 days of its incurrence;

(r) other Indebtedness of Subsidiaries (other than a Securitization Subsidiary) that are not Loan Parties and Indebtedness incurred on behalf of or representing guaranties of Indebtedness of Joint Ventures in an amount not to exceed at any one time outstanding \$~~125,000,000~~175,000,000 (or ~~1.25~~2.0% of Consolidated Total Assets, if greater);

(s) other Indebtedness of any Group Member (other than a Securitization Subsidiary) in an aggregate amount not to exceed at any one time outstanding \$375,000,000 (or 3.50% of Consolidated Total Assets, if greater);

(t) Indebtedness arising as a result of (the establishment of) a fiscal unity (*fiscale eenheid*) between (i) European Loan Parties incorporated in the Netherlands or (ii) Restricted Subsidiaries that are not Loan Parties incorporated in the Netherlands;

(u) Indebtedness pursuant to a declaration of joint and several liability used for the purpose of section 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:404(2) of the Dutch Civil Code);

(v) Indebtedness representing the deferred obligation to purchase common stock or common stock options permitted under Section 6.04(c);

(w) Indebtedness arising under any domination and/or profit transfer agreement (*Beherrschungs und/oder Gewinnabführungsvertrag*) with a Restricted Subsidiary incorporated in Germany which was in force on the Restatement Date;

(x) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade-related letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business;

(y) Indebtedness of the U.S. Borrower in respect of letters of credit issued by the U.S. Borrower for its own account or for the account of any other Group Member; provided that neither the Administrative Agent nor any Lender shall have any direct or indirect liability with respect to any such letter of credit, whether as a guarantor, confirming bank or otherwise;

(z) Indebtedness, if any, in respect of the CKI Obligations and the Itochu Obligations and any Permitted Refinancing of the Itochu Obligations;

(aa) unsecured Indebtedness in respect of obligations of any Group Member to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms (which require that all such payments be made within ~~60~~90 days after the incurrence of the related obligations) in the ordinary course of business, and not in connection with the borrowing of money or any Hedge Agreement or Treasury Transaction;

(bb) Indebtedness representing deferred compensation to employees of any Group Member incurred in the ordinary course of business;

(cc) Indebtedness incurred as part of the Post-Closing Restructuring Transactions, so long as such Indebtedness is otherwise permitted to be incurred under Section 6.01(c);

(dd) guaranties by the U.S. Borrower of Indebtedness of a Foreign Subsidiary that is not a Loan Party of the type described in Section 6.01(m); and

(ee) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in Sections 6.01(a) through 6.01(dd) above.

**Section 6.02 Liens.** Create, incur; ~~or~~ assume ~~or permit to exist~~ any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any Loan Party or any of its Restricted Subsidiaries, whether now owned or hereafter acquired or licensed, or any income, profits or royalties therefrom, except:

(a) Liens granted pursuant to any Loan Document in favor of the Collateral Agent for the benefit of Secured Parties;

(b) Liens for Taxes to the extent obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and so long as adequate reserves or other appropriate provisions as shall be required in conformity with GAAP shall have been made therefore and Liens for Taxes not yet due and payable;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) of ERISA or a violation of Section 436 of the Internal Revenue Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 10 days) are being contested

in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of any Group Member;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder and covering only the assets so leased;

(g) Liens solely on any cash earnest money deposits made by any Group Member in connection with any letter of intent or purchase agreement permitted hereunder;

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

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

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) any reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown, including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person;

(l) licenses or sublicenses (including licenses or sublicenses of Patents, Copyrights, Trademarks and other Intellectual Property rights), leases or subleases granted by any Group Member in the ordinary course of business which does not materially interfere with the business of the Group Members taken as a whole;

(m) Liens in favor of vendors of goods arising as a matter of law securing the payment of the purchase price therefor so long as such Liens attach only to the purchased goods or, where customary in the local market, Liens arising from a contract securing (i) the payment of the purchase price of goods, (ii) the performance of any work or (iii) the fulfillment of any obligation arising out of the non-compliance with such contract;

(n) Liens existing on the ~~Restatement~~[Second Amendment](#) Date which are described in [Schedule 6.02](#) and replacements, renewals or extensions of such Liens; provided, that such Lien

shall not apply to additional property other than (A) after-acquired property that is related to the property covered by such Lien and (B) proceeds and products thereof and such Lien shall secure only those obligations it secures on the ~~Restatement~~[Second Amendment](#) Date and extensions, renewals and replacements thereof that, to the extent constituting Indebtedness, qualify as a Permitted Refinancing thereof;

(o) Liens arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Member in the ordinary course of trading and on the supplier's standard or usual terms and arising as a result or omission by any Group Member, including, for the avoidance of doubt, *verlängerte Eigentumsvorbehalte* and *erweiterte Eigentumsvorbehalte*;

(p) Liens securing Indebtedness permitted pursuant to [Section 6.01\(k\)](#); provided, that any such Lien shall encumber only the property subject to the underlying lease, after-acquired property that is required to be pledged pursuant to such underlying lease on customary terms and proceeds and products thereof;

(q) Liens securing Indebtedness permitted by [Section 6.01\(l\)](#) and any extensions, renewals and replacements thereof that, to the extent constituting Indebtedness, qualify as a Permitted Refinancing thereof; provided, that any such Lien shall encumber only assets and property of the Person so acquired or only attach to those assets which secured such Indebtedness at the time such assets were acquired by the Group other than (A) after-acquired property that is directly related to the property secured by such Lien and (B) proceeds and products thereof;

(r) Liens arising from judgments in circumstances not constituting an Event of Default under [Section 8.01\(i\)](#);

(s) Liens on Securitization Assets or a Securitization Subsidiary's other assets arising in connection with a Qualified Securitization Financing;

(t) Liens arising by virtue of any statutory, contractual or common law provision relating to banker's liens, rights of set-off or similar rights (i) relating to the establishment of depository relations in the ordinary course of business with banks not given in connection with the issuance of Indebtedness and (ii) relating to pooled deposit or sweep accounts of any Group Member to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Group;

(u) any Lien created pursuant to the general conditions of a bank operating in The Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*) and the Consumers Union (*Consumentenbond*) or pursuant to any other general conditions of, or any contractual arrangement with, any such bank to substantially the same effect;

(v) Liens arising out of consignment or similar arrangements for the sale by any Group Member of goods through third parties in the ordinary course of business;

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

(x) (i) Liens granted pursuant to the CKI Security Agreement to secure the CKI Obligations, which are senior to the Lien in favor of the Collateral Agent pursuant to the terms of the CKI Intercreditor Agreement; and (ii) Liens on cash of any Foreign Subsidiary granted to secure Itochu Obligations in an aggregate amount not to exceed ¥1,325,000,000;

(y) Liens that are disclosed in (i) a Title Policy or (ii) any other title insurance policies delivered to the Collateral Agent in connection with mortgages on Material Real Estate Assets executed pursuant to Section 5.13 after the Closing Date (unless the Lien described in this clause (ii) is otherwise prohibited under this Agreement and is capable of being discharged by a Loan Party in a commercially practicable manner) and any replacement, extension or renewal of any such Lien; provided, that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted by this Agreement;

(z) Liens securing Attributable Indebtedness incurred under Section 6.01(k) pursuant to any Sale and Lease-Back permitted under Section 6.10;

(aa) Liens securing obligations in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations (other than obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements and other amounts payable in respect of Indebtedness) and trade-related letters of credit, in each case, outstanding on the Closing Date or issued thereafter in the ordinary course of business and covering the goods (or the documents of title in respect of such goods) financed by such letters of credit, banker's acceptances or bank guarantees and the proceeds and products thereof;

(bb) Liens securing Indebtedness permitted by Section 6.01(r); provided that any such Liens shall only attach to the assets of the entity incurring such Indebtedness;

(cc) Liens in favor of the U.S. Borrower or any other Loan Party; provided that if any such Lien shall cover any Collateral, the holder of such Lien shall execute and deliver to the Administrative Agent a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent;

(dd) (i) solely to the extent equal and ratable Liens are required pursuant to the terms of the 2023 Debentures Indenture, Liens securing the 2023 Debentures Obligations which Liens are granted pursuant to the Loan Documents, the CKI Security Agreement or any other security agreement the terms of which are no more favorable to the holders of the 2023 Debentures Obligations than the terms of the U.S. Pledge and Security Agreement and (ii) Liens securing any Permitted Refinancing of the 2023 Debentures Obligations, which Liens are granted pursuant to the Loan Documents, the CKI Security Agreement or any other security agreement the terms of which are no more favorable to the holders of the 2023 Debentures Obligations than the terms of the U.S. Pledge and Security Agreement; it being agreed that in the case of clauses (i) and (ii), with respect to such Loan Documents or other security agreements contemplated by such clauses entered into after the Closing Date, the Administrative Agent and the Collateral Agent shall enter into intercreditor agreements as may be reasonably requested by the Borrower Representative and

acceptable to the Administrative Agent and the Collateral Agent to give effect to the requirements of clause (i) or (ii) above, as applicable; and

(ee) other Liens securing Indebtedness or other obligations in an aggregate amount not to exceed at any one time outstanding \$200,000,000 (or 1.75% of Consolidated Total Assets, if greater).

**Section 6.03 Designation of Subsidiaries.** Designate any Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary, except that the U.S. Borrower may at any time designate any Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that:

(a) immediately after such designation, no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and the Group shall be in compliance with the financial covenants set forth in Sections 6.07(a) and 6.07(b), in each case on a *pro forma* basis;

(b) with respect to any Subsidiary to be designated as an Unrestricted Subsidiary, such Subsidiary or any of its Subsidiaries does not own any Equity Interests or Indebtedness of or have any Investment in, or own or hold any Lien on any property of, any other Subsidiary of the U.S. Borrower which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;

(c) with respect to any Subsidiary to be designated as an Unrestricted Subsidiary, such Subsidiary is not party to any agreement, contract, arrangement or understanding with any Borrower or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to such Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Borrowers;

(d) with respect to any Subsidiary to be designated as an Unrestricted Subsidiary, such Subsidiary is a Person with respect to which neither any Borrower nor any Restricted Subsidiaries has any direct or indirect obligation (1) to subscribe for additional Equity Interests or (2) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results;

(e) with respect to any Subsidiary to be designated as an Unrestricted Subsidiary, such Subsidiary has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of any Borrower or any Restricted Subsidiaries;

(f) with respect to any Subsidiary to be designated as an Unrestricted Subsidiary, neither any Borrower nor any Restricted Subsidiary will at any time (i) provide a guarantee of, or similar credit support to, any Indebtedness of such Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness), (ii) be directly or indirectly liable for any Indebtedness of such Subsidiary or (iii) be directly or indirectly liable for any Indebtedness which provides that the holder thereof may (upon notice, lapse of time or both) declare a default thereon (or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity) upon the

occurrence of a default with respect to any other Indebtedness that is Indebtedness of such Subsidiary (including any corresponding right to take enforcement action against such Subsidiary);

(g) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated as an Unrestricted Subsidiary;

(h) any designation of a Restricted Subsidiary to an Unrestricted Subsidiary shall be deemed an Investment under Section 6.06 in an amount equal to the fair market value of the Subsidiary so designated; and

(i) any such designation shall be evidenced by providing notice to the Administrative Agent of the copy of the resolution of the U.S. Borrower's Board or Directors (or duly authorized committee thereof) giving effect to such designation and a certificate of an Authorized Officer certifying that such designation complies with the foregoing requirements.

**Section 6.04 Restricted Payments.** Directly or indirectly declare, order, pay, ~~or~~ make ~~or set apart~~ any sum for any Restricted Payment except that:

(a) any Subsidiary of any Borrower may declare and pay dividends, repurchase its Equity Interests, or make other distributions to each direct owner of Equity Interests of such Subsidiary; provided that, in the case of a Subsidiary that is not a Wholly-Owned Restricted Subsidiary, such dividends, repurchases or other distributions are made to all owners of such Subsidiary's Equity Interests on a *pro rata* basis (or more favorable basis from the perspective of the Group Members) based on their relative ownership interests;

(b) the U.S. Borrower may make regularly scheduled payments of principal and interest in respect of any Subordinated Indebtedness in accordance with the terms of and only to the extent required by the documentation governing such Subordinated Indebtedness and any Subordinated Indebtedness may be refinanced pursuant to a Permitted Refinancing thereof;

(c) the U.S. Borrower may purchase, repurchase, retire, redeem or otherwise acquire its common stock or common stock options from present or former officers, directors or employees of the Group in connection with any management equity subscription agreement, any compensation, retirement, disability, severance or benefit plan or agreement, any employment agreement or any other similar plans or agreements; provided, that the aggregate amount of payments under this Section 6.04(c) (net of any proceeds received by the U.S. Borrower subsequent to the Closing Date in connection with resales of any common stock or common stock options so purchased or acquired) shall not exceed \$15,000,000 in any calendar year;

(d) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, the U.S. Borrower may declare and pay cash dividends with respect to (i) its common stock in an annual amount not to exceed \$0.20 per outstanding share of common stock and (ii) its Series A Preferred Stock in an annual amount of up to \$0.20 per share of common stock that would be issuable upon conversion of any outstanding share of Series A Preferred Stock (subject, in the case of each of clauses (i) and (ii), to adjustment for any stock split, reverse stock split, stock dividend or similar occurrence so that the aggregate amount of dividends payable after such transaction is the same as the amount payable immediately prior to such transaction);

(e) the U.S. Borrower may pay any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement (including the other provisions of this Section 6.04);

(f) the U.S. Borrower may make Restricted Payments in respect of Subordinated Indebtedness; provided that (i) the amount of such Restricted Payments pursuant to this Section 6.04(f) does not exceed (x) \$50,000,000 during the term of this Agreement (or 1.0% of Consolidated Total Assets, if greater) plus (y) ~~if the Incurrence Test is satisfied on a pro forma basis to the extent that the U.S. Borrower would be in pro forma compliance with the covenant set forth in Section 6.07(b) as of the last day of the most recently ended Fiscal Quarter after giving effect to such Restricted Payments,~~ an amount equal to the Available Amount, (ii) such Restricted Payments are made from proceeds from the substantially concurrent issuance, sale or exchange by the U.S. Borrower of Equity Interests or (iii) such Restricted Payment results from the conversion of all or any portion of the Subordinated Indebtedness to Equity Interests of the U.S. Borrower;

(g) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, the U.S. Borrower and any of its Restricted Subsidiaries may make other Restricted Payments in an aggregate amount pursuant to this Section 6.04(g) not to exceed (i) \$200,000,000 (or 1.75% of Consolidated Total Assets, if greater) during the term of this Agreement plus (ii) ~~if the Incurrence Test is satisfied on a pro forma basis to the extent that the U.S. Borrower would be in pro forma compliance with the covenant set forth in Section 6.07(b) as of the last day of the most recently ended Fiscal Quarter after giving effect to such Restricted Payments,~~ an amount equal to the Available Amount; provided that, after giving effect to the consummation of such Restricted Payment and any financing thereof, the Group shall be in compliance with the financial covenants set forth in Sections 6.07(a) and 6.07(b);

(h) (i) any Group Member may make Restricted Payments in respect of the Itochu Obligations and (ii) any Group Member (other than the U.S. Borrower) may make Restricted Payments in connection with the Post-Closing Restructuring Transactions;

(i) the U.S. Borrower may make repurchases of Equity Interests deemed to occur upon exercise of options, warrants, restricted stock units or similar rights if such Equity Interests represents all or a portion of the exercise price thereof or deemed to occur in connection with the satisfaction of any withholding tax obligation incurred relating to the vesting or exercise of such options, warrants, restricted stock units or similar rights; and

(j) the U.S. Borrower and any of its Restricted Subsidiaries may make other Restricted Payments so long as (i) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (ii) the Net Leverage Ratio shall be no greater than ~~3.00~~3.50:1.00 on a *pro forma* basis after giving effect to such Restricted Payment.

