UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported): April 13, 2020

BURLINGTON STORES, INC.
(Exact Name of Registrant As Specified In Charter)

Delaware	**001-36107**	**80-0895227**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

2006 Route 130 North
Burlington, New Jersey 08016
(Address of Principal Executive Offices, including Zip Code)

(609) 387-7800
(Registrant's telephone number, including area code)

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	**BURL**	**New York Stock Exchange**

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

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

Item 1.01 Entry into a Material Definitive Agreement.

Convertible Notes

On April 16, 2020, Burlington Stores, Inc. ("BSI") closed the issuance of $805 million aggregate principal amount of its 2.25% Convertible Senior Notes due 2025 (the "Convertible Notes"). An aggregate of up to 3,656,149 shares of common stock may be issued upon conversion of the Convertible Notes, which number is subject to adjustment up to an aggregate of 4,844,410 shares following certain corporate events that occur prior to the maturity date or if BSI issues a notice of redemption, and which is also subject to certain anti-dilution adjustments.

BSI intends to use the net proceeds from the offering of the Convertible Notes for general corporate purposes.

The Convertible Notes were issued pursuant to an Indenture, dated as of April 16, 2020 (the "Convertible Notes Indenture"), between BSI and Wilmington Trust, National Association, as trustee. The Convertible Notes Indenture provides, among other things, that the Convertible Notes are general unsecured obligations of BSI. The Convertible Notes will bear interest at a rate of 2.25% per year, payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2020. The Convertible Notes will mature on April 15, 2025, unless earlier converted, redeemed or repurchased.

Prior to the close of business on the business day immediately preceding January 15, 2025, the Convertible Notes will be convertible at the option of the holders only upon the occurrence of certain events and during certain periods. Thereafter, the Convertible Notes will be convertible at the option of the holders at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The Convertible Notes have an initial conversion rate of 4.5418 shares per $1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately $220.18 per share of BSI's common stock), subject to adjustment if certain events occur. The initial conversion price represents a conversion premium of approximately 32.50% over $166.17 per share, the last reported sale price of BSI's common stock on April 13, 2020 (the pricing date of the offering) on The New York Stock Exchange. Upon conversion, BSI will pay or deliver, as the case may be, cash, shares of its common stock or a combination of cash and shares of its common stock, at its election. BSI will not be able to redeem the Convertible Notes prior to April 15, 2023. On or after April 15, 2023, BSI will be able to redeem for cash all or any portion of the Convertible Notes, at its option, if the last reported sale price of BSI's common stock is equal to or greater than 130% of the conversion price for a specified period of time, at a redemption price equal to 100% of the principal aggregate amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

If BSI undergoes a "fundamental change" as defined in the Convertible Notes Indenture, subject to certain conditions, holders may require BSI to repurchase for cash all or any portion of their Convertible Notes. The fundamental change repurchase price will be 100% of the principal amount of the Convertible Notes to be repurchased plus any accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

If certain corporate events that constitute a "make-whole fundamental change" as set forth in the Convertible Notes Indenture occur prior to the maturity date or if BSI calls all or any portion of the Convertible Notes for redemption, the conversion rate may, in certain circumstances, be increased for a holder who elects to convert its Convertible Notes in connection with such event.

The Convertible Notes Indenture contains customary events of default. In the case of an event of default arising from certain events of bankruptcy, insolvency or other similar law, with respect to BSI, all outstanding Convertible Notes will become due and payable immediately without further action or notice. If any other event of default occurs and is continuing, then the trustee or the holders of at least 25% in aggregate principal amount of the Convertible Notes then outstanding may declare the Convertible Notes due and payable immediately.

A copy of the Convertible Notes Indenture is attached hereto as Exhibit 4.1 and is incorporated herein by reference. The description of the Convertible Notes contained in this Form 8-K is qualified in its entirety by reference to the Convertible Notes Indenture.

Secured Notes

On April 16, 2020, Burlington Coat Factory Warehouse Corporation, a wholly owned subsidiary of BSI ("BCFWC") closed the issuance of $300 million aggregate principal amount of its 6.250% Senior Secured Notes due 2025 (the "Secured Notes").

BCFWC intends to use the net proceeds from the offering of the Secured Notes for general corporate purposes.

The Secured Notes were issued pursuant to an Indenture, dated as of April 16, 2020 (the "Secured Notes Indenture"), among BCFWC, the guarantors party thereto and Wilmington Trust, National Association, as trustee and as collateral agent. The Secured Notes are senior, secured obligations of BCFWC, and interest is payable semiannually in cash at a rate of 6.250% per annum on each of April 15 and October 15, beginning on October 15, 2020. The Secured Notes are guaranteed on a senior secured basis by Burlington Coat Factory Holdings, LLC, Burlington Coat Factory Investments Holdings, Inc. and BCFWC's subsidiaries (the "Guarantors") that guarantee the loans under BCFWC's senior secured term loan facility (the "Term Loan Facility") and BCFWC's senior secured asset-based revolving credit facility (the "ABL Line of Credit"). The Secured Notes mature on April 15, 2025 unless redeemed or repurchased in accordance with their terms prior to such date.

At any time prior to April 15 2022, BCFWC may redeem the Secured Notes, in whole or in part, at its option, at a redemption price equal to 100% of the principal amount of the Secured Notes to be redeemed plus the "Applicable Premium" as of, and accrued and unpaid interest, if any, to, but excluding the redemption date. The Applicable Premium will be equal to the excess of (a) the present value at such redemption date of (i) the redemption price at April 15, 2022 with respect to such Secured Note (such redemption price being set forth in the immediately succeeding sentence) plus (ii) all required interest payments due on such Secured Note through April 15, 2022 (excluding accrued but unpaid interest to, but excluding, the date of redemption), computed using a discount rate equal to the applicable treasury rate as of such redemption date plus 50 basis points, over (b) the then outstanding principal of such Secured Note. On or after April 15, 2022 and prior to maturity BCFWC may redeem the Secured Notes, in whole or in part, at its option, at a redemption price equal to (i) 103.125% of the principal amount of the Secured Notes to be redeemed if the redemption occurs on or after April 15, 2022 and before April 15, 2023, (ii) 101.563% of the principal amount of the Secured Notes to be redeemed if the redemption occurs on or after April 15, 2023 and before April 15, 2024 or (iii) 100% of the principal amount of the Secured Notes if the redemption occurs on or after April 15, 2024 plus, in each case, accrued and unpaid interest, if any, to, but excluding, the redemption date. In addition, at any time prior to April 15, 2022, BCFWC may, at its option, on one or more occasions redeem in the aggregate up to 35% of the aggregate principal amount of the Secured Notes (including any additional notes) issued under the Secured Notes Indenture with an amount equal to or less than the net cash proceeds received by BCFWC from one or more qualified equity offerings, at a redemption price of 106.250% of the principal amount of the Secured Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding the redemption date.

The Secured Notes Indenture contains customary covenants and events of default for a transaction of this type. If an event of default under the Secured Notes Indenture occurs and is continuing, the Trustee or the holders of at least 25% in principal amount of outstanding Secured Notes under the Secured Notes Indenture may declare the principal of and accrued interest on the Secured Notes to be due and payable. In addition, if BCFWC or certain of its subsidiaries become the subject of certain voluntary or involuntary proceedings under any bankruptcy, insolvency or other similar debtor relief law, then the principal of and accrued interest on the Secured Notes will become due and payable without any further action.

Certain of the initial purchasers of the Secured Notes and their affiliates are also parties to BCFWC's Term Loan Facility and ABL Line of Credit.

A copy of the Secured Notes Indenture is attached hereto as Exhibit 4.2 and is incorporated herein by reference. The description of the Secured Notes contained in this Form 8-K is qualified in its entirety by reference to the Secured Notes Indenture.

Collateral Documents and Intercreditor Agreements

The Secured Notes, the guarantees and the Term Loan Facility are secured by a first priority lien on the Term Loan/Notes Priority Collateral (as defined in the Secured Notes Indenture), which include security interests in certain of BCFWC's and the Guarantors' real property in addition to a lien on substantially all of BCFWC's and the Guarantors' intellectual property, equipment, investment property and general intangibles (other than general intangibles relating to, evidencing or governing ABL Priority Collateral), subject to certain exceptions and permitted liens. The Secured Notes, the guarantees and the Term Loan Facility are secured by a second priority lien on the ABL Priority Collateral, which includes security interests in accounts, inventory, deposit accounts, securities accounts and related assets, subject to certain exceptions and permitted liens, which security interests will be junior to the security interests in such assets that secure the ABL Line of Credit. The ABL Line of Credit will have a junior lien on the Term Loan/Notes Priority Collateral. The Secured Notes and the guarantees are secured by the Collateral pursuant to a Security Agreement, Intellectual Property Security Agreement and Pledge Agreement, each dated as of April 16, 2020, among BCFWC, the Guarantors and the Collateral Agent.