**Section 6.05 Restrictions on Subsidiary Distributions; No Further Negative Pledges.** Except as arising under any Loan Document, create or otherwise cause ~~or suffer to exist or become,~~ make effective or acquire any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary of any Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by such Borrower or any other Restricted Subsidiary of any Borrower, (b) repay or prepay any Indebtedness owed by such Restricted Subsidiary to any

Borrower or any other Restricted Subsidiary of any Borrower, (c) make loans or advances to any Borrower or any other Restricted Subsidiary of any Borrower, (d) transfer, lease or license any of its property or assets to any Borrower or any other Restricted Subsidiary of any Borrower or (e) create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations, other than encumbrances and restrictions (i) in agreements evidencing Indebtedness permitted by [Section 6.01](#) and agreements relating to Liens permitted by [Section 6.02](#) that impose restrictions on the property subject to such Liens, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and agreements similar to any of the foregoing (provided that such restrictions are limited to the assets or property subject to such leases, licenses, joint venture or similar agreements), (iii) created by virtue of any sale, transfer, lease or other disposition of, or any agreement with respect thereto, any specific property, assets or Equity Interests permitted to be so transferred under this Agreement, (iv) contained in the 2023 Debentures Indenture, the CKI Documents, the Itochu Agreement, and any agreement related to the obligations of the U.S. Borrower and any of its Subsidiaries to the China JV, (v) with respect to any Restricted Subsidiary organized under the laws of Japan, imposed pursuant to an agreement restricting (A) the creation or assumption of any Lien upon such Restricted Subsidiary's inventory and receivables or (B) the transfer of assets of any such Restricted Subsidiary, in each case in the ordinary course of business, (vi) existing under or by reason of applicable law, rule or regulation, (vii) on the use of cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (viii) in any agreement in effect at the time a Person becomes a Subsidiary of the U.S. Borrower, provided that the agreement in which such restrictions are contained was not entered into in contemplation of such Person becoming a Subsidiary of the U.S. Borrower, (ix) contained in agreements in effect on the ~~Restatement~~[Second Amendment](#) Date and described in [Schedule 6.05](#) and (x) in any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in [clauses \(i\) through \(ix\)](#) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the U.S. Borrower, no more restrictive with respect to the restrictions referred to in [clauses \(a\) through \(e\)](#) above than prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

**Section 6.06 Investments.** Make, or ~~own~~[acquire](#) any Investment in any Person, including any Joint Venture, except:

(a) Investments in cash and Cash Equivalents and Investments that were Cash Equivalents when made;

(b) (i) Investments owned as of the ~~Restatement~~[Second Amendment](#) Date in any Restricted Subsidiary, (ii) Investments made after the ~~Restatement~~[Second Amendment](#) Date in any Loan Party (other than, in the case of this [clause \(ii\)](#), Investments made by any U.S. Loan Party in a European Loan Party or an Ancillary Borrower) and (iii) guarantees by the U.S. Borrower of Indebtedness of any Foreign Subsidiary permitted under [Section 6.01\(j\)](#);

(c) deposits, prepayments, advances in the form of a prepayment of expenses and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Group;

(d) Investments to the extent that payment for such Investments is made with Equity Interests of the U.S. Borrower;

(e) Investments that are acquired after the Closing Date by any Group Member as a result of (i) a Permitted Acquisition; provided that such Investments existed at the time of the Permitted Acquisition and were not made in contemplation thereof or (ii) a sale or disposition of assets by a Group Member to another Group Member (to the extent such disposition is not prohibited by Section 6.08 hereof);

(f) to the extent constituting an Investment, Consolidated Capital Expenditures in the ordinary course of business;

(g) loans and advances to employees, consultants or directors (managing or otherwise) of the Group made in the ordinary course of business in an aggregate principal amount at any one time outstanding not to exceed \$15,000,000;

(h) Permitted Acquisitions permitted pursuant to Section 6.08; provided, that the consideration in respect of such Permitted Acquisitions of Persons that do not become U.S. Loan Parties, or of assets that are not acquired by U.S. Loan Parties, which consideration is funded directly or indirectly with Investments by U.S. Loan Parties, either (a) shall not exceed an aggregate amount of 10.0% of Consolidated Total Assets (determined at the time of such Permitted Acquisition) following the Second Amendment Date or (b) shall be otherwise permitted pursuant to this Section 6.06;

(i) Investments in existence on, or pursuant to legally binding written commitments in existence on, the ~~Restatement~~Second Amendment Date as described in ~~Schedule 6.06~~6.06, any Investments described in a letter from the Borrower Representative to the Administrative Agent on the Second Amendment Date, and, in each case, any extensions, modifications or renewals thereof so long as the amount of any Investment made pursuant to this Section 6.06(i) is not increased at any time above the amount of such Investment existing or committed, as applicable, on the ~~Restatement Date~~Second Amendment Date or described in such letter;

(j) Hedge Agreements and Treasury Transactions which constitute Investments;

(k) accounts, chattel paper and notes receivable arising from the sale or lease of goods or the performance of services in the ordinary course of business;

(l) Investments received by any Group Member in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, suppliers and customers arising in the ordinary course of business;

(m) other Investments in an aggregate amount not to exceed at any one time outstanding (i) \$275,000,000 (or 2.50% of Consolidated Total Assets, if greater), plus (ii) to the extent not included in the Available Amount, 100.0% of the aggregate cash dividends and distributions received by any Group Member from such Investments, plus (iii) an amount equal to the Available Amount at such time; provided that no Investment may be made pursuant to this Section 6.06(m) if, at the time such Investment is made, an Event of Default shall have occurred and be continuing or shall be caused thereby;

(n) Investments in Joint Ventures in an aggregate amount not to exceed at any one time outstanding (i) \$100,000,000 (or 1.00% of Consolidated Total Assets, if greater), plus, (ii) to the extent not included in the Available Amount, 100.0% of the aggregate cash dividends and distributions received by any Group Member from the Joint Ventures;

(o) Investments arising out of the receipt by any Group Member of noncash consideration for the sale of assets permitted under Section 6.08;

(p) guaranties by any Group Member of operating leases (other than obligations with respect to Capital Leases) or of other obligations, that do not constitute Indebtedness, in each case entered into by the applicable Group Member in the ordinary course of business;

(q) guaranties permitted under Section 6.01 (except to the extent such guaranty is expressly subject to this Section 6.06);

(r) Investments made pursuant to the CKI Trust Agreement;

(s) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.04;

(t) the Acquisition;

(u) Investments by any Foreign Subsidiary in any other Group Member;

(v) Investments as part of the Post-Closing Restructuring Transactions; ~~and~~

(w) other Investments so long as (i) no Default or Event of Default shall have occurred and be continuing or shall be caused thereby and (ii) the Net Leverage Ratio shall be no greater than ~~3.00~~3.50:1.00 on a *pro forma* basis after giving effect to such Investment;

(x) Investments by the U.S. Borrower or any of its Subsidiaries in the U.S. Borrower or any of its Subsidiaries made for tax planning reorganization purposes, so long as the U.S. Borrower provides the Administrative Agent a certification that, after giving *pro forma* effect to such Investments, the granting, perfection, validity and priority of security interests of the Secured Parties in the Collateral, taken as a whole, is not impaired in any material respect by such Investment; and

(y) Investments obtained by the US Borrower or any of its subsidiaries as a result of the exercise or effect of Bail-In Actions with respect to its contractual counterparties.

**Section 6.07 Financial Covenants.** In the case of the U.S. Borrower:

(a) Interest Coverage Ratio. Permit the Interest Coverage Ratio as of the last day of any Fiscal Quarter to be less than ~~the~~ correlative ratio indicated~~5.00:1.00.~~

<b>Fiscal Quarter</b>	<b>Interest Coverage Ratio</b>
FQ1-2014	5.00 : 1.00
FQ2-2014	5.00 : 1.00
FQ3-2014	5.00 : 1.00
FQ4-2014	5.00 : 1.00
FQ1-2015	5.50 : 1.00
FQ2-2015	5.50 : 1.00
FQ3-2015	5.50 : 1.00
FQ4-2015	5.50 : 1.00
FQ1-2016	5.75 : 1.00
FQ2-2016	5.75 : 1.00
FQ3-2016	5.75 : 1.00
FQ4-2016	5.75 : 1.00
FQ1-2017 and thereafter	6.00 : 1.00

(b) Net Leverage Ratio. Permit the Net Leverage Ratio (i) as of the last day of any Fiscal Quarter occurring during any Acquisition Period to exceed ~~the correlative ratio indicated:~~4.50 to 1.00 or (ii) as of the last day of any other Fiscal Quarter to exceed 4.00:1.00.

<b>Fiscal Quarter</b>	<b>Net Leverage Ratio</b>
FQ1-2014	4.25 : 1.00
FQ2-2014	4.25 : 1.00
FQ3-2014	4.25 : 1.00
FQ4-2014	4.25 : 1.00
FQ1-2015	3.75 : 1.00
FQ2-2015	3.75 : 1.00
FQ3-2015	3.75 : 1.00
FQ4-2015	3.75 : 1.00
FQ1-2016	3.50 : 1.00
FQ2-2016	3.50 : 1.00
FQ3-2016	3.50 : 1.00
FQ4-2016	3.50 : 1.00
FQ1-2017	3.25 : 1.00
FQ2-2017	3.25 : 1.00
FQ3-2017	3.25 : 1.00
FQ4-2017	3.25 : 1.00
FQ1-2018 and thereafter	3.00 : 1.00



**Section 6.08 Fundamental Changes; Disposition of Assets; Acquisitions.** Enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) or convey, sell, lease or license, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than the Acquisition, purchases or other acquisitions of inventory, materials and equipment and Consolidated Capital Expenditures in the ordinary course of business) all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person, except:

(a) (i) any Group Member may be merged or consolidated with or into any other Group Member, or be liquidated, wound up or dissolved, or all or any part of its business, assets or property may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to any other Group Member; provided, that (w) in the case of a merger or consolidation of a Group Member that is not a Loan Party with or into a Borrower or any Guarantor, such Borrower or Guarantor, as applicable, shall be the continuing or surviving Person, (x) in the case of a merger or consolidation of a Guarantor with or into a U.S. Guarantor, a U.S. Guarantor shall be the continuing or surviving Person, (y) in the case of a merger or consolidation of any Loan Party with or into the U.S. Borrower, the U.S. Borrower shall be the continuing or surviving Person and (z) in the case of a merger or consolidation of the European Guarantor with or into the European Borrower, the European Borrower shall be the continuing or surviving Person, and (ii) any Restricted Subsidiary may merge with any other person in order to effect an Investment permitted pursuant to Section 6.06 so long as the continuing or surviving person shall be a Restricted Subsidiary, which shall be a U.S. Loan Party or European Loan Party, as applicable, if the merging Restricted Subsidiary was a U.S. Loan Party or a European Loan Party, and which, if such transaction involves a U.S. Loan Party, together with each of its Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11, 5.12 and 5.13, as applicable and if such transaction involves (x) the U.S. Borrower, the U.S. Borrower shall be the continuing or surviving Person and (y) a U.S. Guarantor (but not the U.S. Borrower), a U.S. Guarantor shall be the continuing or surviving Person;

(b) (i) any Group Member (other than the U.S. Borrower in the case of a disposition of all of its assets) may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the U.S. Borrower or any U.S. Guarantor; (ii) any Group Member that is a Foreign Subsidiary (other than the European Borrower in the case of a disposition of all its assets) may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Group Member and (iii) any Group Member that is not a Loan Party may dispose of any or all of its assets (upon voluntary liquidation or otherwise) to another Group Member that is not a Loan Party;

(c) (i) sales or other dispositions of assets that do not constitute Asset Sales and (ii) transactions undertaken among the U.S. Borrower and its Restricted Subsidiaries as part of the Post-Closing Restructuring Transactions;

(d) (i) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-cash proceeds) when aggregated with the proceeds of all other Asset Sales made pursuant to this clause (i) in any Fiscal Year, are less than (x) 2.0% of Consolidated Total Assets plus (y) an amount equal to any unutilized portion of the amount permitted under clause (i)(x) for any preceding Fiscal Year; provided that in no event shall the proceeds of any Asset Sale, when aggregated with the proceeds of all other Asset Sales made pursuant to this clause (i) in any Fiscal Year, exceed 5.0% of Consolidated Total Assets; and (ii) certain Asset Sales described by the Borrower Representative in a written notice to the Administrative Agent on or prior to the Closing Date; provided that, in the case of each of clauses (i) and (ii), (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the Board of Directors of the U.S. Borrower (or a duly authorized committee thereof)), (2) except in the case of any Asset Sale to any Restricted Subsidiary, no less than 75.0% thereof shall be paid in cash or Cash Equivalents and (3) except in the case of any Asset Sale to any Restricted Subsidiary, the Net Cash Proceeds thereof shall be applied as required by Section 2.14(a);

(e) any Group Member may sell or discount, in each case without recourse and in the ordinary course of business, accounts receivable arising in the ordinary course of business (x) which are overdue, or (y) which such Group Member may reasonably determine are difficult to collect but only in connection with the compromise or collection thereof consistent with prudent business practice (and not as part of any bulk sale or financing of receivables);

(f) any Group Member may enter into licenses or sublicenses of Software, Trademarks and other Intellectual Property and general intangibles in the ordinary course of business and which do not materially interfere with the business of the Group Members taken as a whole;

(g) (i) any disposition of Securitization Assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing and (ii) any disposition of accounts receivable in connection with receivables factoring arrangements in the ordinary course of business;

(h) dispositions of cash and Cash Equivalents;

(i) Permitted Acquisitions; ~~provided, that the consideration in respect of such Permitted Acquisitions of Persons that do not become U.S. Loan Parties, or of assets that are not acquired by U.S. Loan Parties, which consideration is funded directly or indirectly with Investments by U.S. Loan Parties, shall not exceed an aggregate amount of 5.0% of Consolidated Total Assets (determined at the time of such Permitted Acquisition) over the term of this Agreement;~~

(j) (i) Permitted Sale and Lease-Backs and (ii) Sale and Lease-Backs otherwise permitted by Section 6.10(ii); provided that the Net Cash Proceeds of Sale and Lease-Backs (other

than Permitted Sale and Lease-Backs) shall be applied as required by Section 2.14(a); provided, further, that, in the case of clause (ii), the net proceeds received by the applicable Group Member are at least equal to the fair market value of such asset or Investment (as determined by the U.S. Borrower's Board of Directors (or a duly authorized committee thereof));

(k) sales or other dispositions (including, for the avoidance of doubt, through merger, consolidation or similar transaction) of the Equity Interests of, or other ownership interests in or assets or property, including Indebtedness, or other securities of, any Joint Venture (including the China JV and any Person that would become a Joint Venture after giving effect to such transaction); provided that, in each case, the net proceeds (whether in the form of cash, Equity Interests or any other property) received by the applicable Group Member are at least equal to the fair market value of such asset or Investment (as determined by the U.S. Borrower's Board of Directors (or a duly authorized committee thereof));

(l) any lease, assignment or sublease in the ordinary course of business which does not materially interfere with the business of the Group Members taken as a whole; and

(m) Investments made in accordance with Section 6.06 and 6.06, Restricted Payments made in accordance with Section 6.04:6.04, and any transactions described in a letter delivered by the Borrower Representative to the Administrative Agent on the Second Amendment Date.

**Section 6.09 [Reserved].**

**Section 6.10 Sales and Lease-Backs.** Become ~~or remain~~ liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than to any Group Member), (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person (other than to any Group Member) in connection with such lease or (c) is to sell or transfer to any other Person (other than to any Group Member) who has or will advance funds to such Loan Party on the security of such property or rental obligations of such Loan Party (a "Sale and Lease-Back"), excluding (i) any such arrangement to the extent that either (A) any Attributable Indebtedness incurred in connection therewith does not exceed \$75,000,000 (or 0.75% of Consolidated Total Assets, if greater) (such transaction or (B)(x) no Default or Event of Default shall have occurred and be continuing or shall be caused by the consummation of such Sale Lease-Back and (y) the Net Leverage Ratio shall be no greater than 3.50:1.00 on a pro forma basis after giving effect to the consummation of such Sale and Lease-Back (any such transaction described in this clause (i), a "Permitted Sale and Lease-Back") and (ii) any other Sale and Lease-Back so long as such Group Member would be entitled to incur the Attributable Indebtedness with respect to such Sale and Lease-Back under Section 6.01, create a Lien on the property securing such Attributable Indebtedness under Section 6.02 and the proceeds of such transaction are applied in accordance with Section 2.14(a).

**Section 6.11 Transactions with Shareholders and Affiliates.** Enter into ~~or permit to exist~~ any transaction (including the purchase, sale, lease or exchange of any property, the rendering of any service or the payment of any management, advisory or similar fees) with any Affiliate of any

Group Member on terms that are less favorable to such Group Member than those that might be obtained in a comparable arm's length transaction at the time from a Person who is not an Affiliate; provided, that the foregoing restriction shall not apply to (a) any transaction between or among any Group Members; (b) reasonable and customary fees and indemnities paid to directors, officers and employees of any Group Member and compensation arrangements for directors, officers and other employees of any Group Member entered into in the ordinary course of business; (c) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans in the ordinary course of business; (d) (x) any employment agreements entered into by any Group Member in the ordinary course of business and any transaction pursuant thereto and (y) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transaction pursuant thereto; (e) any Restricted Payment permitted by Section 6.04; (f) any Investment permitted under Section 6.06; (g) any transactions pursuant to agreements in existence on the ~~Restatement~~Second Amendment Date and set forth in Schedule 6.11 and any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect; (h) any transactions between any Group Member and the China JV or any of its Affiliates; (i) any transaction between any Group Member and Apax Partners L.P. or any of its Affiliates; (j) any transaction with a Joint Venture for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and in a manner consistent with past practice; (k) any transaction entered into by a Person prior to the time such Person becomes a Group Member or is merged or consolidated into a Group Member (provided such transaction is not entered into in contemplation of such event); (l) any transactions between any Group Member and Pepe Jeans SL (or any successor or replacement sales and collection agent and franchisee in Spain and Portugal); (m) any transaction between a Group Member and a Securitization Subsidiary pursuant to a Qualified Securitization Financing; (n) any satisfaction or discharge of the Itochu Obligations; (o) any transactions between any Group Member and ITOCHU Corporation or any Joint Venture of any Group Member, in each case in the ordinary course of business; (p) any transactions between any Group Member and the CKI Trust pursuant to the CKI Trust Agreement; and (q) cost sharing arrangements deemed appropriate by the U.S. Borrower to allocate properly the costs of future maintenance and development of Intellectual Property of any Group Member.

**Section 6.12 Conduct of Business.** From and after the Closing Date, engage in any business (either directly or through a Restricted Subsidiary) other than the businesses engaged in by the Group Members on the Closing Date or any extension of such businesses consistent with industry developments and any business ancillary, complementary or related thereto.

**Section 6.13 Amendments or Waivers of Organizational Documents and Certain Other Documents.** Agree to (a) any material amendment, restatement, supplement or other modification to or waiver of any of its Organizational Documents which would be materially adverse to the interests of the Lenders, taken as a whole, (b) any amendment, restatement, supplement or other modification to or waiver (other than any such amendment, restatement, supplement or other modification or waiver as may be required pursuant to the CK Letter Agreement as in effect on the Closing Date) (i) of Section 4.17(c)(iv) or Section 4.18 of the CKI Security Agreement (or any

definition in the CKI Security Agreement that would have the effect of amending, supplementing or otherwise modifying such Sections or the effect or existence of a CKI Blockage Event), in each case that would be materially adverse to the interests of the U.S. Borrower and its Subsidiaries, taken as a whole, or (ii) of any provision of any CKI Document that has the effect of (w) requiring any Person to become a CK Grantor (as defined in the CKI Intercreditor Agreement as of the Closing Date) that would not be required to become a CK Grantor in accordance with the terms of the First Lien Collateral Documents (as defined in the CKI Intercreditor Agreement as of the Closing Date), (x) adding additional CK Collateral (as defined in the CKI Intercreditor Agreement as of the Closing Date) that would not be required to become CK Collateral (as defined in the CKI Intercreditor Agreement as of the Closing Date) pursuant to the terms of the First Lien Collateral Documents (as defined in the CKI Intercreditor Agreement as of the Closing Date), (y) increasing the amount of, or adjusting the calculation of, the Klein Obligations (as defined in the CKI Intercreditor Agreement as of the Closing Date) in any manner unless such adjustment could only decrease the amount of the Klein Obligations as of such date (it being understood that this [Section 6.13](#) shall not prohibit the making of any one-time consent payment by any Group Member in respect of any amendment, restatement, supplement or other modification or waiver to any CKI Documents) or (z) decreasing the amount of the Maximum Second Lien Amount (as defined in the CKI Intercreditor Agreement as of the Closing Date) or (c) any amendment, restatement, supplement, waiver or other modification of the terms of the 2020 Notes or the 2022 Notes which would be materially adverse to the Lenders.