The Collateral Agent and the Trustee also entered into a pari passu intercreditor agreement with the administrative agent and the collateral agent under the Term Loan Facility (the "Pari Passu Intercreditor Agreement") that sets forth the rights of, and relationship among, the holders of the Secured Notes and the secured parties under the Term Loan Facility in respect of the exercise of rights and remedies and application of proceeds with respect to the Collateral. In addition, the Collateral Agent also entered into an amended and restated intercreditor agreement with the administrative agent and collateral agent under the ABL Line of Credit and the administrative agent and the collateral agent under the Term Loan Facility (the "ABL Intercreditor Agreement") that governs, in addition to certain other matters, the relative priority of the liens securing obligations under the ABL Line of Credit, on the one hand, and the liens securing obligations under the Secured Notes and the Term Loan Facility, on the other hand, with respect to the Collateral.

Copies of the Security Agreement, the Intellectual Property Security Agreement, the Pledge Agreement, the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively, and are incorporated herein by reference. The descriptions of the Security Agreement, the Intellectual Property Security Agreement, the Pledge Agreement, the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement contained in this Form 8-K are qualified in their entirety by reference to the Security Agreement, the Intellectual Property Security Agreement, the Pledge Agreement, the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement, as applicable.

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

The information set forth in Item 1.01 of this report regarding the Convertible Notes, the Convertible Notes Indenture, the Secured Notes and the Secured Notes Indenture is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this report regarding the Convertible Notes is incorporated by reference into this Item 3.02. The net proceeds from the sale of the Convertible Notes were approximately $784.4 million, after deducting the initial purchasers' discount of $20.1 million and estimated expenses payable by BSI. The Convertible Notes were issued in a private placement in reliance on section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"). To the extent that any shares of BSI's common stock are issued upon conversion of the Convertible Notes, they will be issued in transactions anticipated to be exempt from registration under the Securities Act by virtue of Section 3(a)(9) thereof.

Item 8.01 Other Events.

On April 13, 2020, BSI issued press releases announcing the pricing of the Convertible Notes and the Secured Notes, copies of which are attached hereto as Exhibits 99.1 and 99.2, respectively.

Item 9.01 **Financial Statements and Exhibits.**

Exhibit Number	Description
4.1	Indenture (including the form of Convertible Note), dated as of April 16, 2020, between Burlington Stores, Inc. and Wilmington Trust, National Association
4.2	Indenture (including the form of Secured Note), dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Guarantors party thereto and Wilmington Trust, National Association
10.1	Security Agreement, dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Grantors party thereto and Wilmington Trust, National Association, in its capacity as collateral agent under the Indenture
10.2	Intellectual Property Security Agreement, dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Grantors party thereto and Wilmington Trust, National Association, in its capacity as collateral agent under the Indenture
10.3	Pledge Agreement, dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Grantors party thereto and Wilmington Trust, National Association, in its capacity as collateral agent under the Indenture
10.4	ABL Intercreditor Agreement, dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Guarantors party thereto, the Bank of America, N.A., in its capacity as administrative agent and collateral agent under the ABL Facility, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent under the Term Loan Facility, and Wilmington Trust, National Association, in its capacity as collateral agent and trustee under the Indenture
10.5	Pari Passu Intercreditor Agreement, dated as of April 16, 2020, among Burlington Coat Factory Warehouse Corporation, the Guarantors party thereto, JPMorgan Chase Bank, N.A., as collateral agent under the Term Loan Facility, and Wilmington Trust, National Association, in its capacity as collateral agent under the Indenture
99.1	Press release, dated April 13, 2020, announcing the pricing of the Convertible Senior Notes due 2025
99.2	Press release, dated April 13, 2020, announcing the pricing of the Senior Secured Notes due 2025
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

BURLINGTON STORES, INC.

/s/ David Glick
David Glick
Senior Vice President of Investor Relations and Treasurer

Date: April 16, 2020

Exhibit 4.1

BURLINGTON STORES, INC.

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of April 16, 2020

2.25% Convertible Senior Notes due 2025

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CONVERSION OF NOTES

INDENTURE, dated as of April 16, 2020 between BURLINGTON STORES, INC., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01) and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (the "**Trustee**," as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS the Company has duly authorized the issuance of its 2.25% Convertible Senior Notes due 2025 (the "**Notes**"), initially in an aggregate principal amount not to exceed $805,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
Definitions

Section 1.01 Definitions. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular unless the context otherwise requires.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

"**Additional Shares**" shall have the meaning specified in Section 13.03(a).

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

"**Applicable Law**" shall have the meaning specified in Section 16.16.

"**Bid Solicitation Agent**" means the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 13.01(b). The Company shall initially act as the Bid Solicitation Agent, although the Company may, from time to time, change the Bid Solicitation Agent.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in The City of New York.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

"**Cash Settlement**" shall have the meaning specified in Section 13.02(a).

"**Clause A Distribution**" shall have the meaning specified in Section 13.04(c).

"**Clause B Distribution**" shall have the meaning specified in Section 13.04(c).

"**Clause C Distribution**" shall have the meaning specified in Section 13.04(c).

The term "**close of business**" means 5:00 p.m., New York City time.

"**Closing Price**" means, with respect to the Common Stock or any other security for which a Closing Price is to be determined, on any date, the closing sale price per share (or, if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on such date as reported for composite transactions by The New York Stock Exchange or, if the Common Stock or such other security, as the case may be, is not then listed on The New York Stock Exchange, as reported for composite transactions by the principal United States national or regional securities exchange on which the Common Stock or such other security is traded. The Closing Price will be determined without reference to after-hours or extended market trading. If the Common Stock or such other security is not listed for trading on a United States national or regional securities exchange on the relevant date, the "**Closing Price**" shall be the last quoted bid price for the Common Stock or such other security in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock or such other security is not so quoted, the "**Closing Price**" shall be the average of the mid-point of the last bid and asked prices for the Common Stock or such other security on the relevant date from each of at least three independent nationally recognized investment banking firms selected by the Company for this purpose. Any such determination shall be conclusive absent manifest error.

"**Combination Settlement**" shall have the meaning specified in Section 13.02(a).

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

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock of the Company, par value $0.0001 per share, at the date of this Indenture, subject to Section 13.07.

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by any Officer, and delivered to the Trustee.

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Date**" shall have the meaning specified in Section 13.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 13.01(a).

"**Conversion Price**" means as of any time, $1,000, *divided by* the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 13.01(a).

"**Conversion Reference Period**" with respect to any Note surrendered for conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to the 45th Scheduled Trading Day immediately preceding the Maturity Date, the 40 consecutive VWAP Trading Day period beginning on, and including, the third VWAP Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs on or after the date of the Company's issuance of a Redemption Notice pursuant to Section 15.02 and prior to the Scheduled Trading Day immediately preceding the relevant Redemption Date, the 40 consecutive VWAP Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding such Redemption Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date, the 40 consecutive VWAP Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding the Maturity Date.

"**Corporate Event**" shall have the meaning specified in Section 13.01(b)(iii).

"**Corporate Trust Office**" means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at Global Capital Markets, 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attention: Burlington Stores Notes Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

"**Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

"**Daily Conversion Value**" means, for each of the 40 consecutive VWAP Trading Days during the Conversion Reference Period, one-fortieth (1/40th) of the product of (a) the Conversion Rate on such VWAP Trading Day and (b) the Daily VWAP for such VWAP Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount (if any), *divided by* 40.

"**Daily Settlement Amount**," for each of the 40 consecutive VWAP Trading Days during the Conversion Reference Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value; and

(b) if the Daily Conversion Value on such VWAP Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such VWAP Trading Day.

"**Daily VWAP**" means, for each of the 40 consecutive VWAP Trading Days during the relevant Conversion Reference Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "BURL <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such VWAP Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**De-Legending Deadline Date**" means, with respect to any Note, the 385th day after the Last Original Issuance Date of such Notes.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Redemption Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Depositary**" means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Distributed Property**" shall have the meaning specified in Section 13.04(c).