**Section 6.14 Fiscal Year.** Change its Fiscal Year-end from the Sunday closest to February 1 of each calendar year or change its method of determining Fiscal Quarters; provided that the Loan Parties and their Restricted Subsidiaries may change their Fiscal Year-end (and make corresponding changes to their method of determining Fiscal Quarters) so long as (i) the U.S. Borrower provides to the Administrative Agent such audited financials as are required to be submitted to the SEC and at the times required thereby and (ii) notwithstanding any change in Fiscal Year-end, the U.S. Borrower will make (x) any payment required pursuant to [Section 2.14\(d\)](#) with respect to the Fiscal Year in which such change is made on the date required pursuant to [Section 2.14](#) without giving effect to such change, and (y) without duplication of any amount already paid with respect to such period, any additional payment pursuant to [Section 2.14\(d\)](#) payable at the time the audited financial statements are delivered for the transition period as set forth in [clause \(i\)](#) (it being understood and agreed that subsequent to such payment (or in the event that no such financial statements are required to be delivered), further payments pursuant to [Section 2.14\(d\)](#) will occur no later than 95 days after the end of such changed Fiscal Year).

**Section 6.15 Centre of Main Interests and Establishments.** No Loan Party whose jurisdiction is in a member state of the European Union shall deliberately change its “centre of main interest” (as that term is used in the Regulation) in a manner that would reasonably be expected to result in a Material Adverse Effect.

## **ARTICLE VII. GUARANTY**

### **Section 7.01 Guaranty of the Obligations.**

(a) Subject to the provisions of [Section 7.02](#), each Guarantor (which, for purposes of this [Article VII](#), shall include the U.S. Borrower) other than the European Guarantor jointly and

severally hereby irrevocably and unconditionally guaranties to the Administrative Agent for the ratable benefit of the Secured Parties the due and punctual payment in full of all Obligations of the Borrowers and each other Guarantor (and, in the case of the U.S. Borrower, all Obligations of any Restricted Subsidiary arising under any Hedge Agreement, Cash Management Agreement or Treasury Transaction) when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or any comparable provision of any other Debtor Relief Law) (the “U.S. Guaranteed Obligations”).

(b) Subject to the provisions of Sections 7.02 and 7.13, the European Guarantor hereby irrevocably and unconditionally guaranties to the Administrative Agent for the ratable benefit of the Secured Parties the due and punctual payment in full of all Obligations of the Ancillary Borrowers and the European Borrower when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (the “European Guaranteed Obligations” and, together with the U.S. Guaranteed Obligations, the “Guaranteed Obligations”).

#### **Section 7.02 Limitation on Liability; Contribution by Guarantors.**

(a) Notwithstanding the foregoing, each Guarantor, and by acceptance of the benefits hereof, the Administrative Agent and each other Secured Party, hereby confirms that it is the intention of all such Persons that each Guaranty and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent conveyance for purposes of the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to each Guaranty and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Administrative Agent and the Secured Parties hereby irrevocably agree that the Guaranteed Obligations of each Guarantor hereunder at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor hereunder not constituting a fraudulent transfer or conveyance.

(b) The U.S. Borrower and each U.S. Guarantor (the “U.S. Contributing Guarantors”) and the European Guarantor (together with the U.S. Contributing Guarantors, the “Contributing Guarantors”) desire to allocate among themselves, in a fair and equitable manner, the U.S. Guaranteed Obligations and European Guaranteed Obligations, respectively, arising under this Guaranty; provided that nothing in this Section 7.02 shall operate or be construed to allocate to the European Guarantor or the European Borrower any Obligation of the U.S. Borrower or the U.S. Guarantors or to permit any payment by the European Guarantor, the European Borrower or any Ancillary Borrower to reduce any Obligations of the U.S. Borrower or the U.S. Guarantors (other than the U.S. Borrower’s or any U.S. Guarantor’s Guaranty hereunder of the Obligations of the European Borrower or any Ancillary Borrower). Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a “Funding Guarantor”) under this Guaranty such that its Aggregate Payments exceed its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other applicable Contributing Guarantors in an amount

sufficient to cause each such Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the U.S. Guaranteed Obligations or European Guaranteed Obligations, as applicable. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of any Debtor Relief Law; provided, that solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.02, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.02), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other applicable Contributing Guarantors as contributions under this Section 7.02. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among the applicable Contributing Guarantors of their obligations as set forth in this Section 7.02 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.02.

(c) In addition to the foregoing, the Guaranteed Obligations of CKI and the CKI Affiliates shall be limited to the amount permitted to be guaranteed (and secured) thereby pursuant to the CKI Security Agreement, as in effect on the Closing Date.

### **Section 7.03 Payment by Guarantors.**

(a) Subject to Sections 7.02 and 7.14, the U.S. Borrower and the U.S. Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Secured Party may have at law or in equity against any of them by virtue hereof, that upon the failure of any Borrower to pay any of the U.S. Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), or any comparable provision of any other Debtor Relief Law), the U.S. Borrower and the U.S. Guarantors, as applicable, shall upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Secured Parties, an amount equal to the sum of the unpaid principal amount of all U.S. Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such U.S. Guaranteed Obligations (including interest which, but for any Borrower's becoming the subject of a case under the Bankruptcy Code or any other Debtor Relief Law, would have accrued on such

U.S. Guaranteed Obligations, whether or not a claim is allowed against such Borrower for such interest in the related bankruptcy case or analogous proceeding under any Debtor Relief Law) and all other U.S. Guaranteed Obligations then owed to the Secured Parties as aforesaid.

(b) Subject to Sections 7.02, 7.13 and 7.14, the European Guarantor hereby agrees, in furtherance of the foregoing and not in limitation of any other right which any Secured Party may have at law or in equity against the European Guarantor by virtue hereof, that upon the failure of the European Borrower or any Ancillary Borrower to pay any of the European Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), or any comparable provision of any other Debtor Relief Law), the European Guarantor shall upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Secured Parties, an amount equal to the sum of the unpaid principal amount of all European Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such European Guaranteed Obligations (including interest which, but for the European Borrower's or any Ancillary Borrower's becoming the subject of a case under the Bankruptcy Code or any other Debtor Relief Law, would have accrued on such European Guaranteed Obligations, whether or not a claim is allowed against the European Borrower of such Ancillary Borrower for such interest in the related bankruptcy case or analogous proceeding under any Debtor Relief Law) and all other European Guaranteed Obligations then owed to the Secured Parties as aforesaid.

**Section 7.04 Liability of Guarantors Absolute.** Each Guarantor agrees that, to the maximum extent permitted by applicable law, its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a Guarantor or surety other than Payment in Full of the applicable Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees, to the maximum extent permitted by applicable law, as follows:

- (a) this Guaranty is a guaranty of payment when due and not of collectability;
- (b) this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;
- (c) the Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between any Borrower and any Secured Party with respect to the existence of such Event of Default;
- (d) the obligations of each Guarantor hereunder are independent of the obligations of each Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of each Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against such Borrower or any of such other guarantors and whether or not such Borrower is joined in any such action or actions;
- (e) payment by any Guarantor of a portion, but not all, of the applicable Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the applicable Guaranteed Obligations which has not been paid. Without limiting the generality

of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the applicable Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the applicable Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the applicable Guaranteed Obligations;

(f) any Secured Party, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Secured Party in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Secured Party may have against any such security, in each case as such Secured Party in its discretion may determine consistent herewith, the applicable Hedge Agreement, Cash Management Agreement or Treasury Transaction and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Borrower or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or any Hedge Agreements, Cash Management Agreements or Treasury Transactions; and

(g) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the applicable Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, any Hedge Agreements, any Cash Management Agreements or any Treasury Transactions, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any of the Hedge Agreements, Cash

Management Agreements or Treasury Transactions or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Hedge Agreement, such Cash Management Agreement, such Treasury Transaction or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect (other than with respect to defense of payment or performance in full); (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents, any of the Hedge Agreements, any of the Cash Management Agreements, any Treasury Transaction or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as Collateral for Indebtedness other than the Guaranteed Obligations) to the payment of Indebtedness other than the Guaranteed Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the corporate structure or existence of any Group Member and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses (other than defense of payment or performance in full), set-offs or counterclaims which any Borrower may allege or assert against any Secured Party in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or omission, or delay to do any other act, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

**Section 7.05 Waivers by Guarantors.** Each Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against any Borrower, any other guarantor (including any other Guarantor) of the applicable Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of any Borrower, any such other guarantor or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Borrower or any other guarantor (including any other Guarantor) including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Borrower or any such other guarantor from any cause other than Payment in Full of the applicable Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest,

notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, or under any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Borrower and notices of any of the matters referred to in Section 7.04 and any right to consent to any thereof; and (g) any defenses (other than defense of payment or performance in full) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

**Section 7.06 Guarantors' Rights of Subrogation, Contribution, Etc.** Until the applicable Guaranteed Obligations shall have been Paid in Full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any applicable Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any applicable Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against any Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the applicable Guaranteed Obligations shall have been Paid in Full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the applicable Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.02. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Secured Party may have against any Borrower, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all applicable Guaranteed Obligations shall not have been Paid in Full, such amount shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the applicable Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

**Section 7.07 Subordination of Certain Intercompany Obligations.** Each European Loan Party and each Ancillary Borrower hereby subordinates any and all debts, liabilities and other obligations owed to it by any U.S. Loan Party (the "Subordinated European Intercompany Obligations") to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 7.07:

(a) Prohibited Payments, Etc. So long as no Event of Default shall have occurred and be continuing, such European Loan Party or such Ancillary Borrower, as applicable, may receive

payments from any U.S. Loan Party on account of the Subordinated European Intercompany Obligations (provided that the making of such payments by the applicable obligor are not prohibited by the terms of this Agreement) and demand, accept or take any action to collect any payment on account of the Subordinated European Intercompany Obligations.

(b) Prior Payment of Guaranteed Obligations. In any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law relating to any other Loan Party, each European Loan Party and each Ancillary Borrower agrees that the Secured Parties shall be entitled to receive Payment in Full in cash of all Guaranteed Obligations before such European Loan Party or such Ancillary Borrower, as applicable, receives payment of any Subordinated European Intercompany Obligations.

(c) Turn-Over. After the occurrence and during the continuation of any Event of Default, each European Loan Party or Ancillary Borrower, as applicable, shall, if the Administrative Agent so requests, collect, enforce and receive payments on account of the Subordinated European Intercompany Obligations as trustee for the Secured Parties and deliver such payments to the Administrative Agent (for the benefit of the applicable Secured Parties) on account of the Guaranteed Obligations, together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such European Loan Party or such Ancillary Borrower (if any) under the other provisions of this Agreement.

(d) Administrative Agent Authorization. After the occurrence and during the continuation of any Event of Default, the Administrative Agent is authorized and empowered (but under no obligation), in its discretion, (i) in the name of each European Loan Party and each Ancillary Borrower, to collect and enforce, and to submit claims in respect of, the Subordinated European Intercompany Obligations and to apply any amounts received thereon to the Guaranteed Obligations, and (ii) to require each European Loan Party and each Ancillary Borrower to (A) collect and enforce, and to submit claims in respect of, the Subordinated European Intercompany Obligations and (B) pay any amounts received on such Subordinated European Intercompany Obligations to the Administrative Agent for application to the Guaranteed Obligations.

**Section 7.08 Continuing Guaranty**. This Guaranty is a continuing guaranty and shall remain in effect until all of the U.S. Guaranteed Obligations and European Guaranteed Obligations, respectively, shall have been Paid in Full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

**Section 7.09 Authority of Guarantors or the Borrowers**. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or any Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

**Section 7.10 Financial Condition of the Borrowers**. Any Credit Extension may be made to any Borrower or continued from time to time, and any Hedge Agreements, Cash Management Agreements and Treasury Transactions may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of such Borrower or, with respect to any Hedge Agreements, Cash Management Agreements and Treasury Agreements, the U.S. Borrower or any of its Subsidiaries party thereto, at the time of any such grant

or continuation or at the time such Hedge Agreement, Cash Management Agreement or Treasury Agreement is entered into, as the case may be. No Secured Party shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of such obligor. Each Guarantor has adequate means to obtain information from each such obligor on a continuing basis concerning the financial condition of each such obligor and its ability to perform its obligations under the Loan Documents, any Hedge Agreements, any Cash Management Agreements or any Treasury Transactions, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of each such obligor and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of any such obligor now known or hereafter known by any Secured Party.

**Section 7.11 Bankruptcy, Etc.**

(a) The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding (or analogous proceeding under any Debtor Relief Law), voluntary or involuntary, involving the bankruptcy, insolvency, examinership, receivership, reorganization, liquidation or arrangement of any Borrower or any other Guarantor or by any defense which any Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the applicable Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in Section 7.11(a) (or, if interest on any portion of the applicable Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the applicable Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the applicable Guaranteed Obligations because it is the intention of the Guarantors and Secured Parties that the Guaranteed Obligations which are guaranteed by the Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve any Borrower of any portion of such Guaranteed Obligations. The Guarantors shall permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person under any Debtor Relief Law to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Borrower, the obligations of the Guarantors with respect to such amounts hereunder shall be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

**Section 7.12 Discharge of Guaranty Upon Sale of Guarantor.** If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise

disposed of or such Guarantor ceases to be a Restricted Subsidiary, in each case in accordance with the terms hereof or as otherwise consented to by the Required Lenders (or such other Lenders as may be required to give such consent under Section 10.05), the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder and all security interests granted in the Collateral by such Guarantor to secure such Guaranty shall automatically be discharged and released without any further action by any Secured Party or any other Person effective as of the time of such transaction. Upon request of the Borrower Representative, the Administrative Agent and the Collateral Agent shall take, and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to take, such actions as shall be reasonably requested to evidence the termination and release of such Guaranty and such security interests in the Collateral.

**Section 7.13 European Guarantor Limitations.** In respect of the European Guarantor, the guarantee under this Article VII (including the contribution requirements under Section 7.02) does not apply to (or, in the case of Section 7.02, will not create) any liability to the extent that it would result in this guarantee constituting unlawful financial assistance prohibited by section 2:98c of the Dutch Civil Code.

**Section 7.14 Subordination of the Guaranteed Obligations.** Notwithstanding anything herein or in any other Loan Document to the contrary, the Collateral Agent, for itself and on behalf of each Secured Party, and each Guarantor hereby agrees that the Guaranteed Obligations of CKI and the CKI Affiliates shall be subordinated in right of payment to the CKI Obligations and 2023 Debentures Obligations to the extent set forth in Section 2.3 of the CKI Intercreditor Agreement.

## **ARTICLE VIII. EVENTS OF DEFAULT**

**Section 8.01 Events of Default.** If any one or more of the following conditions or events occur:

(a) Failure to Make Payments When Due. Failure by any Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise unless the failure to make such a payment is caused solely by administrative or technical error and payment is made within three Business Days of the due date therefor; (ii) within five Business Days after the date when due any amount payable to the Issuing Bank in reimbursement of any drawing under a Letter of Credit; or (iii) any interest on any Loan or any fee or any other amount due hereunder within five Business Days after the date due; or

(b) Default Under Other Agreements. (i) Failure of any Loan Party or any of their respective Subsidiaries (other than a Securitization Subsidiary or an Unrestricted Subsidiary) to pay when due any principal of or interest on or any other amount (other than customary reimbursement of fees and expenses), including any payment in settlement, payable in respect of one or more items of Material Indebtedness (other than Indebtedness referred to in Section 8.01(a), or the CKI Obligations, which are the subject of Section 8.01(n)) beyond the grace period, if any, provided therefor; or (ii) breach or default by any Loan Party with respect to any other material term of (1)

one or more items of Material Indebtedness or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. (i) Failure of any Loan Party to perform or comply with any term or condition contained in Section 2.06, Section 5.01(e), Section 5.02 (solely as to the existence of any Borrower) or Article VI, or (ii) failure of any Loan Party to perform or comply with any term or condition in Section 5.01(a), 5.01(b) or 5.01(c), and in the case of this clause(ii), such default shall not have been remedied or waived within 15 days; or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Loan Document or in any statement or certificate at any time given by any Loan Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents; Dutch Security Agreements. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents or any Dutch Security Agreement, other than any such term referred to in any other subsection of this Section 8.01, and such default shall not have been remedied or waived within 30 days after receipt by the Borrower Representative of notice from the Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy, Appointment of Receiver, Creditor's Process, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Material Company, other than any Material Company organized under the laws of Germany, in an involuntary case (or analogous proceeding under any Debtor Relief Law) under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; (ii) (x) an involuntary case (or analogous proceeding under any Debtor Relief Law) shall be commenced against any Material Company (other than any Material Company organized under the laws of Germany) under the Bankruptcy Code or under any other applicable Debtor Relief Law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, examiner, liquidator, conservator, custodian or other officer having similar powers over any Material Company (other than any Material Company organized under the laws of Germany), or over all or a substantial part of its property, shall have been entered; or (y) there shall have occurred the involuntary appointment of an interim receiver, trustee, examiner, liquidator, conservator or other custodian of any Material Company (other than any Material Company organized under the laws of Germany) for all or a substantial part of its property; or a warrant of or order for attachment, execution or similar process shall have been issued against any substantial part of the property of any Material Company (other than any Material Company organized under the laws of Germany), and any such event described in this clause(ii) shall continue for 60 days without having been dismissed or discharged; or (iii) any expropriation, attachment,

sequestration, distress or execution (including by way of executory attachment (*executoriaal beslag*) or interlocutory attachment (*conservatoir beslag*) or any analogous process) in any jurisdiction affects any asset or assets of a Material Company (other than any Material Company organized under the laws of Germany) exceeding an aggregate value of €37,792,895 (or its equivalent) unless such process is either being contested in good faith and/or proven to be frivolous or vexatious and is discharged within 20 Business Days after commencement; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Any Material Company (other than any Material Company organized under the laws of Germany) shall have an order for relief entered with respect to it or shall commence a voluntary case (or analogous proceeding under any Debtor Relief Law) under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case (or analogous proceeding under any Debtor Relief Law), or to the conversion of an involuntary case to a voluntary case (or analogous proceeding under any Debtor Relief Law), under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee, examiner, liquidator, conservator or other custodian for all or a substantial part of its property; or any Material Company shall make a general assignment for the benefit of creditors; (ii) any Material Company (other than any Material Company organized under the laws of Germany) shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors (or similar governing body) or shareholders of any Loan Party or any of its Subsidiaries, or any committee thereof shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.01(f); or (iii) a European Loan Party shall have filed a notice under Section 36 of the Dutch Tax Collection Act (*Invorderingswet 1990*); or