"**Effective Date**" shall have the meaning specified in Section 13.03(c), except that, as used in Section 13.04 and Section 13.05, "**Effective Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means the first date upon which a sale of the Common Stock does not automatically transfer the right to receive the relevant dividend or distribution from the seller of the Common Stock, regular way on the relevant exchange or in the relevant market for the Common Stock, to its buyer (in the form or due bills or otherwise). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number shall not be considered "regular way" for purposes of this definition.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, (and any successor statute) and the rules and regulations promulgated thereunder.

"**Exempted Fundamental Change**" means a Fundamental Change that satisfies each of the conditions set forth in Section 14.01(f) and with respect to which the Company elects to invoke the provisions of such Section 14.01(f).

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" means the "Form of Fundamental Change Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "Form of Note" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Fundamental Change**" shall be deemed to have occurred if any of the following occurs:

(a) except in connection with a transaction described in clause (b) below, a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly Owned Subsidiaries and the employee benefit plans of the Company and its Wholly Owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Stock representing more than 50% of the voting power of the Company's Common Stock;

(b) the consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (ii) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (iii) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company's Wholly Owned Subsidiaries; *provided*, *however*, that a transaction described in clause (i) or (ii) in which the holders of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of the voting power of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction, with such holders' proportional voting power immediately after such transaction being in substantially the same proportions as their respective voting power before such transaction, shall not be a Fundamental Change;

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock ceases to be listed on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clause (a) or (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock, ordinary shares, common equity interests, American Depositary Receipts or American Depositary Shares that are listed on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors) or will be so listed when issued or exchanged in connection with such transaction or transactions, and as a result of such transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, subject to the provisions of Section 13.02.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 14.01(c).

"**Fundamental Change Repurchase**" means any repurchase of Notes pursuant to Article 14

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 14.01(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 14.01(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 14.01(a).

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Holder**," as applied to any Note, means any Person in whose name at the time a particular Note is registered on the Note Register.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Initial Purchasers**" means J.P. Morgan Securities LLC, BofA Securities, Inc., Goldman Sachs & Co. LLC, Wells Fargo Securities, LLC, U.S. Bancorp Investments, Inc. and SunTrust Robinson Humphrey, Inc.

"**Interest Payment Date**" means each April 15 and October 15 of each year, beginning on October 15, 2020.

"**Last Original Issuance Date**" means (a) with respect to any Notes issued pursuant to the Purchase Agreement, and any Notes issued in exchange therefor or in substitution thereof, the date of this Indenture; and (b) with respect to any Notes issued pursuant to Section 2.11, and any Notes issued in exchange therefor or in substitution thereof, either (i) the later of (x) the date such Notes are originally issued and (y) the last date any Notes are originally issued as part of the same offering pursuant to the exercise of an option granted to the initial purchaser(s) of such Notes to purchase additional Notes; or (ii) such other date as is specified in an Officer's Certificate delivered to the Trustee before the original issuance of such Notes.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

"**Market Disruption Event**" means (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means April 15, 2025.

"**Measurement Period**" shall have the meaning specified in Section 13.01(b)(i).

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Note Register**" shall have the meaning specified in Section 2.05(a).

"**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notice of Conversion**" shall have the meaning specified in Section 13.02(b).

"**Notice of Default**" shall have the meaning specified in Section 6.01(g).

"**Offering Memorandum**" means the preliminary offering memorandum dated April 13, 2020, as supplemented by the related pricing term sheet dated April 13, 2020, relating to the offering and sale of the Notes.

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, the Treasurer, the Assistant Treasurer, the Secretary, the Assistant Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President").

"**Officer's Certificate**," when used with respect to the Company, means a certificate signed by an Officer and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 16.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer's Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

The term "**open of business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel who is reasonably acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 16.05 if and to the extent required by the provisions of such Section 16.05.

"**Optional Redemption**" shall have the meaning specified in Section 15.01.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.07 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.07 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 13 and required to be cancelled pursuant to Section 2.09;

(e) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.11; and

(f) Notes redeemed pursuant to Article 15.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in registered form issued in minimum denominations of $1,000 principal amount and integral multiples in excess thereof.

"**Physical Settlement**" shall have the meaning specified in Section 13.02(a).

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.07 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Purchase Agreement**" means that certain Purchase Agreement, dated as of April 13, 2020, among the Company and J.P. Morgan Securities LLC, as representative of the Initial Purchasers.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Redemption Date**" shall have the meaning specified in Section 15.02(a).

"**Redemption Notice**" shall have the meaning specified in Section 15.02(a).

"**Redemption Price**" means, for any Notes to be redeemed pursuant to Section 15.01, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest on such Notes, if any, to, but excluding, the related Redemption Date (unless such Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case any unpaid interest accrued to the Interest Payment Date will be paid by the Company to Holders of record of such Notes on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes to be redeemed).

"**Reference Property**" shall have the meaning specified in Section 13.07(a).

"**Reference Property Unit**" shall have the meaning specified in Section 13.07(a).

"**Regular Record Date**," with respect to any Interest Payment Date, means the April 1 or October 1 (whether or not such day is a Business Day) immediately preceding the applicable April 15 or October 15 Interest Payment Date, respectively.

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.05(c).

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"**Restricted Note Legend**" shall have the meaning specified in Section 2.05(c).

"**Restricted Securities**" shall have the meaning specified in Section 2.05(c).

"**Rule 144**" means Rule 144 as promulgated under the Securities Act.

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

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is listed or admitted for trading or, if the Common Stock is not so listed or admitted for trading on any such exchange, "**Scheduled Trading Day**" means a Business Day.

"**Securities Act**" means the Securities Act of 1933, as amended, (and any successor statute) and the rules and regulations promulgated thereunder.

"**Settlement Amount**" shall have the meaning specified in Section 13.02(a)(iv).

"**Settlement Method**" means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

"**Settlement Notice**" shall have the meaning specified in Section 13.02(a)(iii).

"**Share Exchange Event**" shall have the meaning specified in Section 13.07(a).

"**Significant Subsidiary**" means a Subsidiary of the Company that would constitute a "significant subsidiary" within the meaning of Article 1, Rule 1-02 of Regulation S-X promulgated under the Securities Act as in effect on the date of this Indenture.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion (excluding cash in lieu of any fractional share) as specified in the Settlement Notice related to any converted Notes.

"**Spin-Off**" shall have the meaning specified in Section 13.04(c).

"**Stock Price**" shall have the meaning specified in Section 13.03(c).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Company**" shall have the meaning specified in Section 11.01(a).

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The New York Stock Exchange or, if the Common Stock (or such other security) is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Closing Price for the Common Stock (or such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, "**Trading Day**" means a Business Day.

"**Trading Price**" of the Notes on any date of determination means the average of the secondary market bid quotations per $1,000 principal amount of the Notes obtained by the Bid Solicitation Agent for $1,000,000 aggregate principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects; *provided* that (i) if three such bids cannot reasonably be obtained by the Bid Solicitation Agent, but two such bids are obtained, then the average of the two bids shall be used and (ii) if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used; *provided further* that if the Bid Solicitation Agent cannot reasonably obtain any such bids, then the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the applicable Conversion Rate.

"**transfer**" shall have the meaning specified in Section 2.05(c).

"**Trigger Event**" shall have the meaning specified in Section 13.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder.

"**Valuation Period**" shall have the meaning specified in Section 13.04(c).

"**VWAP Trading Day**" means a day on which (i) there is no Market Disruption Event and (ii) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, "**VWAP Trading Day**" means a Business Day.

"**Wholly Owned Subsidiary**" means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "more than 50%" in the definition of "Subsidiary" shall be deemed replaced by a reference to "100%".

Section 1.02 References to Interest. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) or Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2
Issue, Description, Execution, Registration and Exchange of Notes

Section 2.01 Designation and Amount. The Notes shall be designated as the "2.25% Convertible Senior Notes due 2025." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $805,000,000, subject to Section 2.11 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02 Form of Notes. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.

(a) The Notes shall be issuable in fully registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples in excess thereof. Each Note shall be dated the date of its authentication. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months (and for partial months, on the basis of the number of days actually elapsed in a 30-day month) and shall accrue from the first original issue date or from the most recent date to which interest is paid or duly provided for.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be sent to each Holder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so mailed, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c). The Trustee shall have no responsibility whatsoever for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 Execution, Authentication and Delivery of Notes. The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile or other electronic signature of an Officer.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; *provided* that the Trustee shall be entitled to receive an Officer's Certificate and an Opinion of Counsel of the Company with respect to the issuance, authentication and delivery of such Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 16.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 14, (iii) any Notes selected for redemption in accordance with Article 15, except the unredeemed portion of any Note being redeemed in part or (iv) any Notes between a Regular Record Date and corresponding Interest Date.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(c) Subject to Section 2.06, Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Subject to Section 2.06, until the date (the "**Resale Restriction Termination Date**") that is the later of (1) the date that is one year after the Last Original Issuance Date of the Notes, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend (the "**Restricted Note Legend**") in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF BURLINGTON STORES, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

The Notes issued pursuant to the Purchase Agreement will initially be issued with a restricted CUSIP number.

Without limiting the generality of Section 2.06, any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the immediately preceding sentence have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act. Any exchange pursuant to the foregoing paragraph shall be in accordance with the applicable procedures of the Depositary.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days, (iii) an Event of Default with respect to the Notes has occurred and is continuing and, subject to the Depositary's applicable procedures, a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note or (iv) the Company and a beneficial owner of a Note agree, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii) or (iv), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) or (iv) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, the Conversion Agent or any other agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depositary with respect to Global Notes.

(d) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF BURLINGTON STORES, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred (or issued upon conversion of a Note that has been transferred) pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold (or issued upon conversion of a Note that has been sold) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note or Common Stock issued upon the conversion or exchange of a Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate unless registered under the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined in Rule 144 under the Securities Act). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with Section 2.09.

(f) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.06 Removal of Transfer Restrictions. Without limiting the generality of any other provision of this Indenture (including Section 4.06(d) and Section 4.06(e)), the Restricted Note Legend affixed to any Note will be deemed, pursuant to this Section 2.06 and the footnote to such Restricted Note Legend, to be removed therefrom upon the Company's delivery to the Trustee of notice, signed on behalf of the Company by one of its Officers, to such effect (and, for the avoidance of doubt, such notice need not be accompanied by an Officer's Certificate or an Opinion of Counsel in order to be effective to cause such Restricted Note Legend to be deemed to be removed from such Note). If such Note bears a "restricted" CUSIP or ISIN number at the time of such delivery, then, upon such delivery, such Note will be deemed, pursuant to this Section 2.06 and the footnotes to the CUSIP and ISIN numbers set forth on the face of the certificate representing such Note, to thereafter bear the "unrestricted" CUSIP and ISIN numbers identified in such footnotes; provided, however, that if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other procedure to cause such Global Note to be identified by "unrestricted" CUSIP and ISIN numbers in the facilities of such Depositary, then (a) the Company shall effect such exchange or procedure as soon as reasonably practicable; and (b) for purposes of Section 4.06(e), such Global Note shall not be deemed to be identified by "unrestricted" CUSIP and ISIN numbers until such time as such exchange or procedure is effected.

Section 2.07 Mutilated, Destroyed, Lost or Stolen Notes. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or for redemption or is about to be converted in accordance with Article 13 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, redemption, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, redemption, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.08 Temporary Notes. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes upon the written request of the Company. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.09 Cancellation of Notes Paid, Converted, Etc. The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order.

Section 2.10 CUSIP Numbers. The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; provided that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Note, notice or elsewhere; provided further that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.11 Additional Notes; Repurchases. The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue price and the date from which interest will accrue) in an unlimited aggregate principal amount; provided that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes or securities law purposes, such additional Notes shall have a separate CUSIP number. For the avoidance of doubt, notwithstanding any other provision of this Indenture to the contrary, for purposes of Section 4.06(d) and Section 4.06(e), in the event additional Notes are issued pursuant to this Section 2.11, references to the "Last Original Issuance Date" of the Notes with respect to such additional Notes shall refer only to such additional Notes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 16.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with Section 2.09.

ARTICLE 3
Satisfaction and Discharge

Section 3.01 Satisfaction and Discharge. This Indenture shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.07) have been delivered to the Note Registrar for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Redemption Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and/or shares of Common Stock or, if applicable, solely to satisfy the Conversion Obligation, other Reference Property (in respect of conversions) sufficient, without consideration of reinvestment, to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
Particular Covenants of the Company

Section 4.01 Payment of Principal and Interest. The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price or Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02 Maintenance of Office or Agency. The Company will maintain in the United States an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the United States.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the United States where Notes may be surrendered for registration of transfer or exchange or for presentation for payment, redemption or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served; provided that no office of the Trustee shall be a place for service of legal process on the Company.

Section 4.03 Appointments to Fill Vacancies in Trustee's Office. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 Provisions as to Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts. Upon the occurrence of any event specified in Section 6.01(i) or Section 6.01(j), the Trustee shall automatically become the Paying Agent.

(d) Subject to applicable abandoned property laws, any money and shares of Common Stock deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust and the Trustee shall have no further liability with respect to such funds; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that neither the Trustee nor Paying Agent shall withhold paying such money or securities back to the Company until, at the Company's expense, they publish (in no event later than five days after the Company requests repayment) in a newspaper of general circulation in The City of New York, or mail or send to each registered Holder, a notice stating that such money or securities shall be paid back to the Company if unclaimed after a date no less than 30 days from the date of such publication or notification.

Section 4.05 Existence. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06 Rule 144A Information Requirement and Annual Reports; Additional Interest.

(a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act (assuming such securities have not been owned by an Affiliate of the Company), promptly provide to the Trustee and any Holder or beneficial owner of such Notes or any shares of Common Stock issuable upon conversion of such Notes and, upon written request, any securities analyst or prospective investors in such Notes or such shares of Common Stock, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any such document or report that the Company files with the Commission via the Commission's EDGAR system shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system; *provided* that the Trustee shall have no obligation to determine whether such documents or reports have been filed via the EDGAR system.

(c) Delivery of the reports and documents described in subsection (b) above to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the Last Original Issuance Date of any Note, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that have been the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. As used in this Section 4.06(d), documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act do not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the Restricted Note Legend has not been removed (including pursuant to Section 2.06), the notes are assigned a restricted CUSIP or the Notes are is not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the De-Legending Deadline Date for such Note, the Company shall pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of the Notes outstanding until the Restricted Note Legend has been removed in accordance with Section 2.05(c) or Section 2.06, the Notes are assigned an unrestricted CUSIP and the Notes are freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding).

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(g) In no event shall any Additional Interest that may accrue pursuant to Section 4.06(d) or Section 4.06(e), together with any interest that may accrue in the event the Company elects to pay Additional Interest in respect of an Event of Default relating to its failure to comply with its obligations as set forth under Section 6.03, accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

(i) Notwithstanding anything to the contrary in this Section 4.06, the Company shall not be required to pay Additional Interest pursuant to Section 4.06(d) or Section 4.06(e) (i) on any date on which (w) the Company shall have filed a shelf registration statement for the resale of the Notes and any shares of Common Stock issuable upon conversion of the Notes, (x) such shelf registration statement is effective and usable by Holders identified therein as selling security holders for the resale of the Notes and any shares of Common Stock issued upon conversion of the Notes, (y) the Holders may register the resale of their Notes under such shelf registration statement on terms customary for the resale of convertible securities offered in reliance on Rule 144A and (z) the Notes and/or shares of Common Stock sold pursuant to such shelf registration statement become freely tradable pursuant to Rule 144 as a result of such sale or (ii) once the Company shall have complied with the requirements set forth in clause (i) above for a period of one year.

Section 4.07 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08 Compliance Certificate; Statements as to Defaults. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2020) an Officer's Certificate stating whether the signers thereof have knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee promptly after the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof; *provided* that the Company shall not be required to deliver such notice if such Event of Default or Default has been cured or waived before the date on which the Company is required to deliver such notice.

Section 4.09 Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
Lists of Holders and Reports by the Company and the Trustee

Section 5.01 Lists of Holders. At any time the Trustee is not acting as Note Registrar, the Company shall furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after each April 1 and October 1 in each year beginning with October 1, 2020, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished.