(h) German Proceedings. Without limitation of Section 8.01(f) or 8.01(g), with respect to any Material Company organized under the laws of Germany: (i) an involuntary petition for insolvency proceedings in respect of its assets (*Antrag auf Eröffnung eines Insolvenzverfahrens*) is filed and not dismissed within 60 days; (ii) any event occurs which constitutes a cause for the initiation of insolvency proceedings (*Eröffnungsgrund*) as set forth in Section 17 (*Zahlungsunfähigkeit*) or 19 (*Überschuldung*) of the German Insolvency Act (*Insolvenzordnung*); (iii) the commencing of negotiations with one or more of its creditors with a view to the general readjustment or rescheduling of its Indebtedness (other than customary adjustments of payment terms with suppliers); (iv) an insolvency court taking steps as set out in Section 21 of the German Insolvency Act (*Insolvenzordnung*); or (v) a court order for commencement of insolvency proceedings (*Insolvenzeröffnungsbeschluss*) or for rejection of insolvency proceedings due to lack of funds (*Abweisungsbeschluss mangels Masse*) is made; or

(i) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$75,000,000 or (ii) in the aggregate at any time an amount in excess of \$75,000,000 (in either case to the extent not covered by insurance by a solvent and unaffiliated insurance company) shall be entered or filed against any Loan Party or any of its Restricted Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days thereafter (or in any event later than five days prior to the date of any proposed sale thereunder); or

(j) Employee Benefit Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in or would reasonably be expected to result in a Material Adverse Effect; or

(k) Change of Control. A Change of Control occurs; or

(l) Guarantees, Security Documents and other Loan Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect with respect to a Material Company (other than in accordance with its terms) or, with respect to a Material Company, shall become null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Security Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall become null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Security Documents with the priority required by the relevant Security Document, in each case for any reason other than the failure of the Collateral Agent or any Secured Party to take any action within its control; provided that this clause (ii) shall not apply to any Security Document the invalidity of which would not reasonably be considered prejudicial to the interests of the Secured Parties taken as a whole, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Security Documents; or

(m) Expropriation. There occurs any seizure, expropriation, nationalization, intervention or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Group Member or any of its assets that would reasonably be expected to have a Material Adverse Effect; or

(n) CKI Related Matters. (i) An event described in Section 8.01(f) or 8.01(g) shall occur with respect to the CKI Trust, (ii) the CKI Trust or the CKI Trust Agreement or other operative documents with respect to the CKI Trust shall be modified, amended or altered in any manner which would have a material adverse effect on the CKI Trust or otherwise be materially disadvantageous to the interests of the Lenders, taken as a whole, (iii) the CKI Intercreditor Agreement shall cease to be in full force and effect (other than in accordance with its terms or with the consent of the Required Lenders), (iv) the Design Services Purchase Payment (as defined in the CKI Stock Purchase Agreement) shall not be paid when due (beyond any applicable grace period) or the CKI Liquidated Damages Amount under the CKI Stock Purchase Agreement shall become due and payable (provided that, if such CKI Liquidated Damages Amount has become due and payable solely arising from an Event of Default under the CKI Security Agreement with respect to which no cure period applies, such acceleration of the CKI Liquidated Damages Amount shall not be an Event of Default hereunder unless such amount remains unpaid for 30 days); or (v) a CKI Blockage Event shall have occurred and *pro forma* for such occurrence, the U.S. Borrower would not be in compliance with the financial covenants set forth in Section 6.07 after excluding CKI and the CKI Affiliates from Consolidated Adjusted EBITDA (provided that such Event of Default may be cured upon delivery by the Borrower Representative of a Compliance Certificate in accordance with Section 5.01(c)(iii)).

demonstrating compliance with the financial covenants set forth in Section 6.07 after excluding CKI and the CKI Affiliates from Consolidated Adjusted EBITDA);

**THEN**, (1) upon the occurrence of any Event of Default described in Section 8.01(f), 8.01(g) or 8.01(h), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Required Lenders, (A) the Revolving Commitments, if any, of each Lender having such Revolving Commitments, the obligation of each Issuing Bank to issue any Letter of Credit, the obligation of the Swing Line Lender to make any Swing Line Loan and the obligation to make loans under any Ancillary Facility shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Loan Party: (i) the unpaid principal amount of and accrued interest on the Loans, (ii) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), (iii) all amounts due under any Ancillary Facility and (iv) all other Obligations; provided, that the foregoing shall not affect in any way the obligations of Lenders under Section 2.03(b)(v) or 2.04(e); (C) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to Security Documents; (D) the Administrative Agent shall direct the Borrower Representative to pay (and each Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Sections 8.01(f), 8.01(g) and 8.01(h) to pay) to the Administrative Agent such additional amounts of cash as reasonably requested by the Issuing Bank, to be held as security for each Borrower's reimbursement Obligations in respect of Letters of Credit then outstanding; and (E) the Administrative Agent and the Collateral Agent may exercise on behalf of themselves, the Lenders, the Issuing Bank and the other Secured Parties all rights and remedies available to the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Bank under the Loan Documents or under applicable law or in equity.

## **ARTICLE IX. AGENTS**

**Section 9.01 Appointment of Agents.** Each of MLPFS and CGM|Citi are hereby appointed as a Co-Syndication Agent hereunder, and each Lender hereby authorizes MLPFS and CGM|Citi to act as the Co-Syndication Agents in accordance with the terms hereof and the other Loan Documents. Barclays is hereby appointed as the Administrative Agent and the Collateral Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Barclays to act as the Administrative Agent and the Collateral Agent in accordance with the terms hereof and the other Loan Documents. Royal Bank is hereby appointed as the Documentation Agent hereunder, together with JPMorgan, in connection with the Second Amendment, and each Lender hereby authorizes JPMorgan and Royal Bank to act as the Documentation AgentAgents in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article IX (other than as expressly provided herein) are solely for the benefit of the Agents and the Lenders and no Loan Party shall have any rights as a third party beneficiary

of any of the provisions of this Article IX (other than as expressly provided herein). In performing its functions and duties hereunder, each Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Group Member. Each Syndication Agent and the Documentation ~~Agent~~Agents, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each of the Arrangers, the Bookrunners, the Co-Syndication Agents and the Documentation ~~Agent~~Agents are named as such for recognition purposes only, and in their respective capacities as such shall have no duties, responsibilities or liabilities with respect to this Agreement or any other Loan Document; it being understood and agreed that each of the Arrangers, the Bookrunners, the Co-Syndication Agents and the Documentation ~~Agent~~Agents shall be entitled to all indemnification and reimbursement rights in favor of the Agents provided herein and in the other Loan Documents and all of the other benefits of this Article IX.

**Section 9.02 Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. In the event that any obligations (other than the Obligations) are permitted to be incurred hereunder and secured by Liens permitted to be incurred hereunder on all or a portion of the Collateral, each Lender authorizes the Administrative Agent and the Collateral Agent to enter into intercreditor agreements, subordination agreements and amendments to the Security Documents to reflect such arrangements on terms acceptable to the Administrative Agent and Collateral Agent. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship or other implied duties in respect of any Lender, any Loan Party or any other Person; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement 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 the agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

**Section 9.03 General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document, or for the creation, perfection or priority of any Lien, or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to the Lenders or by or on behalf of any Loan

Party or to any Agent or Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in Article III or elsewhere herein (other than confirm receipt of items expressly required to be delivered to such Agent) or to inspect the properties, books or records of any Group Member or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Lenders (i) for any action taken or omitted by any Agent (A) under or in connection with any of the Loan Documents or (B) with the consent or at the request of the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement) except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction or (ii) for any failure of any Loan Party to perform its obligations under this Agreement or any other Loan Document. No Agent shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose or be liable for the failure to disclose, any information relating to any Borrower or any of its Affiliates that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.05) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions and shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for a Group Member), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.05).

(c) Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by it. Each

of the Administrative Agent, the Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.03 and of Section 9.06 shall apply to any of the Affiliates of the Administrative Agent or the Collateral Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent or Collateral Agent, as applicable. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.03 and of Section 9.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent or the Collateral Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent; provided, that the Administrative Agent and Collateral Agent shall be responsible for all acts of each of their respective sub-agents, and each Loan Party, Secured Party and other Person shall have the same rights against the Administrative Agent or Collateral Agent, as applicable, as if the Administrative Agent or Collateral Agent, as applicable, had performed the duties and exercised the rights and powers under this Agreement or any other Loan Document that its sub-agent performed or exercised.

(d) Notice of Default or Event of Default. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to such Agent by a Loan Party or a Lender. In the event that the Administrative Agent shall receive such a notice, the Administrative Agent shall give notice thereof to the Lenders, provided that failure to give such notice shall not result in any liability on the part of the Administrative Agent.

**Section 9.04 Agents Entitled to Act as Lender**. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent shall have the same rights and powers hereunder in its capacity as a Lender as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the U.S. Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the U.S. Borrower for services in connection herewith and otherwise without having to account for the same to Lenders. The Lenders acknowledge that pursuant to such activities, the Agents or their

Affiliates may receive information regarding any Loan Party or any Affiliate of any Loan Party (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Agents and their Affiliates shall be under no obligation to provide such information to them.

**Section 9.05 Lenders' Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Group in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Group. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to the Original Credit Agreement (or, if applicable, the First [Amendment or Second Amendment](#)), an Assignment Agreement or a Joinder Agreement and funding its Tranche A Term Loans, ~~Franchise-B Term Loans~~, Revolving Commitments and/or Revolving Loans on the Closing Date, the Restatement [Date, the Second Amendment Date](#) or thereafter or by the funding of any Incremental Term Loans or Incremental Revolving Loans, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date, the Restatement Date, [the Second Amendment Date](#) or as of the date of funding of such Loans.

**Section 9.06 Right to Indemnity.** Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent to the extent that such Agent shall not have been reimbursed by any Loan Party (and without limiting its obligation to do so), for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, that in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided, further, that this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**Section 9.07 Successor Administrative Agent, Collateral Agent and Swing Line Lender.**

(a) The Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to the Lenders and the Borrower Representative. The Administrative Agent shall have the right to appoint a financial institution to act as the Administrative Agent and/or the Collateral Agent hereunder, subject to the reasonable satisfaction of the Borrower Representative and the Required Lenders, and the Administrative Agent's resignation shall become effective on the earlier of (i) the acceptance of such successor Administrative Agent by the Borrower Representative and the Required Lenders or (ii) the thirtieth day after such notice of resignation. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, upon five Business Days' notice to the Borrower Representative, to appoint a successor Administrative Agent. If neither Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, then the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided, that until a successor Administrative Agent is so appointed by Required Lenders or the Administrative Agent, the Administrative Agent, by notice to the Borrower Representative and Required Lenders, may retain its role as the Collateral Agent under any Security Document. Except as provided in the preceding sentence, any resignation of Barclays or its successor as the Administrative Agent pursuant to this Section 9.07 shall also constitute the resignation of Barclays or its successor as the Collateral Agent. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Section 9.07 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent hereunder. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Security Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Security Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. If the Administrative Agent is retaining its role as Collateral Agent, the actions enumerated in the preceding sentence will be modified to account for such retained role. Any successor Administrative Agent appointed pursuant to this Section 9.07 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder. If Barclays or its successor as the Administrative Agent pursuant to this Section 9.07 has resigned as the Administrative Agent but retained its role as the Collateral Agent and no successor Collateral Agent has become the Collateral Agent pursuant to the immediately preceding sentence, Barclays or its successor may resign as the Collateral Agent upon notice to the Borrower Representative and Required Lenders at any time.

(b) In addition to the foregoing, the Collateral Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and the Loan Parties. The Administrative Agent

shall have the right to appoint a financial institution as the Collateral Agent hereunder, subject to the reasonable satisfaction of the Borrower Representative and the Required Lenders and the Collateral Agent's resignation shall become effective on the earlier of (i) the acceptance of such successor Collateral Agent by the Borrower Representative and the Required Lenders or (ii) the thirtieth day after such notice of resignation. Upon any such notice of resignation, if a successor Collateral Agent has not already been appointed by the retiring Collateral Agent, Required Lenders shall have the right, upon five Business Days' notice to the Administrative Agent, to appoint a successor Collateral Agent. Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, the successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement and the Security Documents, and the retiring Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Security Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Security Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Security Documents, whereupon such retiring Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Security Documents. After any retiring Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Agreement and the Security Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Security Documents while it was the Collateral Agent hereunder.

(c) Any resignation of Barclays or its successor as the Administrative Agent pursuant to this Section shall also constitute the resignation of Barclays or its successor as the Swing Line Lender and Issuing Bank, and any successor Administrative Agent appointed pursuant to this Section 9.07 shall, upon its acceptance of such appointment, become the successor to the Swing Line Lender and an Issuing Bank (in accordance with Section 2.04(h)) for all purposes hereunder. In such event (i) the U.S. Borrower shall prepay any outstanding Swing Line Loans made by the retiring Administrative Agent in its capacity as Swing Line Lender, (ii) upon such prepayment, the retiring Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to the U.S. Borrower for cancellation and (iii) the U.S. Borrower shall issue, if so requested by the successor Administrative Agent and the Swing Line Lender, a new Swing Line Note to the successor Administrative Agent and the successor Swing Line Lender, in the principal amount of the Swing Line Sublimit then in effect and with other appropriate insertions.

#### **Section 9.08 Security Documents and Guaranty.**

(a) Agents under Security Documents and Guaranty. Each Secured Party hereby further authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Security Documents; provided, that, except as expressly set forth herein, neither the Administrative Agent nor the Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder

of Obligations. Subject to Section 10.05, without further written consent or authorization from any Secured Party, the Administrative Agent or the Collateral Agent, as applicable may execute any documents or instruments necessary (i) in connection with a sale or disposition of assets permitted by this Agreement, to release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.05) have otherwise consented or (ii) to release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.05) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrowers, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

(c) Rights under Hedge Agreements. No Hedge Agreement shall create (or be deemed to create) in favor of any Lender 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 Sections 2.15(f) and 10.05(c)(v) of this Agreement. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed the 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 Section 9.08(c).

(d) Release of Collateral and Guarantees, Termination of Loan Documents.

(i) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations have been Paid in Full, this Agreement and all other Loan Documents, all guarantee obligations provided for in any Loan Document and all security interests granted pursuant to any Loan Document shall automatically terminate, and upon request of the Borrower Representative, the Administrative Agent and the Collateral Agent shall (without notice to, or vote or consent of, any Lender or any Lender Counterparty) take such actions as shall be reasonably requested to evidence the release of its security interest in all Collateral, and to evidence the release of all guarantee obligations provided

for in any Loan Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation, examinership, receivership or reorganization of any Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor, liquidator, examiner or conservator of, or trustee or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(ii) Upon any disposition of property permitted by this Agreement, any security interest in such property provided for in any Security Document shall be deemed to be automatically released and such property shall automatically revert to the applicable Loan Party with no further action on the part of any Person. The Collateral Agent shall, at the applicable Loan Party's expense, execute and deliver or otherwise authorize the filing of such documents as such Loan Party shall reasonably request, in form and substance reasonably satisfactory to the Collateral Agent, including financing statement amendments to evidence such release.

(iii) Notwithstanding anything to the contrary contained in any Security Document or any other Loan Document, in the event that the Collateral Agent exercises any of its rights or remedies under the Loan Documents with respect to Collateral that is the subject of a Trademark license agreement entered into by the U.S. Borrower or any of its Subsidiaries, the Lenders hereby agree that the Collateral Agent shall, and the Collateral Agent hereby agrees that it shall, exercise such rights and remedies subject to the obligation to pay royalties and the restrictions on the marketing, sale and distribution of such goods, in each case, that are contained in the applicable licensing agreement; provided that such restrictions are in the nature of customary restrictions intended to preserve the rights of the applicable licensors in the licensed Intellectual Property, preserve the prestige, image and goodwill of the licensed Intellectual Property and the licensor and/or avoid the infringement of the rights of any third party, including, without limitation, any other licensee of the applicable licensor. At the request of the U.S. Borrower or any of its Subsidiaries from time to time, the Lenders hereby agree that the Collateral Agent shall be authorized to, and the Collateral Agent hereby agrees that it shall, execute and deliver to the U.S. Borrower acknowledgments of the Lenders' and the Collateral Agent's agreements pursuant to the foregoing sentence, for the benefit of the applicable licensor.

**Section 9.09 Withholding Taxes.** To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If any payment has been made to any Lender by the Administrative Agent without the applicable withholding Tax being withheld from such payment and the Administrative Agent has paid over the applicable withholding Tax to the Internal Revenue Service or any other Governmental Authority, or the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not

properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred, provided that nothing in this Section 9.09 shall impose any obligation on any Loan Party.

**Section 9.10 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under the Bankruptcy Code or other applicable law or any other judicial proceeding relative to any Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the other Secured Parties (including fees, disbursements and other expenses of counsel) 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. Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and other Secured Party to make such payments to the Administrative Agent. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or other Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or other Secured Party to authorize the Administrative Agent to vote in respect of the claim of such Person or in any such proceeding.

**Section 9.11 Administrative Agent's "Know Your Customer" Requirements.** Each Lender shall promptly, upon the request of the Administrative Agent, provide such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself) in order for the Administrative Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Loan Documents.

## ARTICLE X. MISCELLANEOUS

### **Section 10.1 Notices.**

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Loan Party, the Collateral Agent, the Administrative Agent, the Swing Line Lender or the Issuing Bank, shall be sent to such Person's address as set forth on Schedule 1.01(d) or in the other relevant Loan Document, and in the case of any Lender, the address as indicated on Schedule 1.01(d) or otherwise indicated to the Administrative Agent in writing. Except as otherwise set forth in Section 10.01(b) below, each notice hereunder shall be in writing and may be personally

served or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, ordinary or registered post, or three Business Days after depositing it in the ordinary or prepaid post or United States mail with postage prepaid and properly addressed; provided, that no notice to any Agent shall be effective until received by such Agent; provided, further, that any such notice or other communication shall at the request of the Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.03(c) hereto as designated by the Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to the Administrative Agent, the Collateral Agent, the Swing Line Lender, the Lenders and any Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, the Collateral Agent, the Swing Line Lender, each Lender and each Issuing Bank, as applicable; provided, that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, each other Agent and the Borrower Representative hereby agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that any Borrowing Notice or notice of an Event of Default shall be promptly confirmed by facsimile. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents nor any of their respective officers, directors, employees, agents, advisors or representatives (the "Agent Affiliates") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the

Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, Software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform. In no event shall any Agent nor any of the Agent Affiliates have any liability to any Loan Party, any Lender or any other Person for damages of any kind, whether or not based on strict liability and including (A) direct damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or any Agent's transmission of communications through the internet, except to the extent the liability of any such Person if found in a final ruling by a court of competent jurisdiction to have resulted from such Person's gross negligence or willful misconduct or (B) indirect, special, incidental or consequential damages.

(iv) Each Loan Party, each Lender, the Issuing Bank and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

(v) All uses of the Platform shall be governed by and subject to, in addition to this Section 10.01, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

(c) Change of Address. Any party hereto may changes its address or telecopy number for notices and other communications hereunder by written notice to the other parties hereto.