Section 5.02 Preservation and Disclosure of Lists. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. Events of Default. Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in the payment of principal of any Note when due on the Maturity Date, upon Optional Redemption, upon Fundamental Change Repurchase or otherwise;

(b) default in the payment of any interest on any Note when due and payable, and such default continues for a period of 30 days past the applicable due date;

(c) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 14.01(c) or notice of a Make-Whole Fundamental Change or a Share Exchange Event in accordance with Section 13.01(b)(iii) and such failure continues for a period of more than three Business Days;

(d) failure by the Company to comply with its obligations under Article 11;

(e) following the exercise by the Holder of the right to convert a Note in accordance with Article 13, failure by the Company to deliver the applicable Conversion Obligation when due and such failure continues for a period of more than five Business Days;

(f) default by the Company in its obligation to repurchase any Note, or any portion thereof, surrendered for repurchase pursuant to and in accordance with Article 14;

(g) failure by the Company to perform or observe any other covenant or agreement in the Notes or this Indenture and such failure continues for 60 days after receipt by the Company of written notice from the Trustee to the Company or from the Holders of at least 25% in principal amount of the Notes then outstanding to the Trustee and the Company (such written notice with respect to any default, a "**Notice of Default**");

(h) failure to pay when due at maturity (which failure continues after any applicable grace or notice period), or a default that results in the acceleration of any indebtedness for borrowed money of the Company or any Subsidiary of the Company (other than indebtedness that is non-recourse to the Company or any Subsidiary of the Company) in an aggregate principal amount of $75 million (or its foreign currency equivalent) or more, unless the acceleration is rescinded, stayed or annulled within 30 days after receipt by the Company of a Notice of Default;

(i) commencement by the Company or any Significant Subsidiary of the Company of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or consent, by the Company or any of its Significant Subsidiaries, to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making, by the Company or any of its Significant Subsidiaries, of a general assignment for the benefit of creditors, or failure, by the Company or any of its Significant Subsidiaries, generally to pay its debts as they become due; or

(j) commencement of an involuntary case or other proceeding against the Company or any Significant Subsidiary of the Company seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive days.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

Section 6.02 Acceleration; Rescission and Annulment. If one or more Events of Default shall have occurred and be continuing, then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, and accrued and unpaid interest on, all the Notes then outstanding to be immediately due and payable, and upon any such declaration the same shall become and shall automatically be immediately due and payable. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase or redeem any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 Additional Interest.

(a) Notwithstanding anything in this Indenture or in the Notes to the contrary (but subject to Section 6.03(b)), to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (i) 0.25% per annum of the principal amount of the Notes outstanding for each day on which such Event of Default is continuing during the 180-day period beginning on, and including, the date on which such an Event of Default first occurs to, and including, the 180th day thereafter and (ii) 0.50% per annum of the principal amount of the Notes outstanding for each day on which such Event of Default is continuing during the 185-day period beginning on, and including, the 181st day after the occurrence of such Event of Default. Additional Interest payable pursuant to this Section 6.03 shall be payable in the same manner as Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e). On the 365th day after such Event of Default (if the Event of Default relating to the Company's failure to file is not cured or waived prior to such 365th day), such Additional Interest shall cease to accrue and the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 365 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes and, in writing, the Trustee and the Paying Agent, of such election prior to the occurrence of such Event of Default. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

(b) The provisions of this Section 6.03(a) shall not affect the rights of Holders of the Notes in the event of the occurrence of any other Event of Default.

(c) In no event shall any Additional Interest that may accrue in the event the Company elects to pay Additional Interest in respect of an Event of Default relating to its failure to comply with its obligations under Section 4.06(b) as set forth in this Section 6.03, together with any interest that may accrue pursuant to Section 4.06(d) or Section 4.06(e) accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 6.04 Payments of Notes on Default; Suit Therefor. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 Application of Monies Collected by Trustee. Any monies or property collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee (including any other role or capacities in which the Trustee acts with respect to the Notes) under Section 7.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 Proceedings by Holders. Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity satisfactory to it against all costs, liability or expenses to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 6.07 Proceedings by Trustee. In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 Remedies Cumulative and Continuing. Except as provided in the last paragraph of Section 2.07, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. The Trustee may maintain a proceeding even if it does not possess any Notes or does not produce any Notes in the proceeding.

Section 6.09 Direction of Proceedings and Waiver of Defaults by Majority of Holders. The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; provided, however, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability or for which it has not received indemnity or security satisfactory to the Trustee against loss, liability or expense (it being understood that the Trustee does not have an affirmative duty to determine whether any direction is prejudicial to any Holder). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 Notice of Defaults. The Trustee shall, within 90 days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, send to all Holders as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default in the payment of the principal of (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 Undertaking to Pay Costs. All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 13.

ARTICLE 7
CONCERNING THE TRUSTEE

Section 7.01 Duties and Responsibilities of Trustee. The Trustee, prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee has written notice or actual knowledge and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has written notice or actual knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; provided that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered (and, if requested, provided) to the Trustee indemnity or security satisfactory to the Trustee against any costs, liability or expense that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee has written notice or actual knowledge and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved, as determined by a court of competent jurisdiction by a final and non-appealable judgment, that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of specific written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses or other costs, fees or expenses incurred in connection therewith or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such specific written investment direction from the Company (but it is understood and agreed that the Trustee or its Affiliates are permitted to receive additional compensation or fees (that could be deemed to be in the Trustee's economic self-interest) associated with any investments hereunder);

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7, including, without limitation, its right to be indemnified, shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent;

(i) under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes; and

(j) any of the Trustee, its officers, directors, employees and affiliates may become the owner of, or acquire any interest in, any Notes with the same rights that they would have if the Trustee were not appointed hereunder, and may engage or be interested in any financial or other transaction with the Company and may act on, or as depositary, trustee or Trustee for, any committee or body of holders of Notes or in connection with any other obligations of the Company as freely as if the Trustee were not appointed hereunder. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered (and, if requested, provided) to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 Reliance on Documents, Opinions, Etc. Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, judgment, order, bond, note, coupon or other paper or document, whether sent by letter, email, facsimile or other electronic communication, believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties, even if it contains errors or is later deemed not authentic;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel and other professional advisors of its own choosing and require an Opinion of Counsel (at the expense of the Company) and any advice of such counsel or other professional advisors or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel, and the Trustee shall not be responsible for the content of any Opinion of Counsel in connection with this Indenture, whether delivered to it or on its behalf;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, judgment, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee shall not be bound to make any investigation as to the performance or observance of any of the covenants, agreements or other terms or conditions set forth in this Indenture;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(g) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(h) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(i) the Holders shall not have the right to compel disclosure of information made available to the Trustee in connection with this Indenture, unless otherwise required by applicable law or the express terms of this Indenture;

(j) the Trustee shall have the right to participate in defense of any claim against it, even if defense is assumed by an indemnifying party;

(k) the Trustee shall have no duty to make any documents available to the Holders, provided that the Trustee shall provide a copy of this Indenture to a Holder upon proof that such Person is a Holder;

(l) the Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture;

(m) with respect to payments due with respect to the Notes, the Trustee (in its capacity as Trustee or as Paying Agent) shall only be obligated to pay amounts which it has actually received; and

(n) the Trustee shall be entitled to take any action or to refuse to take any action which the Trustee regards as necessary for the Trustee to comply with any applicable law.

In no event shall the Trustee be liable for any special, indirect, punitive, incidental or consequential loss or damage, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default or any other fact, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been actually received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, from the Company or any Holder of the Notes, and such notice references the Notes and this Indenture and states that it is a "notice of default".

Section 7.03 No Responsibility for Recitals, Etc. The recitals contained herein and in the Notes shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes or other transaction documents. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of the Indenture.

Section 7.04 Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes. The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent, Bid Solicitation Agent or Note Registrar.

Section 7.05 Monies to Be Held in Trust. All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest or investment income on any money received by it hereunder and will not be deemed an investment manager.

Section 7.06 Compensation and Expenses of Trustee. The Company covenants and agrees to pay to the Trustee in any capacity under this Indenture from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including (a) the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ and (b) stamp, issue, registration, documentary or other taxes and duties) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as determined by a final, non-appealable decision of a court of competent jurisdiction. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its officers, directors, attorneys, employees and agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, as determined by a court of competent jurisdiction by a final and non-appealable judgment, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, the payment or conversion of the Notes and the earlier resignation or removal or the Trustee. The Company need not pay for any settlement made without its consent, which consent shall be promptly given unless such settlement is unreasonable. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 Officer's Certificate as Evidence. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence and willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 Eligibility of Trustee. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by giving notice thereof to the Holders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the giving of such notice of resignation to the Company, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders and at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If the Trustee is removed, but no successor trustee has been appointed and accepted such appointment, the removed Trustee may, upon the terms and conditions and otherwise as in Section 7.09(a) provided, petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 Acceptance by Successor Trustee. Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11 Succession by Merger, Etc. Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 Trustee's Application for Instructions from the Company. Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after notice to the Company has been deemed to have been given pursuant to Section 17.03, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8
CONCERNING THE HOLDERS

Section 8.01 Action by Holders. Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 Proof of Execution by Holders. Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 Who Are Deemed Absolute Owners. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Redemption Price and any Fundamental Change Repurchase Price, if applicable) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 Company-Owned Notes Disregarded. Without limiting Section 2.11, in determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 Revocation of Consents; Future Holders Bound. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9
HOLDERS' MEETINGS

Section 9.01 Purpose of Meetings. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 Call of Meetings by Trustee. The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 Call of Meetings by Company or Holders. In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04 Qualifications for Voting. To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 Regulations. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 Voting. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 No Delay of Rights by Meeting. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01 Supplemental Indentures Without Consent of Holders. Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to add guarantees with respect to the Notes or to secure the Notes;

(b) to evidence the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 11;

(c) in connection with any Share Exchange Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 13.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 13.07;

(d) to irrevocably elect one Settlement Method or irrevocably eliminate one or more Settlement Methods or irrevocably elect a Specified Dollar Amount to be applicable to Combination Settlements;

(e) to surrender any right or power herein conferred upon the Company;

(f) to add to the covenants or Events of Default of the Company for the benefit of the Holders;

(g) to cure any ambiguity or correct or supplement any defect or inconsistency in the Indenture;

(h) to modify or amend the Indenture to permit the qualification of the Indenture or any indenture supplemental thereto under the Trust Indenture Act;

(i) to establish the form of the Notes, if issued in definitive form;

(j) to evidence the acceptance of the appointment under this Indenture of a successor Trustee in accordance with the terms of this Indenture;

(k) to conform the provisions of this Indenture or the Notes to the "Description of notes" section of the Offering Memorandum;

(l) to provide for conversion rights of Holders of Notes if any reclassification or change of the Common Stock or any merger, consolidation or sale of all or substantially all of the Company's assets occurs;

(m) to comply with the rules of the Depositary;

(n) to change the Conversion Rate in accordance with this Indenture; or

(o) to make any change that does not materially adversely affect the rights of any Holder under the Indenture or the Notes.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 Supplemental Indentures with Consent of Holders. With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided*, *however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) reduce the principal amount of, or change the Maturity Date or an Interest Payment Date of, any Note;

(b) reduce or alter the manner of calculating the interest rate or extend the stated time for payment of interest on any Note;

(c) reduce the Redemption Price or the Fundamental Change Repurchase Price of any Note, or change the time at which or circumstances under which any Note may or shall be repurchased or redeemed;

(d) impair the right of any Holder to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(e) change the currency of payment of the Notes or interest on any Note;

(f) make any change that adversely affects the repurchase option of a Holder pursuant to Article 14 or the right of a Holder to convert any Note or reduce the consideration receivable upon conversion of any Note except as otherwise permitted by the Indenture;

(g) change the Company's obligation to maintain an office or agency as described in Section 4.02;

(h) modify any of the provisions of this Article 10, or reduce the percentage of the aggregate principal amount of outstanding Notes required to amend, modify or supplement the Indenture or the Notes or waive an Event of Default, except to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby; or

(i) reduce the percentage of Notes whose Holders must consent to an amendment.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties, privileges, indemnities or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture and the Notes shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 Notation on Notes. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated upon receipt of a Company Order by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 16.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 Evidence of Compliance of Supplemental Indenture to Be Furnished to Trustee. In addition to the documents required by Section 16.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto is permitted or authorized by this Indenture.

ARTICLE 11
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 Company May Consolidate, Etc. on Certain Terms. Subject to the provisions of Section 11.02, the Company shall not consolidate with or merge with or into any other Person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its assets to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**") shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, all of the obligations of the Company under the Notes and this Indenture; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

For purposes of this Section 11.01, the conveyance, transfer, sale, lease or other disposition of all or substantially all of the assets of one or more Subsidiaries of the Company to another Person, which assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the assets of the Company on a consolidated basis, shall be deemed to be the conveyance, transfer, sale, lease or other disposition of all or substantially all of the assets of the Company to another Person. The provisions of this Article 11 shall not apply to the Company's conveyance, transfer, sale, lease or other disposition of all or substantially all of its assets, directly or indirectly, to one of the Company's Wholly Owned Subsidiaries.

Section 11.02 Successor Corporation to Be Substituted. In case of any such consolidation, merger, conveyance, transfer, sale, lease or other disposition and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the Company will be discharged from its obligations under the Notes and this Indenture, except in the case of any such lease. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, conveyance, transfer, sale or other disposition (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, conveyance, transfer, sale, lease or other disposition, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 Opinion of Counsel to Be Given to Trustee. No such consolidation, merger, conveyance, transfer, sale, lease or other disposition shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance, transfer, sale, lease or other disposition and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 Indenture and Notes Solely Corporate Obligations. No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
CONVERSION OF NOTES

Section 13.01 Conversion Privilege.

(a) Subject to and upon compliance with the provisions of this Article 13, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 13.01(b), at any time prior to the close of business on the Business Day immediately preceding January 15, 2025 under the circumstances and during the periods set forth in Section 13.01(b), and (ii) regardless of the conditions described in Section 13.01(b), on or after January 15, 2025 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 4.5418 shares of Common Stock (subject to adjustment as provided in this Article 13, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 13.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding January 15, 2025, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any ten consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per $1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Closing Price of the Common Stock and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. Unless the Company is acting as Bid Solicitation Agent, the Company shall provide written notice to the Bid Solicitation Agent of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if not the Company) shall have no obligation to determine the Trading Price per $1,000 principal amount of Notes unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per $1,000 principal amount of Notes) unless a Holder of at least $5,000,000 aggregate principal amount of Notes provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of the Closing Price of the Common Stock and the Conversion Rate, at which time the Company shall (if the Company is acting as Bid Solicitation Agent) or the Company shall instruct the Bid Solicitation Agent (if the Company is not acting as Bid Solicitation Agent), in writing, to determine the Trading Price per $1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Price of the Common Stock and the Conversion Rate. If the Company does not instruct the Bid Solicitation Agent in writing to determine the Trading Price per $1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent in writing to obtain bids and the Bid Solicitation Agent fails to make such determination, or if the Company is acting as Bid Solicitation Agent and the Company fails to determine the Trading Price per $1,000 principal amount of Notes when the Company is required to do so, then, in each case, the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. At such time as the Company directs the Bid Solicitation Agent in writing to solicit bid quotations, the Company shall provide the Bid Solicitation Agent in writing with the names and contact details of three independent recognized securities dealers selected by the Company, and the Company shall direct those securities dealers to provide bids to the Bid Solicitation Agent. In the event that the Company is not acting as Bid Solicitation Agent and the Bid Solicitation Agent is required to determine the Trading Price, but cannot, in its own determination, act in such capacity, the Bid Solicitation Agent shall notify the Company and the Company shall promptly appoint a substitute Bid Solicitation Agent. If the Trading Price condition set forth above has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing in accordance with Section 16.03 and shall so notify the Holders by issuing a press release or providing notice on the Company's website and, in respect of Global Notes, shall provide notice through the Depositary in accordance with the procedures thereof. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Price of the Common Stock and the Conversion Rate for such date, the Company shall so notify the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) as described in the preceding sentence.

(ii) If, prior to the close of business on the Business Day immediately preceding January 15, 2025, the Company elects to:

(A) distribute to all holders of the Common Stock any rights or warrants (other than any issuance of rights, options or warrants issued under a shareholder rights plan that are (1) transferable with shares of the Common Stock, including upon conversion of a Note, and (2) not exercisable until the occurrence of a Trigger Event; *provided* that any such rights, options or warrants will be deemed distributed under this Section 13.01(b)(ii)(A) upon the separation of such rights, options or warrants from the Common Stock, or upon the occurrence of a Trigger Event) entitling them to purchase, for a period of not more than 45 calendar days after the Ex-Dividend Date for such distribution, shares of the Common Stock at a price per share that is less than the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all holders of the Common Stock the Company's assets (including cash), debt securities or rights or warrants to purchase securities of the Company, which distribution has a per share value, as determined in good faith by the Company exceeding 10% of the Closing Price of the Common Stock on the Trading Day immediately preceding the date of announcement for such distribution,

then, in either case, the Company shall notify all Holders of the Notes and, in writing, the Trustee and the Conversion Agent (if other than the Trustee), at least 50 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution.

The Company shall notify the Holders of the Notes if the Notes become convertible pursuant to this Section 13.01(b)(ii) by issuing a press release or providing a notice on the Company's website and shall provide notice through the Depositary in accordance with the procedures thereof in respect of Global Notes. Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such distribution and (2) the Company's announcement that such distribution will not take place, in each case, even if such Notes are not otherwise convertible at such time; *provided* that no Holder of a Note shall have the right to convert if the Holder otherwise would participate in such distribution without conversion in respect of Notes held by such Holder as if such Holder held a number of shares of Common Stock equal to the Conversion Rate for each $1,000 principal amount of Notes it holds.