**Section 10.02 Expenses.** Whether or not the transactions contemplated hereby are consummated, each Borrower agrees to pay promptly (a) all the actual and reasonable out-of-pocket costs and expenses incurred by the Agents and the Arranger in connection with the negotiation, preparation and execution of the Loan Documents and any consents, amendments, supplements, waivers or other modifications thereto; (b) the reasonable fees, expenses and disbursements of counsel to the Agents (in each case including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, supplements, waivers or other modifications thereto and any other documents or matters requested by any Borrower; provided that reasonable attorney's fees shall be limited to one primary counsel and, if reasonably required by the Administrative Agent, one local counsel per jurisdiction and one specialist counsel per specialty, provided, further, that no such limitation shall apply if counsel for the Administrative Agent determines in good faith that there is a conflict of interest that requires separate representation for any Agent or Lender; (c) all the actual costs and reasonable out-of-pocket expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of the Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and Taxes, stamp or documentary Taxes, search fees, title insurance

premiums and reasonable fees, expenses and disbursements of counsel to the Collateral Agent and the Administrative Agent; (d) all the actual costs and reasonable out-of-pocket expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (e) all other actual costs and reasonable out-of-pocket expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions contemplated by the Loan Documents and any consents, amendments, supplements, waivers or other modifications thereto; and (f) all actual costs and reasonable out-of-pocket expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent or any Lender in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings. All amounts due under this Section 10.02 shall be due and payable promptly after demand therefor.

### **Section 10.03 Indemnity.**

(a) In addition to the payment of expenses pursuant to Section 10.02, whether or not the transactions contemplated hereby are consummated, each Loan Party agrees to defend (subject to Indemnitees' rights to selection of counsel), indemnify, pay and hold harmless, each Agent, Arranger, Bookrunner, any other agent or co-agent (if any) designated by the Bookrunners with respect to the credit facilities hereunder, Issuing Bank, Swing Line Lender and Lender and the officers, partners, members, directors, trustees, shareholders, advisors, employees, representatives, attorneys, controlling persons, agents and Affiliates of each Agent, Arranger, Bookrunner, other agent or co-agent (if any) designated by the Bookrunners with respect to the credit facilities hereunder, Issuing Bank, Swing Line Lender and Lender (each, an "Indemnitee"), from and against any and all Indemnified Liabilities; provided, that no Loan Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (a) arise from (i) the gross negligence or willful misconduct of such Indemnitee or any of such Indemnitee's Affiliates or any of its or their respective partners, trustees, shareholders, officers, directors, employees, advisors, representatives, agents, attorneys, controlling persons or members or (ii) a material breach of such Indemnitee's (or any of its Affiliates, partners, trustees, shareholders, officers, directors, employees, advisors, representatives, agents, attorneys, controlling persons and members) obligations under the Loan Documents, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction, (b) arise out of any dispute among Indemnitees (other than a dispute involving claims against the Administrative Agent, the Collateral Agent, an Arranger or a Bookrunner, in each case in their respective capacities as such) that did not involve actions or omissions of the Loan Parties or their Affiliates or (c) arise in connection with any settlement entered into by such Indemnitee without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Loan Parties (provided, however, that the foregoing indemnity will apply to any such settlement in the event the Loan Parties were offered the ability to assume the defense of the action that was the subject matter of such settlement and elected not to assume the defense); provided, further, that in connection therewith, the Loan Parties shall only be responsible for the fees, charges and disbursements of a single counsel selected by the Administrative Agent for all Indemnitees and of such special and

local counsel as the Administrative Agent may deem appropriate in its good faith discretion, except that if any Indemnitee reasonably concludes that its interests conflict or are reasonably likely to conflict with those of other Indemnitees and notifies the Loan Parties of such conflict, the Loan Parties shall also be responsible for the fees, charges and disbursements of one separate counsel for such conflicted Indemnitees; provided, further, that in respect of a European Loan Party, the Guaranty of the European Guarantor (including the contribution requirements in respect of the indemnity in this Section 10.03) does not apply to any Indemnified Liability to the extent that it would result in this indemnity constituting unlawful financial assistance prohibited by section 2:98c of the Dutch Civil Code. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.03 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Loan Party shall to the extent permitted by law contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no Loan Party or Indemnitee shall be responsible or liable to any Person for any special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) alleged as arising out of, in connection with, as a result of or in any way related to this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the transmission of information through the Internet, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith; provided that the foregoing does not otherwise modify the obligations of the Loan Parties set forth in this Section 10.03. Each Loan Party and each Indemnitee, as applicable, hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) All amounts due under this Section 10.03 shall be due and payable within five days after demand therefor.

**Section 10.04 Set-Off.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuation of any Event of Default each Lender is hereby authorized by each Loan Party at any time or from time to time to the fullest extent permitted by law and subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived to the fullest extent permitted by applicable law, to set-off and to appropriate and to apply any and all deposits (time or demand, provisional or final, general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Loan Party against and on account of the obligations and liabilities of any Loan Party to such Lender hereunder, the Letters of Credit and participations therein and under the other Loan Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Loan Document, irrespective of whether or not (i) such Lender shall have made any demand hereunder or (ii) such obligations and liabilities, or any of them, may be contingent or unmatured.

## **Section 10.05 Amendments and Waivers.**

(a) Required Lenders' Consent. Subject to the additional requirements of Sections 10.05(b) and 10.05(c), no amendment, supplement, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of the Required Lenders and the U.S. Borrower (it being understood that delivery of an executed counterpart of a signature page to the applicable amendment, supplement, modification, termination or waiver by facsimile or other electronic transmission will be effective as delivery of an original executed counterpart thereof); provided that (x) any Defaulting Lender shall be deemed not to be a "Lender" for purposes of calculating the Required Lenders (including the granting of any consents or waivers) with respect to any of the Loan Documents and (y) the Administrative Agent and the Borrower Representative may amend, modify or supplement this Agreement to cure any error (including, but not limited to, typographical error, incorrect cross-reference or incorrectly-named defined term), defect, ambiguity, inconsistency or any other error or omission of a technical nature, and such amendment, modification or supplement shall become effective without any further action or consent of any other Lender if the same is not objected to in writing by the Required Lenders to the Administrative Agent within 10 Business Days following receipt of notice thereof.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be directly and adversely affected thereby, no amendment, supplement, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Loan or Note;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment) of principal;
- (iii) [reserved];

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee or any premium payable hereunder (it being understood that any change to the definition of Net Leverage Ratio or in the component definitions thereof shall not constitute a reduction in the rate of interest); provided, further, that only the consent of the Required Lenders shall be necessary to amend the Default Rate in Section 2.10 or to waive any obligation of any Borrower to pay interest at the Default Rate;

(v) waive or extend the time for payment of any such interest, fees or premiums, it being understood that only the consent of the Required Lenders shall be necessary to rescind an acceleration of Obligations after acceleration thereof pursuant to Section 8.01 hereof;

(vi) reduce or forgive the principal amount of any Loan or any reimbursement Obligation in respect of any Letter of Credit;

(vii) amend, modify, terminate or waive any provision of Section 2.13(b)(ii), Section 2.13(c)(i) to the extent relating to the requirement to make Offers to all Lenders

in a Class, Section 2.15 (except to the extent provided for in Section 10.05(c)(iii)), Section 2.16(c), Section 2.17, this Section 10.05(b), Section 10.05(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document except as expressly provided in any Loan Document;

(ix) amend the definition of “Required Lenders” or amend Section 10.05(a) in a manner that has the same effect as an amendment to such definition or the definition of “Pro Rata Share”; provided that with the consent of Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of “Required Lenders” or “Pro Rata Share” on substantially the same basis as the Term Loan Commitments, the Term Loans, the Revolving Commitments and the Revolving Loans are included on the Closing Date;

(x) release all or substantially all of the Collateral or all or substantially all of the Guarantors (by value) from the Guaranty except as expressly provided in the Loan Documents or any Intercreditor Agreement;

(xi) amend or modify any provision of Section 10.06 in a manner that further restricts assignments thereunder;

(xii) amend or modify any Intercreditor Agreement in a manner that would adversely affect the priority of the Liens of the Collateral Agent or the Subordination of any Indebtedness to the Obligations; or

(xiii) change the stated currency in which any Borrower is required to make payments of principal, interest, fees or other amounts hereunder or under any other Loan Document;

provided that, for the avoidance of doubt, all Lenders shall be deemed directly and adversely affected thereby with respect to any amendment described in clauses (vii), (viii), (ix), (x) and (xii).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall:

(i) increase any Commitment of any Lender over the amount thereof then in effect or extend the outside date for such Commitment without the consent of such Lender; provided that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall be deemed to constitute an increase in any Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to (x) the U.S. Swing Line Sublimit or the U.S. Swing Line Loans without the consent of the U.S.

Swing Line Lender, or (y) the Canadian Swing Line Sublimit or the Canadian Swing Line Loans without the consent of the Canadian Swing Line Lender;

(iii) alter the required application of any repayments or prepayments as between Classes pursuant to Section 2.15 without the consent of Lenders holding more than 50.0% of the aggregate Tranche A Term Loan Exposure of all Lenders; ~~Tranche B Term Loan Exposure of all Lenders~~; Revolving Exposure of all Lenders or Incremental Term Loan Exposure of all Lenders, as applicable, of each Class which is being allocated a lesser repayment or prepayment as a result thereof; provided, that Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered;

(iv) amend, modify, terminate or waive any obligation of Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.04(e) without the written consent of the Administrative Agent and of the Issuing Bank;

(v) amend, modify or waive this Agreement or any Security Document so as to alter the ratable treatment of Obligations arising under the Loan Documents and Obligations arising under Hedge Agreements or the definition of “Lender Counterparty,” “Hedge Agreement,” “Obligations,” or “Secured Obligations” (as defined in any applicable Security Document) in each case in a manner adverse to any Lender Counterparty with Obligations then outstanding without the written consent of any such Lender Counterparty;

(vi) amend, modify, terminate or waive any provision of Article IX as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent;

(vii) amend any condition for Credit Extensions set forth in Section 3.02 without the consent of applicable Lenders holding more than 50% of the aggregate U.S. Revolving Exposure, 50% of the aggregate Canadian Revolving Exposure or 50% of the aggregate European Revolving Exposures, as applicable;

(viii) without limiting the provisions of Section 10.05(b), amend, modify, terminate or waive any provision hereof that would materially, disproportionately and adversely affect the obligation of any Borrower to make any payment of Revolving Loans without the consent of Lenders holding more than 50% of the aggregate Revolving Exposure of all Lenders (or if such amendment, modification or waiver affects only the European Revolving Loans, only the Canadian Revolving Loans or only the U.S. Revolving Loans, 50% of the aggregate Revolving Exposure of the relevant Class);

(ix) without limiting the provisions of Section 10.05(b), amend, modify, terminate or waive any provision hereof that would materially, disproportionately and adversely affect the obligation of any Borrower to make payment of Term Loans without the consent of Lenders holding more than 50.0% of the aggregate Term Loans of all Lenders (or if

such amendment, modification or waiver affects only a specific Class of Term Loans, 50% of the aggregate Term Loans of the relevant Class); and

(x) (i) the Commitment or Loan of any Defaulting Lender may not be increased or extended and the principal of any Loan of a Defaulting Lender may not be reduced, in each case without the consent of such Lender and (ii) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of each such Defaulting Lender.

(d) Execution of Amendments, Etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, supplements, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. In the case of any waiver, subject to any conditions or qualifications set forth therein, the parties hereto shall be restored to their former positions and rights hereunder and under the other Loan Documents, and, subject to any conditions or qualifications set forth therein, any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right or consequence in respect thereof. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.05 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Loan Party, on such Loan Party.

Notwithstanding anything to the contrary provided herein, no consent of any Lender shall be required in connection with the making of any amendment to any Loan Document of the type described in Section 2.24 hereof which states in such Section that no consent of any Lender, other than the applicable Incremental Revolving Loan Lender or Incremental Term Loan Lender, is required.

#### **Section 10.06 Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the respective successors and assigns. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders (and any purported assignment or delegation without such consent shall be null and void) and no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.06.

(b) Register. Each Borrower, each Guarantor, the Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding Tax matters and any

fees payable in connection with such assignment, in each case, as provided in Section 10.06(d). Each assignment shall be recorded in the Register promptly following receipt by the Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to the Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “Assignment Effective Date.” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, that *pro rata* assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term of “Eligible Assignee” upon the giving of notice to the Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of “Eligible Assignee” upon giving of notice to the Borrower Representative and the Administrative Agent and, in the case of assignments of Revolving Loans or Revolving Commitments to any such Person, consented to by the Borrower Representative (provided that the Borrower Representative shall be deemed to have consented to assignments made during the initial syndication of the Revolving Commitments to Lenders previously approved by the Borrower Representative and to any other such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof), the Administrative Agent, the applicable Issuing Bank and the applicable Swing Line Lender (each such consent not to be (x) unreasonably withheld or delayed or (y) in the case of the Borrower Representative, required at any time an Event of Default described in Section 8.01(a), 8.01(f), 8.01(g) or 8.01(h) has occurred and is continuing); provided, that each such assignment pursuant to this Section 10.06(c)(ii) shall be in an aggregate amount of not less than (A) \$5,000,000 (or such lesser amount as may be agreed to by the Borrower Representative and the Administrative Agent or as shall constitute the aggregate amount of the Revolving Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Commitments and Revolving Loans and (B) \$500,000 (or such lesser amount as may be agreed to by the Borrower Representative and the Administrative Agent or as shall constitute the aggregate amount of the Tranche A Term Loan, ~~Tranche B Term Loan~~ or Incremental Term Loans of a Series of the assigning Lender) with respect to the assignment of Term Loans; provided, that the Related Funds of any individual Lender may aggregate their Loans for purposes of determining compliance with such minimum assignment amounts.

(d) Mechanics. Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to the Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the

Assignment Effective Date. In connection with all assignments there shall be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income Tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(c), together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (x) in connection with an assignment elected or caused by a Borrower pursuant to Section 2.23, (y) in connection with an assignment by or to Barclays or any Affiliate thereof or (z) in the case of an assignee which is already a Lender or is an Affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon obtaining or succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date, the Restatement Date, the Second Amendment Date or ~~as of~~ the Assignment Effective Date, as applicable, that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it shall make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.06, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.06, as of the “Assignment Effective Date” (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof, including under Section 10.08) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, that anything contained in any of the Loan Documents to the contrary notwithstanding, (y) the Issuing Bank shall continue to have all rights and obligations thereof with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (z) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to the Administrative Agent for cancellation, and thereupon the applicable Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender. Any assignment or transfer by a

Lender of rights or obligations under this Agreement that does not comply with the requirements of this Section 10.06 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(g). Any assignment by a Lender pursuant to this Section 10.06 shall not in any way constitute or be deemed to constitute a novation, discharge, rescission, extinguishment or substitution of the Indebtedness hereunder, and any Indebtedness so assigned shall continue to be the same obligation and not a new obligation.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than any Group Member or any of their respective Affiliates) in all or any part of its Commitments, Loans or in any other Obligation: provided, that (A) such Lender's obligations shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) each Borrower, the Administrative Agent, each Issuing Bank and each of the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's agreements and obligations.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Revolving Commitment Termination Date) in which such participant is participating or the amortization schedule therefor, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Guarantors or the Collateral under the Security Documents (except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Each Borrower agrees that each participant shall be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(c); provided, that such participant agrees to be subject to Sections 2.19 and 2.20 as if it were a Lender; provided, further, that (x) a participant shall not be entitled to receive any greater payment under Section 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrower Representative's prior written consent and (y) a participant shall not be entitled to the benefits of Section 2.20 unless such participant

agrees, for the benefit of the Borrowers, to comply with Section 2.20 as though it were a Lender; provided, further, that, except as specifically set forth in clause (x) of this sentence, nothing herein shall require any notice to the Borrower Representative or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.04 as though it were a Lender; provided, that such participant agrees to be subject to Section 2.17 as though it were a Lender. A participant shall not be entitled to the benefits of Section 2.20 to the extent such participant fails to comply with Section 2.20(c).

(iv) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts of each participant's interest in the Commitments, Loans and other Obligations held by it (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such Commitments, Loans and other Obligations as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.06 any Lender may pledge (without the consent of any Borrower or the Administrative Agent) all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as between any Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; provided, further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(i) Act on the Financial Supervision. In order to comply with the Dutch Financial Supervision Act (*Wet op het financieel toezicht*), the amount transferred under this Section 10.06 shall include a portion outstanding from the European Borrower of at least €100,000 (or its equivalent in other currencies) or such other amount as may be required from time to time under the Dutch Financial Supervision Act (or implementing legislation) or if less, the new Lender shall confirm in writing to the Loan Parties that it is a professional market party (*professionele marktpartij*) within the meaning of the Dutch Financial Supervision Act.

**Section 10.07 Independence of Covenants, Etc.** All covenants, conditions and other terms hereunder and under the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, conditions or other terms,

the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant, condition or other term shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**Section 10.08 Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 2.18(c), 2.19, 2.20, 10.02 and 10.03 and the agreements of Lenders set forth in Sections 2.17, 9.03(b), 9.06 and 9.09 shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination hereof.

**Section 10.09 No Waiver; Remedies Cumulative.** No failure or delay or course of dealing on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Loan Documents or any of the Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy. Without limiting the generality of the foregoing, the making of any Credit Extension shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Agent, Issuing Bank or Lender may have had notice or knowledge of such Default or Event of Default at the time of the making of any such Credit Extension.

**Section 10.10 Marshalling; Payments Set Aside.** Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent or Lenders (or to the Administrative Agent, on behalf of Lenders), or any Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

**Section 10.11 Severability.** In case any provision in or obligation hereunder or under any other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular

jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction). The parties hereto shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions the economic effect of which comes as close as reasonably possible to that of the invalid, illegal or unenforceable provisions.

**Section 10.12 Obligations Several; Independent Nature of Lenders' Rights.** The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**Section 10.13 Table of Contents and Headings.** The Table of Contents hereof and Article and Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose, modify or amend the terms or conditions hereof, be used in connection with the interpretation of any term or condition hereof or be given any substantive effect.