(iii) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding January 15, 2025, or if the Company is a party to a Share Exchange Event (other than a Share Exchange Event that is solely to change the jurisdiction of the Company's incorporation and that does not constitute a Fundamental Change or a Make-Whole Fundamental Change) that occurs prior to the close of business on the Business Day immediately preceding January 15, 2025 (each such Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, a "**Corporate Event**"), in each case, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 14.01, all or any portion of a Holder's Notes may be surrendered for conversion at any time from the effective date of such Corporate Event until 35 Trading Days after such effective date or, if such Corporate Event constitutes a Fundamental Change (other than an Exempted Fundamental Change), until the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent in writing of any Corporate Event and the corresponding right to convert the Notes as promptly as practicable following the time we publicly announce such Corporate Event (but in no event later than the Business Day following the effective date of such Corporate Event). Such notice to the Holders shall be given by issuing a press release or providing a notice on the Company's website and, in respect of Global Notes, through the Depositary in accordance with the procedures thereof.

(iv) Prior to the close of business on the Business Day immediately preceding January 15, 2025, a Holder may surrender all or any portion of its Notes for conversion at any time during any fiscal quarter commencing after the fiscal quarter ending on June 30, 2020 (and only during such fiscal quarter), if the Closing Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding fiscal quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day.

(v) If the Company calls any Notes for Optional Redemption pursuant to Article 15, then a Holder may surrender all or any portion of such Notes called for Optional Redemption for conversion at any time prior to the close of business on the Scheduled Trading Day immediately preceding the related Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert any such Notes pursuant to this subsection (b)(v) shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder of such Notes may convert its Notes called for redemption until the Business Day immediately preceding the date on which the Redemption Price has been paid or duly provided for.

Section 13.02 Conversion Procedure; Settlement Upon Conversion.

(a) Subject to this Section 13.02, Section 13.03(b) and Section 13.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of Notes being converted, cash ("**Cash Settlement**"), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 13.02 ("**Physical Settlement**") or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 13.02 ("**Combination Settlement**"), at its election, as set forth in this Section 13.02.

(i) All conversions for which the relevant Conversion Date occurs after the Company's issuance of a Redemption Notice with respect to the Notes and prior to the related Redemption Date, and all conversions for which the relevant Conversion Date occurs on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date, shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs after the Company's issuance of a Redemption Notice with respect to the Notes but prior to the related Redemption Date, and any conversions for which the relevant Conversion Date occurs on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date, the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates. The Company may, at any time prior to the 45th Scheduled Trading Day immediately preceding the Maturity Date, by written notice to Holders, the Trustee and the Conversion Agent, irrevocably elect one settlement method or irrevocably eliminate one or more Settlement Methods or irrevocably elect a Specified Dollar Amount to be applicable to Combination Settlements.

(iii) If, in respect of any Conversion Date (or the period described in the third immediately succeeding set of parentheses, as the case may be), the Company elects to deliver a written notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company shall send such Settlement Notice to the Trustee, the Conversion Agent and converting Holders no later than the close of business on the first VWAP Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs (x) after the date of issuance of a Redemption Notice with respect to the Notes and before the related Redemption Date, in such Redemption Notice or (y) on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date, no later than the 45th Scheduled Trading Day immediately preceding the Maturity Date). With respect to any conversion, if the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, then the Company shall no longer have the right to elect Cash Settlement or Physical Settlement and shall be deemed to have elected Combination Settlement with respect to such conversion and the Specified Dollar Amount per $1,000 principal amount of Notes will be equal to $1,000. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per $1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per $1,000 principal amount of Notes shall be deemed to be $1,000. Notwithstanding anything to the contrary herein, if the Company calls any Notes for redemption pursuant to Article 15 and the related Redemption Date is on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date, then the Settlement Method that shall apply to all conversions with a Conversion Date that occurs on or after the date the Company sends the related Redemption Notice and on or before the Scheduled Trading Day immediately preceding such Redemption Date shall be set forth in such Redemption Notice and shall be the same Settlement Method that applies to all conversions with a Conversion Date that occurs on or after the 45th Scheduled Trading Day immediately preceding the Maturity Date.

(iv) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects Physical Settlement, the Company shall deliver to the converting Holder in respect of each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (*provided* that the Company shall deliver cash in lieu of fractional shares as described in Section 13.02(j));

(B) if the Company elects Cash Settlement, the Company shall pay to the converting Holder in respect of each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 40 consecutive VWAP Trading Days during the related Conversion Reference Period; and

(C) if the Company elects (or is deemed to have elected) Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 40 consecutive VWAP Trading Days during the related Conversion Reference Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Conversion Reference Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 13.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay all transfer or similar taxes as set forth in Section 13.02(d) and Section 13.02(e) and (5) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 13.02(h) and (ii) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and comply with Section 13.02(b)(3), (4) and (5). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 13 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 14.02.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 13.03(b) and Section 13.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the second Business Day immediately following the last VWAP Trading Day of the Conversion Reference Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, a book-entry transfer of such shares of Common Stock through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation.

(d) In case any Physical Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Physical Holder of the Note so surrendered a new Physical Note or Physical Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Physical Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Physical Notes issued upon such conversion being different from the name of the Holder of the old Physical Notes surrendered for such conversion.

(e) If a Holder submits any of its Notes for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the shares of Common Stock issued upon such conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 13.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 13.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date but prior to the opening of business on the Interest Payment Date to which that Regular Record Date relates, Holders of such Notes as of the close of business on the Regular Record Date will receive, on the corresponding Interest Payment Date (or, at the Company's election, sooner), the full amount of interest payable on such Notes on such Interest Payment Date notwithstanding the conversion. Notes that are converted with a Conversion Date occurring after a Regular Record Date bur prior to the next Interest Payment Date, upon surrender for conversion, must be accompanied by funds equal to the amount of interest payable on the Notes so converted on the next succeeding Interest Payment Date; *provided* that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exist at the time of conversion with respect to such Notes.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall become the stockholder of record with respect to such shares of Common Stock as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last VWAP Trading Day of the relevant Conversion Reference Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for the last VWAP Trading Day of the relevant Conversion Reference Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Conversion Reference Period and any fractional shares remaining after such computation shall be paid in cash.

Section 13.03 Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or a Redemption Notice.

(a) If (i) (A) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date or (B) the Company delivers a Redemption Notice with respect to any or all of the Notes pursuant to Section 15.02 and, in each case, (ii) a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or a Holder of any Notes called for redemption pursuant to such Redemption Notice converts such Notes in connection with such Redemption Notice, as applicable, the Company shall, under certain circumstances, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as provided below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant notice of conversion of the Notes is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of an Exempted Fundamental Change or a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change). A conversion of Notes shall be deemed for these purposes to be "in connection with" a Redemption Notice if the relevant notice of conversion of the Notes is received by the Conversion Agent from, and including, the date of such Redemption Notice until the close of business on the Business Day immediately preceding the Redemption Date. For the avoidance of doubt, if we issue a Redemption Notice, we will increase the Conversion Rate hereunder during the related redemption period only with respect to conversions of Notes called (or deemed called) for redemption, and not for Notes not called for redemption and Holders of the Notes not called for redemption will not be entitled to convert such Notes on account of the Redemption Notice and will not be entitled to an increased conversion rate for conversions of such notes on account of the Redemption Notice during the related redemption period.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change pursuant to Section 13.01(b)(iii) or a Redemption Notice pursuant to Section 13.01(b)(v), the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 13.02; *provided*, *however*, that if, following a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify the Holders of Notes, the Trustee and the Conversion Agent in writing of the Effective Date of any Make-Whole Fundamental Change by issuing a press release or providing a notice on the Company's website announcing such Effective Date and by providing notice through the Depositary in respect of Global Notes no later than fifteen days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective, or the date of the relevant Redemption Notice, as the case may be (such date, as applicable, the "**Effective Date**") and the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or determined with respect to the Optional Redemption, as the case may be (the "**Stock Price**"). If all holders of the Common Stock receive in exchange for their Common Stock only cash in the corporate transaction, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Closing Prices of the Common Stock on the five Trading Days immediately prior to, but not including, the applicable Effective Date. The Company shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date (as such term is used in Section 13.04) or expiration date of the event occurs during such five consecutive Trading Day period.