**Section 10.14 APPLICABLE LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

**Section 10.15 CONSENT TO JURISDICTION.** SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH LOAN PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, HEREBY EXPRESSLY AND IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY SECURITY AGREEMENT GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES (i) JURISDICTION AND VENUE OF COURTS IN ANY OTHER JURISDICTION IN WHICH IT MAY BE ENTITLED TO BRING SUIT BY REASON OF ITS PRESENT OR FUTURE DOMICILE OR OTHERWISE AND (ii) ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH

COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE LOAN PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.01; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE LOAN PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT THE AGENTS AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY SECURITY DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

**Section 10.16 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 10.17 Confidentiality.** Each Agent and each Lender (which term shall for the purposes of this Section 10.17 include the Issuing Bank) shall hold all non-public information regarding the Group and their businesses identified as such by the Borrower Representative and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by the Borrower Representative that, in any event, the

Administrative Agent may not disclose such information other than to the Lenders and each Agent, provided, that each Lender may make (i) disclosures of such information to Affiliates or Related Funds of such Lender or Agent and to its and their respective officers, directors, employees, representatives, agents and advisors (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17); provided, that, prior to any disclosure, such Affiliates, Related Funds, officers, directors, employees, representatives, agents and advisors and other persons be instructed to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from any Agent or any Lender, (ii) disclosures of such information reasonably required by (A) any pledgee referred to in Section 10.06(h), (B) any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein, (C) any bona fide or potential direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Borrower and its obligations or (D) any direct or indirect investor or prospective investor in a Related Fund; provided, that such pledgees, assignees, transferees, participants, counterparties, advisors and investors are advised of and agree to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17, (iii) disclosure to any rating agency when required by it; provided, that, prior to any disclosure, such rating agency be instructed to preserve the confidentiality of any confidential information relating to the Loan Parties received by it from any Agent or any Lender, (iv) disclosures in connection with the exercise of any remedies hereunder or under any other Loan Document and (v) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, that unless specifically prohibited by applicable law or court order, each Lender and each Agent shall make reasonable efforts to notify the Borrower Representative of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

**Section 10.18 Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law, shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect; provided, that in no event shall the amount paid pursuant hereto be in excess of the amount of interest that would have been due if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been

in effect, then to the extent permitted by law, such Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and each Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the applicable Borrower.

**Section 10.19 Counterparts.** This Agreement may be executed in any number of counterparts (and by different parties hereto on different counterparts), each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission will be effective as delivery of an original executed counterpart thereof.

**Section 10.20 Effectiveness; Entire Agreement; No Third Party Beneficiaries.** This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Borrowers and the Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement, the other Loan Documents, the Engagement Letter, [the Second Amendment Engagement Letter](#) and any fee letter entered into in connection with the Engagement Letter, [the Second Amendment](#) or this Agreement represent the entire agreement of the Group, the Agents, the Issuing Bank, the Swing Line Lender, the Arrangers, the Bookrunners and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent, Issuing Bank, Swing Line Lender, Arranger, Bookrunner or Lender relative to the subject matter hereof or thereof not expressly set forth or referred to herein or in the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, express or implied, shall be construed to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders, holders of participations in all or any part of a Lender's Commitments, Loans or in any other Obligations, and the Indemnitees) any rights, remedies, obligations, claims or liabilities under or by reason of this Agreement or the other Loan Documents. 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, the Issuing Bank or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement.

**Section 10.21 PATRIOT Act.** Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that shall allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act.

**Section 10.22 "Know Your Customer" Checks.** If in connection with (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date hereof, (b) any change in the status of a Loan Party after the date hereof, (c) the

addition of any Guarantor pursuant to Section 5.11 or (d) any proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that was not previously a Lender hereunder, the Administrative Agent or any Lender (or, in the case of clause (d) above, any prospective Lender) requires additional information in order to comply with “know your customer” or similar identification procedures, each Loan Party shall, promptly upon the request of the Administrative Agent or such Lender, provide such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) or such Lender (for itself or, in the case of the event described in clause (d) above, on behalf of any prospective Lender) in order for the Administrative Agent, such Lender or such prospective Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Loan Documents.

**Section 10.23 Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as an original executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 10.24 No Fiduciary Duty.** Each Agent, each Lender, each Arranger, each Bookrunner, each Issuing Bank, the Swing Line Lender and their respective Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of each Borrower, its stockholders and/or its Affiliates. Each Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Borrower, its stockholders or its Affiliates, on the other; provided that each Loan Party acknowledges that one or more Affiliates of Barclays, MLPFS and CGMI (collectively, the “Borrower Financial Advisor”) were retained by the Borrowers as a buy-side financial advisor in connection with the Acquisition. The Borrowers, on behalf of themselves and their respective Subsidiaries and Affiliates, agree not to assert any claim that the Borrowers and their respective Subsidiaries and Affiliates might allege based on any actual or potential conflict of interest that might be asserted to arise or result from, on the one hand, the engagement of the Borrower Financial Advisor and, on the other hand, Barclays’, MLPFS’ or CGMI’s or their respective Affiliates’ respective relationships as Agent, Lender, Arranger, Bookrunner, Issuing Bank or Swing Line Lender, as applicable, described herein. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Borrowers, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Borrower, its stockholders or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Borrower, its stockholders or its Affiliates on other matters) or any other obligation to any Borrower except the obligations

expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Borrower, its management, stockholders, creditors or any other Person. Each Borrower acknowledges and agrees that such Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto.

**Section 10.25 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 any Borrower or Guarantor in respect of such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the applicable Borrower or Guarantor in the Agreement Currency, such Borrower or Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrower or Guarantor (or to any other Person who may be entitled thereto under applicable Law).

**Section 10.26 Ancillary Borrowers.** Subject to the terms of this Agreement, any Foreign Subsidiary may, with the approval of any relevant Ancillary Lender, become a borrower with respect to an Ancillary Facility. The Borrower Representative shall specify the relevant Foreign Subsidiary in a written notice delivered by it to the Administrative Agent pursuant to Section 2.26. Such Foreign Subsidiary shall become an Ancillary Borrower when such Foreign Subsidiary has delivered the following to the Administrative Agent and the relevant Ancillary Lender: (i) a Counterpart Agreement in the form of Exhibit F-2, (ii) all such information required by the Administrative Agent or the relevant Lender with respect to the regulations described in Section 10.21 or 10.22 and (iii) such documentation and certificates as are similar to those described in Section 3.01(b) and such customary legal opinions as the Administrative Agent or the relevant Ancillary Lender may reasonably request.

**Section 10.26 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 between the parties hereto, each party hereto acknowledges that any

liability of any EEA Financial Institution under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(c) a reduction in full or in part or cancellation of any such liability;

(d) 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

(e) 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.

*[Remainder of page intentionally left blank]*

**EXHIBIT A-2**

**Specified Amended and Restated Schedules**

**[To Be Attached.]**

**SCHEDULE 1.01(a)  
TO CREDIT AND GUARANTY AGREEMENT**

**TRANCHE A TERM LOAN COMMITMENTS**

**[On file with the Administrative Agent]**

[Schedule 1.01-(a)-1]

**SCHEDULE 1.01(c)  
TO CREDIT AND GUARANTY AGREEMENT**

**REVOLVING COMMITMENTS**

**[On file with the Administrative Agent]**

[Schedule 1.01-(c)-1]

## Schedule 6.01

### Certain Indebtedness

1. Guaranty by PVH Corp. (“PVH”) of the obligations of PVH UK Limited under the Concession Agreements between Harvey Nichols and Company Limited (“HN”) and PVH UK Limited (formerly known as TH (UK) Limited) relating to PVH UK Limited’s concessions to operate shops within HN’s stores in the United Kingdom
2. Guaranty by PVH of the obligations of Egypt Clothing Co. to Penfabric Sdn. Berhad
3. Guaranty by PVH to American Express Travel Related Services, Inc. regarding corporate credit cards held by PVH employees
4. Guaranty by PVH to American Express International Inc. regarding corporate credit cards held by PVH employees
5. Guaranty by PVH of Fenwick Limited’s obligations to Dolce & Gabbana
6. Indebtedness with respect to that certain Facility Letter, dated as of June 4, 2013, among PVH Canada, Inc. and HSBC Bank Canada (and Guaranty by PVH) (total commitments consists of: (a) C\$ 150,000 revolving loan facility, (b) US \$18,000,000 foreign exchange revolving line, (c) C\$ 10,000,000 daily settlement limit for spot and forward foreign exchange contract transactions), and C\$ 1,000,000 EFT facility
7. Indenture, dated as of July 11, 1988, by and between Blair County Industrial Development Authority and Warnaco Inc. (\$0 principal amount outstanding)
8. Credit facilities between WBR Industria e Comercio de Vestuario Ltda. and Itau Unibanco S.A. (15,000,000 Reais in total commitments)
9. Credit facility between WBR Industria e Comercio de Vestuario Ltda. and Banco Santander Brasil S.A. (15,000,000 Reais in total commitments)
10. Credit facilities, dated as of December 4, 2013, between WBR Industria e Comercio de Vestuario Ltda. and HSBC Bank Brasil S.A. (and US \$5,000,000 Guaranty by PVH) (30,000,000 Reais in total commitments)
11. Credit facility between WBR Industria e Comercio de Vestuario Ltda. and Banco do Brasil S.A. (9,000,000 Reais in total commitments)
12. Credit facility between WBR Industria e Comercio de Vestuario Ltda. and Banco Industrial (2,000,000 Reais in total commitments)
13. Credit facility between WBR Industria e Comercio de Vestuario Ltda. and Banco Bradesco (12,000,000 Reais in total commitments)

[Schedule 6.01-1]

14. Credit facilities between CK Stores Italy S.r.l. and Intesa Sanpaolo S.p.A. (along with patronage letters provided by Warnaco Inc.) (€1,500,000 in total commitments)
15. Credit facilities between CK Stores Italy S.r.l. and Banca Nazionale del Lavoro S.p.A. (along with patronage letters provided by Warnaco Inc.) (€2,200,000 in total commitments)
16. Credit facilities between CK Stores Italy S.r.l. and UniCredit S.p.A. (€560,000 in total commitments)
17. Credit facility between CK Stores Italy S.r.l. and Cassa di Risparmio di Parma e Piacenza S.p.A. (€356,000 in total commitments)
18. Credit Facility, dated as of December 4, 2013, and subsequently amended, by and between PVH Asia Ltd. and the Hongkong and Shanghai Banking Corporation Limited (for standby documentary credit facilities and bank guarantees) (and Guaranty by PVH) (\$5,000,000 in total commitments)
19. Credit Facility, dated as of December 4, 2013, and subsequently amended, by and between PVH Asia Ltd. and the Hongkong and Shanghai Banking Corporation Limited (for revolving loans) (and Guaranty by PVH) (\$10,000,000 in total commitments)
20. Continuing Letter of Credit Agreement, dated as of December 4, 2013, and amended on March 12, 2015, by and among The Hongkong and Shanghai Banking Corporation Limited, Warnaco, Inc, PVH Korea Co., Ltd., PVH Asia Ltd, Warnaco Global Sourcing Ltd, and PVH Canada, Inc. (and Guaranty by PVH) (\$25,000,000 in total commitments)
21. Credit facilities by and between Premium Garments Wholesale Trading Private Limited and The Hongkong and Shanghai Banking Corporation Limited (INR 345,000,000 in total commitments, consisting of INR 45,000,000 foreign exchange facility (and letter of comfort from PVH), dated as of January 27, 2014, and INR 300,000,000 multi-purpose line of credit (and guaranty by PVH), dated as of December 4, 2013), and subsequently amended
22. Foreign exchange line of credit, dated as of December 4, 2013, and subsequently amended, by and between PVH Korea Co., Ltd. and The Hongkong and Shanghai Banking Corporation Limited, Seoul Branch (and Warnaco Inc. guarantee of such line of credit) (and Guaranty by PVH) (\$15,000,000 in total commitments)
23. Agreement between Tommy Hilfiger Europe B.V. and HSBC Bank (£ 1,100,000 in total commitments)
24. Bonds, Guarantees and/or Indemnities Facility between PVH B.V. and Barclays Bank (and Guaranty by PVH) (€ 10,000,000 in total commitments)
25. Agreement between Tommy Hilfiger Japan Corporation and Mizuho Bank (and Guaranty by PVH) (¥ 1,000,000,000 in total commitments)

[Schedule 6.01-2]

26. Agreement, dated as of March 1, 2013, between Tommy Hilfiger Marka Dagitim Ve Ticaret Anonim Serketi and Garanti Bank (\$5,300,000 in total commitments)
27. Agreement, dated as of April 23, 2013, among Hilfiger Stores GmbH, PVH Deutschland GmbH and CommerzBank (€ 5,500,000 in total commitments)
28. Capital Leases (including any and all guaranties given in connection therewith)

Entity	Description	Lessor	Date of Lease
PVH Canada Inc.	7445 Cote de Liesse, St-Laurent, Quebec H4T 1G2, Canada	Sun Life Assurance Company of Canada	6/1/2007

29. Credit facility between PVH Korea Co., Ltd. and HSBC Bank for overdraft facility (KRW 3,500,000,000)
30. Credit facilities between Tommy Hilfiger Japan Corporation and Bank of Tokyo-Mitsubishi UFJ, Ltd. (JPY 1,200,000,000 in total commitments, consisting of JPY 200,000,000 overdraft facility and JPY 1,000,000,000 in total commitments (and Guaranty by PVH)
31. Credit facility between Tommy Hilfiger Marka Dagitim Ve Ticaret Anonim Serketi (Turkey) and Is Bank (TRY 3,000,000 in total overdraft commitments)
32. Credit facility between PVH Mexico, S.A. de C.V. and Banamex/Citibank for overdraft account facility (and Guarantee by PVH Corp) – MXN 80,000,000
33. Credit facility between PVH Mexico, S.A. de C.V.; PVH Services, S. de R.L. de C.V.; Operadora de Tiendas de Menudeo, S. de R.L. de C.V. and BBVA Bancomer for an overdraft facility (MXN 161,000,000)
34. Credit facility signed October 2015, between PVH Mexico, S.A. de C.V. and Santander for overdraft account facility (MXN 120,000,000)
35. Credit facility between PVH Mexico, S.A. de C.V. and Banamex/Citibank for overdraft facility (MXN 79,750,000)
36. Guaranty by PVH Corp. to Westpac regarding FX facility of PVH Brands Australia Pty Limited (AUD 4,500,000)
37. Credit facility between PVH Shanghai, PVH Commerce Shanghai and HSBC for FX Facility/Forward Contracts (USD \$4,800,000)
38. Credit facility between Tommy Hilfiger Europe BV and Bayerische Landesbank (EUR 20,000,000)

[Schedule 6.01-3]

## **Schedule 6.02**

### Certain Liens

Liens, if any, in existence as of the Second Amendment Date Date securing each of the instruments and agreements evidencing third-party Indebtedness of a Foreign Subsidiary set forth in items 27 and 29 through 38 on Schedule 6.01; provided that such Liens, if any, shall encumber only assets and property of the Foreign Subsidiary or Foreign Subsidiaries, as applicable, that is or are, as applicable, an obligor or obligors, as applicable, in respect of such Indebtedness

Liens on cash and Cash Equivalents of Warnaco Asia Limited to secure rent payments with respect to its Hong Kong office, CKU Citygate store and CKJ Silvercord store in aggregate amount not to exceed HKD 20,000,000

Please see table attached

[Schedule 6.02-1]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
BassNet LLC	NYC Department of Finance	Judgment Lien – \$448.75	NY	New York County	6/9/2010 #002700821-01	
Calvin Klein, Inc.	The Bank of New York Mellon Trust Company, N.A., as Collateral Agent	All assets	NY	Department of State	3/5/2010 #201003050115 583	Assignment filed 5/6/2010 Amendment filed 5/6/2010
Calvin Klein, Inc.	New York State Department of State	State tax lien – \$476.43	NY	Department of State	2/11/2009 #E-000874597- W001-3	
Calvin Klein, Inc.	Union Transport Corp.	Judgment lien – \$77,810.11	NY	New York County	5/1/2000 #001276294-02	
Calvin Klein, Inc.	Rajwinder Kaur	Litigation-related filing	NY	New York County Supreme Court	10/22/2014 #160264/2014	
Calvin Klein Jeanswear Company	Kaufman Associates Ltd.	Judgment \$32,318.47	NY	New York County	6/25/1996 #000878205-01	
Calvin Klein Jeanswear Company	Union Transport Corp.	Judgment \$77,810.11	NY	New York County Supreme Court	5/1/2000 #001276294-03	
Calvin Klein Jeanswear Company	NYS Department of Taxation and Finance	Tax lien – \$5675.38	NY	NY, New York County	12/29/2015 #003427915-01	
CK Service Corp.	The Bank of New York Mellon Trust Company, N.A., as Collateral Agent	All assets	DE	Secretary of State	3/4/2010 #2010 0732705	Assignment filed 5/6/2010 Amendment filed 5/6/2010
CK Service Corp.	NY State Dep't of Taxation and Finance	Tax lien – \$627.54	NY	New York County	8/24/2005 #002036404-01	
Cluett, Peabody & Co. Inc.	New York State Department of State	Tax lien – \$2,564.90	NY	Department of State	1/8/2004 #E-003851518- W001-5	

[Schedule 6.02-2]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
Cluett, Peabody & Co. Inc.	New York Department of State	Tax lien – \$1,871.20	NY	Department of State	1/8/2004 #E-002949322-W002-7	
Cluett, Peabody & Co. Inc.	New York Department of State	Tax lien – \$273.16	NY	Department of State	3/4/2004 #E-002949322-W004-6	
Cluett, Peabody & Co. Inc.	New York State Department of State	Tax lien – \$1,122.16	NY	New York State Department of State	1/4/2013 #E-007330473-W002-5	
Cluett Peabody & Co. Inc	NY State Dep't of Taxation & Finance	Tax lien – \$807.74	NY	New York County	12/21/1988 #000131668-01	
Cluett Peabody & Co.	NY State Department of State	Tax Lien – \$1,122.16	NY	New York State Department of State	6/4/2013 #E-007330473	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	6/24/2008 #2008 2151171	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	6/24/2008 #2008 2151189	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	10/15/2010 #2010 3622242	
Phillips-Van Heusen	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	3/17/2010 #2010 0920862	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	4/13/2010 #2010 1265960	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	6/10/2010 #2010 2018590	
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	7/31/2010 #2010 2667446	
Phillips-Van Heusen Corporation	Forsythe/McArthur Associates, Inc.	Leased computer, telecommunications equipment	DE	Secretary of State	7/2/2003 #31683922	Amendment filed 7/29/2003 Continuation filed 1/11/2008

[Schedule 6.02-3]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Phillips-Van Heusen Corporation	IBM Credit LLC	Leased equipment and software	DE	Secretary of State	7/1/2008 #2008 2262812	
Phillips-Van Heusen Corporation	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/11/2008 #2008 2392056	
Phillips-Van Heusen Corporation	DDI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/14/2008 #2008 2399317	
Phillips-Van Heusen Corporation	DDI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/14/2008 #2008 2399440	
Phillips-Van Heusen Corporation	Bank Financial F.S.B.	Leased equipment	DE	Secretary of State	8/1/2008 #2008 2636106	Amendment filed 11/19/2008 Assignment filed 11/19/2008
Phillips-Van Heusen Corporation	U.S. Bancorp	Specific equipment	DE	Secretary of State	2/11/2009 #2009 0468261	
Phillips-Van Heusen Corporation	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	8/23/2010 #2010 2935181	
Phillips-Van Heusen Corporation	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	11/3/2010 #2010 3850686	
Phillips-Van Heusen Corporation	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	4/8/2011 #2011 1321432	Amendment filed 4/19/2011
Phillips-Van Heusen	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	6/8/2011 #2011 2178625	
Phillips-Van Heusen Corporation	New York State Department of State	State tax lien – \$122,616.00	NY	Department of State	4/7/2010 #E-005430632-W003-6	
Phillips-Van Heusen Corporation	New York State Department of State	State tax lien – \$34.81	NY	Department of State	10/6/2010 #E-005430632-W004-1	

[Schedule 6.02-4]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
PVH Corp.	Cisco Systems Capital Corporation	Leased Equipment	DE	Secretary of State	4/9/2001 #10335120	Amendment filed 11/14/2003 Continuation filed 11/29/2005 Continuation filed 3/31/2011 Amendment filed 7/29/2011 Continuation Filed 3/28/2016
PVH Corp.	Cisco Systems Capital Corporation	In lieu continuation NYSOS 2001 filing/leased equipment	DE	Secretary of State	11/29/2005 #5366969 5	Continuation filed 11/15/2010 Amendment filed 7/29/2011 Continuation filed 11/12/2015

[Schedule 6.02-5]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
PVH Corp.	Comsource, Inc.; MB Financial Bank, NA; Bankfinancial FSB; First Bank of Highland Park	Leased computer equipment and software	DE	Secretary of State	1/23/2007 #2007 0276013	Assignment filed 2/6/2007 Assignment filed 2/6/2007 Assignment filed 3/24/2008 Assignment filed 6/9/2009 Assignment filed 10/26/2009 Assignment filed 4/5/2010 Assignment filed 12/21/2010 Amendment filed 8/10/2011 Continuation filed 1/13/2012 Assignment filed 2/17/2012 Assignment filed 8/17/2012 Assignment filed 10/11/2012 Assignment filed 3/28/2013 Assignment filed 4/26/2013 Assignment filed 7/15/2013 Assignment filed 7/25/2013 Assignment filed 8/19/2013 Assignment filed 9/12/2013 Assignment filed 12/26/2013 Assignment filed 3/21/2014 Assignment filed 5/7/2014 Assignment filed 12/16/2014

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	The Bank of New York Mellon Trust Company, N.A., as Collateral Agent	All capital stock of Calvin Klein, Inc., Calvin Klein (Europe), Inc., Calvin Klein (Europe II) Corp. and CK Service Corp. and 65% of equity interest in Calvin Klein Europe S.R.L.	DE	Secretary of State	3/4/2010 #2010 0732002	Assignment filed 5/6/2010 Amendment filed 6/28/2011 Continuation filed 1/5/2015
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	3/22/2010 #2010 0978522	Amendment filed 7/19/2011
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2587909	Amendment filed 9/21/2010 Assignment filed 9/21/2010 Amendment filed 8/2/2011
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2588261	Amendment filed 9/21/2010 Assignment filed 9/21/2010 Amendment filed 7/12/2011
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2588428	Amendment filed 9/21/2010 Assignment filed 9/21/2010 Amendment filed 7/12/2011

[Schedule 6.02-7]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2588485	Amendment filed 9/22/2010 Assignment filed 9/22/2010 Amendment filed 7/7/2011
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2588675	Amendment filed 9/22/2010 Assignment filed 9/22/2010 Amendment filed 8/2/2011
PVH Corp.	SG Equipment Finance USA Corp	Leased equipment	DE	Secretary of State	7/26/2010 #2010 2588857	Amendment filed 9/22/2010 Assignment filed 9/22/2010 Amendment filed 7/19/2011
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	9/27/2010 #2010 3359837	Amendment filed 8/2/2011
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	4/8/2011 #2011 1323263	Amendment filed 7/12/2011 Amendment filed 7/27/2011
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	5/17/2011 #2011 1854598	Amendment filed 7/7/2011 Amendment filed 10/11/2011
PVH Corp.	Forsythe/McArthur Associates, Inc.	Leased equipment	DE	Secretary of State	5/19/2011 #2011 1898009	Amendment filed 8/26/2011
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/28/2011 #2011 2918533	Amendment filed 2/20/2012

[Schedule 6.02-8]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/28/2011 #2011 2919010	Amendment filed 2/28/2012
PVH Corp.	Western Finance & Lease Inc	Leased equipment	DE	Secretary of State	8/12/2011 #2011 3131854	
PVH Corp	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	8/13/2011 #2011 3143578	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	9/20/2011 #2011 3607630	Amendment filed 2/21/2012
PVH Corp	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	12/8/2011 #2011 4695535	
PVH Corp	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	12/13/2011 #2011 4759943	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	12/20/2011 #2011 4879303	Amendment filed 2/28/2012
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	12/23/2011 #2011 4953207	Amendment filed 4/10/2012
PVH Corp.	Arrow Enterprise Computing Solutions	Leased equipment	DE	Secretary of State	2/6/2012 #2012 0461329	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	4/24/2012 #2012 1569732	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	8/10/2012 #2012 3091370	
PVH Corp.	MB Financial Bank, N.A.	Leased equipment	DE	Secretary of State	2/19/2013 #2013 0651613	Amendment filed 5/10/2013 Assignment filed 5/13/2013
PVH Corp.	General Electric Credit Corporation of Tennessee	Leased equipment	DE	Secretary of State	2/26/2013 #2013 0748211	

[Schedule 6.02-9]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	SG Equipment Finance USA Corp.	Leased equipment	DE	Secretary of State	3/25/2013 #2013 1134056	Amendment filed 5/10/2013 Assignment filed 5/13/2013
PVH Corp.	MB Financial Bank, N.A.	Leased equipment	DE	Secretary of State	4/18/2013 #2013 1496240	Assignment filed 6/25/2013 Amendment filed 6/25/2013
PVH Corp.	Bankfinancial, F.S.B.	Leased equipment	DE	Secretary of State	4/23/2013 #2013 1547133	
PVH Corp.	MB Financial Bank, N.A.	Leased equipment	DE	Secretary of State	6/4/2013 #2013 2122977	Assignment filed 8/30/2013 Amendment filed 8/30/2013
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	7/24/2013 #2013 2874510	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	8/6/2013 #2013 3078145	Amendment filed 1/23/2014
PVH Corp	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	9/11/2013 #2013 3528487	
PVH Corp	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	9/18/2013 #2013 3621779	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	10/10/2013 #2013 3988509	Amendment filed 3/4/2014
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	02/19/14 #20140635755	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	03/03/2014 #20140973594	
PVH Corp.	Thompson Tractor Co., Inc.	Cessna TJ5000, SN 4LMBB2115DL024559 and proceeds	DE	Secretary of State	05/09/2014 #201441840859	

[Schedule 6.02-10]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	05/09/2014 #20141850742	Amendment filed 07/24/2014
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	05/14/2014 #20141903426	Amendment filed 09/02/2014
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	09/25/2014 #20143850385	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	09/25/2014 #20143850393	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	09/25/2014 #20143850435	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	09/25/2014 #20143850476	
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	11/17/2014 #20144626016	Amendment filed March 23, 2015
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	11/17/2014 #20144633434	Amendment filed 03/03/2015
PVH Corp.	IBM Credit LLC	Leased equipment and software	DE	Secretary of State	12/02/2014 #20144832572	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	12/03/2014 #20144856050	
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	12/03/2014 #20144868469	Amendment filed 03/23/2015
PVH Corp.	CSI Leasing, Inc.  First Bank of Highland Park	Leased equipment, software and personal property	DE	Secretary of State	12/12/2014 20145049333	Amendment filed 01/07/2015  Full Assignment filed 01/07/2015

[Schedule 6.02-11]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
PVH Corp.	CSI Leasing, Inc. First Bank of Highland Park	Leased equipment, software and personal property	DE	Secretary of State	12/15/2014 #20145084728	Amendment filed 01/07/2015  Full Assignment filed 01/07/2015
PVH Corp.	Signature Financial LLC DDI Leasing, Inc.	Leased hardware, software and other equipment	DE	Secretary of State	12/17/2014 #20145129176	Full Assignment filed 12/17/2014
PVH Corp.	General Electric Credit Corporation of Tennessee	Leased equipment	DE	Secretary of State	03/13/2015 #20151060044	
PVH Corp.	CSI Leasing, Inc. First Bank of Highland Park	Leased equipment, software and personal property	DE	Secretary of State	04/07/2014 #20151480291	Amendment filed 06/10/2015  Full Assignment filed 06/10/2015
PVH Corp.	CSI Leasing, Inc. First Bank of Highland Park	Leased equipment, software and personal property	DE	Secretary of State	06/26/2015 #20152756400	Amendment filed 08/04/2015  Full Assignment filed 08/04/2015
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	07/09/2015 #20152969730	
PVH Corp.	IBM Credit LLC	Leased equipment and software	DE	Secretary of State	08/24/2015 #20153701512	
PVH Corp.	IBM Credit LLC	Leased equipment and software	DE	Secretary of State	12/21/2015 #20156166507	
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	12/24/2015 #20156271224	Amendment filed 02/16/16

[Schedule 6.02-12]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	01/06/2016 #20160100055	Amendment filed 02/16/16
PVH Corp.	Sumitomo Mitsui Finance & Leasing Co., Ltd.	Leased equipment	DE	Secretary of State	01/27/2016 #20160516425	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	01/29/2016 #20160550531	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	01/29/2016 #20160550549	
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	01/29/2016 #20160550556	
PVH Corp.	CSI Leasing, Inc.	Leased equipment, software and personal property	DE	Secretary of State	03/29/2016 #20161854270	
PVH Corp.	CSI Leasing, Inc.	Leased equipment	DE	Secretary of State	03/29/2016 #20161858693	
PVH Corp.	IBM Credit LLC	Leased equipment	DE	Secretary of State	04/04/2016 #20161970878	
PVH Corp.	Suntrust Equipment Finance & Leasing Corp.	Leased equipment	DE	Secretary of State	12/17/2013 #2013 4982311	Amendment filed 1/15/2014 Assignment filed 1/15/2014
PVH Corp.	Ikon Financial Svcs	Leased equipment	DE	Secretary of State	2/19/2014 #2014 0635755	
PVH Corp.	Arrow Enterprise Computing Solutions	Leased equipment	NY	Department of State	2/6/2012 #201202060073640	
PVH Corp.	Arrow Enterprise Computing Solutions	Leased equipment	NY	Department of State	3/29/2012 #201203295361139	

[Schedule 6.02-13]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
PVH Corp.	James Nelson	Litigation-related filing		US District Court, California Central District	04/02/2015 8:15-cv-00512-AG-RNB	
PVH Corp.	Scott Young	Litigation-related filing		US District Court, California Central District	03/04/2016 2:16-cv-01517-SVW-FFM	
PVH Corp.	Timothy Edward Coyne	Litigation-related filing	NY	New York County Supreme Court	06/13/2013 653934/2012	
PVH Corp. Calvin Klein Inc.	Rodriguez	Litigation-related filing		US District Court, New York Southern District	04/03/2015 1:15-cv-02590-JSR	
PVH Corp.	Icon Laser Solutions	Litigation-related filing		US District Court, Texas Northern District	10/14/2015 3:15-cv-03320-K	
PVH Corp.	State of NJ	State tax lien – \$4207.06	NJ	Trenton Superior Court	10/28/2015 #DJ 190855 15	
PVH Foreign Holdings Corp	NYC Department of Finance	Tax lien – \$448.75	NY	New York County	6/9/2010 #002700817-01	
PVH Puerto Rico LLC	Departamento de Hacienda, Area de Rentas Internas	Tax debts totaling \$23,226.47		Puerto Rico	2/2005	
Tommy Hilfiger Retail, LLC	Dept of Labor	State tax lien – \$7,516.87	NJ	Hudson County	12/20/2005 #DJ 334304 05	
Tommy Hilfiger Retail, LLC	Div of Employer Accounts	State tax lien – \$4,654.54	NJ	Hudson County	9/26/2007 #DJ 255624 07	
Tommy Hilfiger Retail, LLC	Div of Employer Accounts	State tax lien – \$7,763.70	NJ	Hudson County	8/25/2010 #DJ 216893 10	
Tommy Hilfiger Retail, LLC	New York State Department of State	State tax lien – \$112.05	NY	Department of State	4/27/2011 #E-029072357-W001-4	

[Schedule 6.02-14]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Tommy Hilfiger U.S.A., Inc.	De Lage Landen Financial Services, Inc.	Leased equipment	DE	Secretary of State	4/25/2008 #2008 1444494	Assignment filed 9/25/2008 Amendment filed 9/26/2008
Tommy Hilfiger U.S.A., Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	5/28/2008 #2008 1827821	
Tommy Hilfiger U.S.A., Inc.	The Huntington National Bank	Leased equipment	DE	Secretary of State	8/7/2008 #2008 2712162	
Tommy Hilfiger U.S.A., Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	10/23/2008 #2008 3574215	
Tommy Hilfiger U.S.A., Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	10/24/2008 #2008 3592555	
Tommy Hilfiger U.S.A., Inc.	Crown Credit Company	Leased equipment	DE	Secretary of State	12/8/2008 #2008 4060354	Continuation filed 11/8/2013
Tommy Hilfiger U.S.A., Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	12/10/2008 #2008 4097430	
Tommy Hilfiger U.S.A., Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	8/24/2009 #2009 2711247	Amendment filed 10/27/2009 Assignment filed 10/28/2009
Tommy Hilfiger U.S.A., Inc.	Presidio Technology Capital, LLC & Wells Fargo Financial Leasing Inc.	Leased equipment	DE	Secretary of State	10/29/2009 #2009 3482947	Amendment filed 11/10/2009
Tommy Hilfiger USA Inc.	American Express Business Finance Corporation	Leased equipment	NY	Department of State	1/12/2001 #009263	Continuation filed 1/11/2006 Continuation filed 11/5/2010

[Schedule 6.02-15]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Tommy Hilfiger U.S.A., Inc.	New York State Department of State	State tax lien – \$2,760.00	NY	Department of State	2/24/2010 #E-003686029-W005-8	
Tommy Hilfiger U.S.A., Inc.	New York State Department of State	State tax lien – \$85,157.35	NY	Department of State	2/24/2010 #E-003686029-W006-3	
Tommy Hilfiger USA Inc	NYC Department of Finance	Tax lien – \$80,848.71	NY	New York County	8/16/2010 #002725211-01	
Tommy Hilfiger USA Inc	NYC Department of Finance	Tax lien – \$17,461.46	NY	New York County	1/17/2012 #002934576-01	
Tommy Hilfiger USA Inc	NYC Department of Finance	Tax lien – \$80,979.09	NY	New York County	7/30/2015 #003385450-01	

[Schedule 6.02-16]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
The Warnaco Group, Inc. & Warnaco Inc.	Macquarie Equipment Finance, LLC & Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	1/27/2010 #2010 0291868	Amendment filed 4/15/2010 Assignment filed 7/16/2010 Assignment filed 7/19/2010 Assignment filed 8/10/2010 Assignment filed 8/11/2010 Assignment filed 9/29/2010 Assignment filed 3/28/2011 Assignment filed 6/30/2011 Assignment filed 7/26/2011 Assignment filed 9/28/2011 Assignment filed 12/15/2011 Assignment filed 1/19/2012 Assignment filed 3/15/2012 Assignment filed 6/4/2012 Assignment filed 6/28/2012 Assignment filed 6/29/2012 Assignment filed 9/25/2012 Assignment filed 12/20/2012 Assignment filed 12/21/2012 Assignment filed 3/25/13

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	1/27/2010 #2010 0292155	Amendment filed 4/15/2010 Assignment filed 7/13/2010
The Warnaco Group, Inc. & Warnaco Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	2/3/2010 #2010 0371702	Amendment filed 4/15/2010
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	2/3/2010 #2010 0371710	Amendment filed 4/15/2010 Amendment filed 7/13/2010 Assignment filed 7/13/2010
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	2/3/2010 #2010 0371728	Amendment filed 4/15/2010 Assignment filed 7/13/2010 Assignment filed 7/28/2010 Amendment filed 7/28/2010 Assignment filed 7/28/2010
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/16/2010 #2010 1318678	
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/16/2010 #2010 1318843	
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/28/2010 #2010 1474356	Assignment filed 7/13/2010

[Schedule 6.02-18]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
The Warnaco Group, Inc. & Warnaco Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	9/28/2010 #2010 3367764	
The Warnaco Group, Inc. & Warnaco, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	10/13/2010 #2010 3570805	Assignment filed 1/25/2011
The Warnaco Group, Inc. & Warnaco, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	1/4/2012 #2012 0028797	
The Warnaco Group, Inc. & Warnaco, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	1/18/2012 #2012 0215766	Assignment filed 3/14/2012
The Warnaco Group, Inc. & Warnaco, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	4/3/2012 #2012 1285107	
The Warnaco Group, Inc. & Warnaco, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	7/20/2012 #2012 2795351	
The Warnaco Group, Inc. & Warnaco, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	7/20/2012 #2012 2795526	Assignment filed 9/24/2012
The Warnaco Group, Inc. & Warnaco, Inc.	Banc of America Equipment Finance, LLC	Leased equipment	DE	Secretary of State	10/8/2012 #2012 3873678	Assignment filed 12/20/2012
The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased goods, including various computer equipment and software	DE	Secretary of State	5/29/2008 #2008 1845195	Amendment filed 10/21/2009 Assignment filed 10/16/2009 Assignment filed 12/7/2009 Assignment filed 5/6/2010

[Schedule 6.02-19]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
The Warnaco Group, Inc.	Dell Financial Services L.L.C.	Leased computer equipment	DE	Secretary of State	9/10/2008 #2008 3069240	Continuation filed 6/18/13
The Warnaco Group, Inc.	Trinity, a Division of Bank of the West	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4015283	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4015788	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4016018	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4016174	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4016455	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/3/2008 #2008 4016463	
The Warnaco Group, Inc.	Presidio Technology Capital, LLC	Leased equipment	DE	Secretary of State	12/18/2008 #2008 4209225	Amendment filed 12/19/2008
The Warnaco Group, Inc.	Presidio Technology Capital, LLC & US Bancorp Equipment Finance, Inc.	Leased equipment	DE	Secretary of State	2/5/2009 #2009 0395654	Amendment filed 2/9/2009
The Warnaco Group, Inc.	Presidio Technology Capital, LLC & US Bancorp Equipment Finance, Inc.	Leased equipment	DE	Secretary of State	2/5/2009 #2009 0395738	
The Warnaco Group Inc	Leaf Funding Inc.	Rental agreement for water units	DE	Secretary of State	2/26/2009 #2009 0635984	
The Warnaco Group, Inc.	Oprema Fund	Leased equipment	DE	Secretary of State	11/23/2009 #2009 3762124	
Warnaco Inc.	Marquette Equipment Finance, LLC	Leased equipment	DE	Secretary of State	7/2/2007 #2007 2509262	Continuation filed 3/12/2012

[Schedule 6.02-20]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	2/13/2008 #2008 0537975	
Warnaco Inc.	Relational, LLC	Leased equipment	DE	Secretary of State	6/3/2008 #2008 1895141	Assignment filed 7/1/2008 Assignment filed 7/9/2008 Assignment filed 9/18/2008 Assignment filed 10/1/2008 Assignment filed 10/3/2008 Assignment filed 10/14/2008 Amendment filed 10/16/2008 Assignment filed 10/16/2009 Assignment filed 11/12/2008 Assignment filed 12/4/2008 Assignment filed 12/7/2009 Assignment filed 5/6/2010 Assignment filed 10/15/2010
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	9/25/2008 #2008 3261169	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	9/26/2008 #2008 3275912	
Warnaco Inc.	Lease Corporation of America	Leased equipment	DE	Secretary of State	12/24/2008 #2008 4278816	

[Schedule 6.02-21]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	12/3/2009 #2009 3874408	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	3/2/2010 #2010 0702625	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	3/10/2010 #2010 0814776	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	3/15/2010 #2010 0881155	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	3/16/2010 #2010 0900393	
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	4/30/2010 #2010 1511207	
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/30/2010 #2010 1511348	Assignment filed 7/13/2010
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	5/7/2010 #2010 1597073	
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	5/7/2010 #2010 1597230	
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	5/7/2010 #2010 1597297	Assignment filed 7/13/2010
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	7/1/2010 #2010 2304354	Amendment filed 7/1/2010 Assignment filed 7/13/2010
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	10/12/2010 #2010 3559626	

[Schedule 6.02-22]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	12/16/2010 #2010 4451625	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	1/1/2011 #2011 0000326	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	1/4/2011 #2011 0026032	
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	1/10/2011 #2011 0094501	Assignment filed 3/18/2011
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	1/10/2011 #2011 0094576	Assignment filed 3/18/2011
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	1/13/2011 #2011 0143183	
Warnaco Inc	IBM Credit LLC	Leased equipment	DE	Secretary of State	2/1/2011 #2011 0382583	
Warnaco Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	4/6/2011 #2011 1283475	
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/14/2011 #2011 1411787	Assignment filed 6/29/2011
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	4/14/2011 #2011 1411803	Assignment filed 6/29/2011
Warnaco, Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	7/1/2011 #2011 2541855	

[Schedule 6.02-23]

<b>Debtor</b>	<b>Secured Party</b>	<b>Collateral</b>	<b>State</b>	<b>Jurisdiction</b>	<b>Original File Date and Number</b>	<b>Related Filings</b>
Warnaco, Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	7/1/2011 #2011 2542507	Assignment filed 9/15/2011
Warnaco, Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	7/5/2011 #2011 2571027	Assignment filed 9/15/2011 Assignment filed 9/29/2011
Warnaco, Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	7/19/2011 #2011 2779075	Assignment filed 7/26/2011
Warnaco, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	9/29/2011 #2011 3744748	Amendment filed 1/25/2012 Amendment filed 6/22/2012 Assignment filed 6/27/2012
Warnaco, Inc.	Banc of American Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	9/29/2011 #2011 3744854	Assignment filed 1/18/2012
Warnaco, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	9/29/2011 #2011 3744920	
Warnaco Inc.	Crown Lift Trucks	2 Crown Lift Trucks	DE	Secretary of State	2/24/2012 #2012 0725244	
Warnaco, Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	5/30/2012 #2012 2239434	Assignment filed 3/4/2013
Warnaco, Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	8/2/2012 #2012 2971432	
Warnaco, Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	11/14/2012 #2012 4387934	Assignment filed 12/19/2012

[Schedule 6.02-24]

Debtor	Secured Party	Collateral	State	Jurisdiction	Original File Date and Number	Related Filings
Warnaco, Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	12/31/2012 #2012 5095395	Assignment filed 3/22/2013
Warnaco Inc. & The Warnaco Group, Inc.	Banc of America Leasing & Capital, LLC	Leased equipment	DE	Secretary of State	3/4/2013 #2013 0827288	
Warnaco, Inc. & The Warnaco Group, Inc.	Macquarie Equipment Finance, LLC	Leased equipment	DE	Secretary of State	5/7/2013 #2013 1735373	
Warnaco Inc.	Commissioner of Labor State of New York	Labor Lein – \$1576.63	NY	New York County	01/14/2015 0033252228-01	
Warnaco Inc.	Commissioner of Labor State of New York	Labor Lein – \$350.11	NY	New York County	05/06/2015 00336121-01	
Warnaco Swimwear Inc.	Crown Lift Trucks	Crown parts consignment	DE	Secretary of State	1/25/2006 #6029733 3	Continuation filed 10/27/2010
Warnaco Swimwear Products Inc.	Crown Credit Company	4 Crown Lift Trucks	DE	Secretary of State	9/3/2008 #2008 2980397	
Warnaco Swimwear Products Inc.	Crown Credit Company	16 Douglas Batteries	DE	Secretary of State	4/6/2009 #2009 1088894	
Warnaco Swimwear Products Inc	Los Angeles County Tax Collector	State tax lien – \$1,066.25	CA	Los Angeles County Recorder's Office	12/7/2010 #20101797648	
Warnaco Swimwear Products Inc	Los Angeles County Tax Collector	State tax lien – \$965.42	CA	Los Angeles County Recorder's Office	2/6/2012 #20120205084	

[Schedule 6.02-25]

## Schedule 6.05

### Certain Restrictions on Subsidiaries

1. Indenture dated as of November 1, 1993, between PVH Corp. (“PVH”) and The Bank of New York Mellon, as trustee (as amended, amended and restated, supplemented or otherwise modified from time to time)
2. Indenture, dated as of December 20, 2012, by and between PVH and U.S. Bank National Association, as trustee
3. Stock Purchase Agreement dated as of December 17, 2002, among PVH, the CK Companies and the sellers named therein (as amended, amended and restated, supplemented or otherwise modified from time to time)
4. Amended and Restated Pledge and Security Agreement, dated as of May 6, 2010, among PVH, the CK Companies, Mr. Calvin Klein and The Bank of New York Mellon Trust Company, N.A., as collateral agent (as amended, amended and restated, supplemented or otherwise modified from time to time)
5. Pledgor Guarantee, dated as of February 12, 2003, among the CK Companies and Mr. Calvin Klein (as amended, amended and restated, supplemented or otherwise modified from time to time)
6. CK Intercreditor Agreement, dated as of May 6, 2010, between The Bank of New York Mellon Trust Company, N.A., as first lien collateral agent, and Barclays Bank PLC, as second lien collateral agent (as amended, amended and restated, supplemented or otherwise modified from time to time)
7. Facility Letter, dated as of June 4, 2013, among PVH Canada, Inc. and HSBC Bank Canada (and Guaranty by PVH)
8. Tommy Hilfiger Japan Corporation is restricted from pledging receivables and inventory. Several department stores and fashion houses have a negative pledge clause in their contracts with Tommy Hilfiger Japan Corporation as security for the payment of rent owing under lease agreements. These restrictions were in place prior to the acquisition of Tommy Hilfiger Japan Corporation
9. Trust Agreement, dated as of March 14, 1994, between Calvin Klein, Inc. and Wilmington Trust Company, as trustee, and related agreements
10. Quality Assurance Agreement, dated as of March 14, 1994, among Calvin Klein, Inc., Calvin Klein Trademark Trust and Warnaco Inc.
11. 2023 Debentures Intercreditor Agreement, dated as of February 13, 2013, by and among Barclays Bank PLC, as collateral agent, The Bank of New York Mellon and PVH

[Schedule 6.05-1]

12. Shareholders Agreement, dated on or about March 2014, by and among Arvind Brands and Retail Limited, PVH Singapore Private Limited and Premium Garments Wholesale Trading Private Limited
13. Items 6 through 38 described on Schedule 6.01

[Schedule 6.05-2]

**Schedule 6.06**

Certain Investments

1. Non-Subsidiary Equity Investments

<b>Debtor/Grantor</b>	<b>Issuer</b>	<b># of Shares Owned or % of Shares Owned</b>
PVH Corp.	New Sidney's, Inc.	81
	EBS Building, L.L.C.	208
	EBS Litigation, L.L.C.	207
	EBS Pension, L.L.C.	208
Calvin Klein, Inc.	Calvin Klein Trademark Trust	100% of Class A Interests
Warnaco Inc.	Calvin Klein Trademark Trust	100% of Class B Interests; 100% of Class C Interests
Cluett, Peabody & Co., Inc.	Beijing Innovative Garment Co., Ltd.	7.5%
	Industrias Jatu, S.A.	10.11%
PVH Singapore Private Limited	Premium Garments Wholesale Trading Private Limited	22,950
PVH B.V.	Kingdom Holding 1 B.V.	833,587
PVH Services Limited	PVH Brands Australia Pty Limited	5,326,945
Tommy Hilfiger Europe B.V.	Tommy Hilfiger Arvind Fashion Private Limited (formerly known as Arvind Murjani Brands Private Limited)	1,616,298
PVH B.V.	Tommy Hilfiger Arvind Fashion Private Limited (formerly known as Arvind Murjani Brands Private Limited)	7,363,135
	Tommy Hilfiger do Brasil S.A.	19.614.122 Common Shares; 11.768.474 Preferred shares

2. Guaranty by PVH Corp. ("PVH") of the obligations of PVH Limited under the Concession Agreements between Harvey Nichols and Company Limited ("HN") and PVH Limited relating to PVH Limited's concessions to operate shops within HN's stores in the United Kingdom

3. Guaranty by PVH of the obligations of Egypt Clothing Co. to Penfabric Sdn. Berhad
4. Guaranty by PVH to American Express Travel Related Services, Inc. regarding corporate credit cards held by PVH employees
5. Guaranty by PVH to American Express International Inc. regarding corporate credit cards held by PVH employees
6. Guaranty by PVH of Fenwick Limited's obligations to Dolce & Gabbana
7. Trust Agreement, dated as of March 14, 1994, between Calvin Klein, Inc. and Wilmington Trust Company, as trustee
8. Worldwide Transfer Agreement, dated as of March 14, 1994, among Calvin Klein, Inc., Calvin Klein Trademark Trust and Warnaco Inc.
9. Guaranties of PVH as described in items 6, 10, 18, 19, 20, 21, 22, 24, 25, 30, 32 and 36 on Schedule 6.01
10. Letters of comfort of PVH as described in item 21 on Schedule 6.01
11. Patronage letters provided by Warnaco Inc. as described in items 14 and 15 on Schedule 6.01

[Schedule 6 06-2]

## Schedule 6.11

### Certain Affiliate Transactions

1. Sale and Purchase Agreement of the Entire Interest of Hilfiger Stores Spain, S.L., dated as of May 26, 2008, between Pepe Jeans SL and Hilfiger Stores B.V. (as amended, amended and restated, supplemented or otherwise modified from time to time)
2. Affiliate Agreement, dated as of June 29, 2009, between Pepe Jeans SL and Hilfiger Stores B.V. (as amended, amended and restated, supplemented or otherwise modified from time to time)
3. Agency Agreement, effective January 1, 2007, between Tommy Hilfiger Europe B.V. and Pepe Jeans SL (as amended, amended and restated, supplemented or otherwise modified from time to time)
4. The shares of Madison Clothing Ltd. are owned 50% by Thomas Rieffel and 50% by Daniel Grieder. Daniel Grieder stepped down as President of the Board of Madison Clothing Ltd. on July 28, 2004. Since then, Daniel Grieder has not been involved at all in the business of Madison Clothing Ltd.
5. Trust Agreement, dated as of March 14, 1994, between Calvin Klein, Inc. and Wilmington Trust Company, as trustee
6. Servicing Agreement, dated as of March 14, 1994, between Calvin Klein, Inc. and Calvin Klein Trademark Trust
7. Quality Assurance Agreement, dated as of March 14, 1994, among Calvin Klein, Inc., Calvin Klein Trademark Trust and Warnaco Inc.
8. Worldwide Transfer Agreement, dated as of March 14, 1994, among Calvin Klein, Inc., Calvin Klein Trademark Trust and Warnaco Inc.
9. Dominic Chirico and Vincent Chirico, the sons of Emanuel Chirico, Chairman and Chief Executive Officer of PVH Corp., work for PVH Corp.
10. Corrine Benz, the of Daniel Grieder, the Chief Executive Officer of Tommy Hilfiger and PVH Europe, works for a subsidiary of PVH Corp.
11. Shareholders' Agreement, dated on or about March 28, 2014, by and between Kingdom Holding 1 B.V., Bond Street Investments B.V., Kingdom Holding 1 Sarl, SHL Finance Ltd, Grandwell Strategic Investments Ltd, Fulderberg Ltd, T4, LLC, Tranquility Investments LLC, Stichting Administratiekantoor Hamburg and PVH B.V.
12. Shareholders Agreement, dated as of November 9, 2012, by and PVH B.V., Inbrands S.A., American Sportswear S.A., Sur American Development International Corp. and Tommy Hilfiger do Brasil S.A., as amended by the First Amendment to Shareholders Agreement, dated as of January 4, 2013

13. Amended and Restated Shareholders Agreement, made as of September 7, 2011, by and among Arvind Limited, PVH B.V., Tommy Hilfiger Europe B.V. and Tommy Hilfiger Arvind Fashion Private Limited (formerly known as Arvind Murjani Brands Private Limited)
14. Shareholders Deed, dated 3 February 2014, by and among Gazal Apparel Pty. Limited, PVH Services Limited and PVH Brands Australia Pty Limited
15. Shareholders Agreement, dated on or about March 2014, by and among Arvind Brands and Retail Limited, PVH Singapore Private Limited and Premium Garments Wholesale Trading Private Limited

[Schedule 6.11-2]

**EXHIBIT B**  
**Solvency Certificate**

[Attached.]

Exhibit B

**SOLVENCY CERTIFICATE**

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the chief financial officer of PVH Corp., a Delaware corporation (the "U.S. Borrower").

2. Reference is made to the Amended and Restated Credit and Guaranty Agreement, dated as of March 21, 2014, as amended by that certain Second Amendment to Credit Agreement, dated as of May 19, 2016 (the "Second Amendment"), by and among the U.S. Borrower, PVH B.V. (formerly known as Tommy Hilfiger B.V.), a Dutch private limited liability company with its corporate seat in Amsterdam, the Netherlands, certain subsidiaries of the U.S. Borrower, as Guarantors, the Lenders party thereto from time to time, and Barclays Bank PLC, as Administrative Agent and Collateral Agent (as amended by the Second Amendment and as it may be amended, supplemented or otherwise modified, the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined).

3. I have reviewed the terms of Section 3 of the Second Amendment and Article IV of the Credit Agreement and the definitions and provisions contained in the Second Amendment and Credit Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify that as of the date hereof, after giving effect to the incurrence of the Obligations on the Second Amendment Date, the Group Members are, on a consolidated basis, Solvent.

[Signature Page to Solvency Certificate]

The foregoing certifications are made and delivered as of May \_\_, 2016.

PVH CORP.

\_\_\_\_\_  
Name: Michael A. Shaffer

Title: Executive Vice President and Chief Operating  
and Financial Officer

[Signature Page to Solvency Certificate]

**Exhibit C**

**Replacement Lenders**

Name of Replacement Lender	Amount of Revolving Commitments Purchased Pursuant to Section 2(b)	Amount of Revolving Loans Purchased Pursuant to Section 2(b)	Amount of Tranche A Term Loans Purchased Pursuant to Section 2(b)
Barclays Bank PLC	EUR 28,660,725.00 USD 49,671,428.60		USD 360,293,012.70

## PVH CORP.

## SCHEDULE OF NON-MANAGEMENT DIRECTORS' FEES

EFFECTIVE JUNE 16, 2016

**BOARD**

Annual member fee	\$85,000	Retainer
Equity Award – Restricted Stock Units	\$145,000 value	This award is targeted to equal the number of restricted stock units with a value of approximately \$135,000 as of the date of grant.
Presiding Director Fee	\$30,000	Retainer

**AUDIT & RISK MANAGEMENT COMMITTEE**

Fee to chair	\$40,000	Retainer
Fee to member	\$20,000	Retainer

**COMPENSATION COMMITTEE**

Fee to chair	\$35,000	Retainer
Fee to member	\$15,000	Retainer

**NOMINATING, GOVERNANCE & MANAGEMENT DEVELOPMENT COMMITTEE**

Fee to chair	\$25,000	Retainer
Fee to member	\$10,000	Retainer

**CORPORATE RESPONSIBILITY COMMITTEE**

Fee to chair	\$25,000	Retainer
Fee to member	\$10,000	Retainer

All meeting-related expenses will be reimbursed to non-employee Directors.

I, Emanuel Chirico, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PVH Corp.;
2. Based on my knowledge, this Quarterly Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Quarterly Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Quarterly Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Quarterly Report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - d) Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: September 1, 2016

/s/ EMANUEL CHIRICO

\_\_\_\_\_  
Emanuel Chirico

Chairman and Chief Executive Officer

I, Michael Shaffer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PVH Corp.;
2. Based on my knowledge, this Quarterly Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Quarterly Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Quarterly Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Quarterly Report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - d) Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: September 1, 2016

/s/ MICHAEL SHAFFER

Michael Shaffer

Executive Vice President and  
Chief Operating & Financial Officer

**CERTIFICATE PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of PVH Corp. (“the Company”) for the quarterly period ended July 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Emanuel Chirico, Chairman and Chief Executive Officer of the Company, certify, pursuant to section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

- (i) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: September 1, 2016

By: /s/ EMANUEL CHIRICO

Name: Emanuel Chirico  
Chairman and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