(d) The Stock Prices set forth in the first row of the table below (i.e., the column headers) shall be adjusted as of any date on which the Conversion Rate of the Notes is adjusted as described in Section 13.04. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 13.04.

(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 13.03 for each Stock Price and Effective Date set forth below:

	Stock Price									
Effective Date	$166.17	$180.00	$200.00	$220.18	$250.00	$286.23	$325.00	$400.00	$500.00	$750.00
April 16, 2020	1.4761	1.2982	1.0506	0.8613	0.6572	0.4876	0.3646	0.2203	0.1201	0.0209
April 15, 2021	1.4761	1.2843	1.0229	0.8256	0.6164	0.4465	0.3266	0.1910	0.1016	0.0176
April 15, 2022	1.4761	1.2489	0.9714	0.7655	0.5523	0.3851	0.2719	0.1513	0.0776	0.0134
April 15, 2023	1.4761	1.1929	0.8917	0.6741	0.4576	0.2980	0.1978	0.1015	0.0501	0.0095
April 15, 2024	1.4761	1.1016	0.7560	0.5192	0.3043	0.1686	0.0981	0.0449	0.0226	0.0054
April 15, 2025	1.4761	1.0137	0.4582	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Price amounts in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Price amounts and the two Effective Dates, as applicable, based on a 365 or 366-day year, as applicable;

(ii) if the Stock Price is in excess of $750.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $166.17 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the number of shares of Common Stock issuable upon conversion exceed 6.0179 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 13.04.

(f) Nothing in this Section 13.03 shall prevent an adjustment to the Conversion Rate that would otherwise be required pursuant to Section 13.04.

Section 13.04 Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 13.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate immediately prior to the event that otherwise would result in an adjustment pursuant to this Section 13.04, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or the Effective Date of such share split or share combination, as applicable;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable; and

OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, or immediately after the Effective Date of such share split or share combination, as applicable.

Any adjustment made under this Section 13.04(a) shall become effective immediately after (x) the open of business on the Ex-Dividend Date for such dividend or distribution or (y) the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution described in this Section 13.04(a) is declared but not so paid or made, the Conversion Rate shall be readjusted the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company distributes to all holders of the Common Stock any rights or warrants entitling them to purchase, for a period of not more than 45 calendar days after the Ex-Dividend Date of such distribution, shares of the Common Stock at a price per share that is less than the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants, *divided by* the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

Any increase made under this Section 13.04(b) shall be made successively whenever any such rights or warrants are distributed and shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment with respect to the distribution of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so distributed, the Conversion Rate shall be adjusted to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not occurred.

For purposes of this Section 13.04(b) and for the purpose of Section 13.01(b)(ii)(A), in determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Closing Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, and in determining the aggregate exercise or conversion price payable for such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined in good faith by the Company.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all holders of the Common Stock, excluding (i) dividends or distributions referred to in Section 13.04(a) or Section 13.04(b), (ii) dividends or distributions paid exclusively in cash and (iii) Spin-Offs as to which the provisions set forth below in this Section 13.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness or other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), then the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

SP_0 = the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Company) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any adjustment made under the portion of this Section 13.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If the Company in good faith determines the "FMV" (as defined above) of any distribution for purposes of this Section 13.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Closing Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 13.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate in effect immediately before the close of business on the 10th Trading Day immediately following, and including, the Effective Date of the spin-off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

CR' = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV_0 = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definitions of Closing Price and Trading Day as set forth in Section 1.01, as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period immediately following, and including, the Effective Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Closing Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur immediately after the close of business on the last Trading Day of the Valuation Period; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, the references to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Effective Date for such Spin-Off to, and including, such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any VWAP Trading Day that falls within the relevant Conversion Reference Period for such conversion and within the Valuation Period, the references to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Effective Date for such Spin-Off to, and including, such VWAP Trading Day in determining the Conversion Rate as of such VWAP Trading Day.

For purposes of this Section 13.04(c) (and subject in all respect to Section 13.09), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.04(c) (and no adjustment to the Conversion Rate under this Section 13.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 13.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 13.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 13.04(a), Section 13.04(b) and this Section 13.04(c), if any dividend or distribution to which this Section 13.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 13.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 13.04(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 13.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 13.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 13.04(a) and Section 13.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date" within the meaning of Section 13.04(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 13.04(b).

(d) If any cash dividend or distribution is made to all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Closing Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to holders of the Common Stock.

Any adjustment pursuant to this Section 13.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is declared but not so paid or made, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

CR' = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP' = the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period commencing on the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 13.04(e) shall become effective immediately after the close of business on the tenth Trading Day next succeeding the date such tender or exchange offer expires; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to "10" or "tenth" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, such Conversion Date in determining the Conversion Rate; and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any VWAP Trading Day that falls within the relevant Conversion Reference Period for such conversion and within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to "10" or "tenth" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, such VWAP Trading Day in determining the Conversion Rate as of such VWAP Trading Day. If the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would be in effect if such tender or exchange offer had not been made (or had only been made in respect of the purchases that had been effected).

(f) Notwithstanding this Section 13.04 or any other provision of this Indenture or the Notes, if, in the case of any conversion of a Note, where either (x) Combination Settlement applies on any VWAP Trading Day during the relevant Conversion Reference Period for such Note, shares of the Common Stock are deliverable as part of the Daily Settlement Amount for such VWAP Trading Day or (y) Physical Settlement applies to such conversion, any adjustment to the Conversion Rate described in clauses (a), (b), (c), (d) or (e) of this Section 13.04 becomes effective on any Ex-Dividend Date, and the Holder of such Notes would (i) receive shares of the Common Stock in respect of such conversion (in the case of Physical Settlement) or in respect of such VWAP Trading Day (in the case of Combination Settlement) based on an adjusted Conversion Rate and (ii) be a record holder of such shares of Common Stock as of the Record Date for the relevant dividend, distribution or other event giving rise to the adjustment to the Conversion Rate, then, notwithstanding the Conversion Rate adjustment provisions in this Section 13.04, in lieu of receiving shares of Common Stock at such an adjusted Conversion Rate, such Holder shall receive a number of shares of Common Stock based on the unadjusted Conversion Rate and such shares of Common Stock shall participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) If, in the case of any conversion of a Note, where either (x) Combination Settlement applies and on any VWAP Trading Day during the Conversion Reference Period corresponding to the Conversion Date for such Note, shares of Common Stock are deliverable as part of the Daily Settlement Amount for such VWAP Trading Day or (y) Physical Settlement applies to such conversion, and, in either case:

(i) the related Record Date for any issuance, dividend or distribution, the Effective Date for any share split or combination or the expiration date for any tender or exchange offer by the Company or its Subsidiaries that, in each case, would require an adjustment to the Conversion Rate pursuant to any of clauses (a), (b), (c), (d) or (e) of this Section 13.04 occurs on or prior to such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement);

(ii) the applicable Conversion Rate for such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement) will not reflect such adjustment; and

(iii) the shares of Common Stock that the Company shall deliver to the converting Holder for such conversion (in the case of Physical Settlement) or in respect of such VWAP Trading Day (in the case of Combination Settlement) are not entitled to participate in the relevant event (because such shares were not held by such Holder on the related Record Date, Effective Date, expiration date or otherwise),

then the Company will adjust the number of shares of Common Stock that the Company delivers in respect of such conversion (in the case of Physical Settlement) or as part of the Daily Settlement Amount for such VWAP Trading Day (in the case of Combination Settlement) in a manner that in the Company's good faith, reasonable judgment appropriately reflects the relevant issuance, dividend, distribution transaction or event.

(h) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities. If, however, the application of the formulas in clauses (a), (b), (c), (d) and (e) of this Section 13.04 would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate shall be made (except on account of share combinations, and without limiting the operation of any provision of Section 13.04 providing for the readjustment of the Conversion Rate).

(i) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 13.04, and to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days (or such shorter period permitted by applicable law and applicable exchange listing requirements) if the Company has determined that such increase would be in the Company's best interest. If the Company makes such a determination, it shall be conclusive. In addition, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company may (but is not required to) in its sole discretion increase the Conversion Rate as the Company deems advisable to avoid or diminish any income tax to Holders of the Notes resulting from any dividend or distribution of Capital Stock issuable upon conversion of the Notes (or rights to acquire such Capital Stock) or from any event treated as such for income tax purposes. Whenever the Conversion Rate is increased pursuant to this Section 13.04(i), the Company shall, at least 15 days prior to such increase, give in writing to the Trustee and the Conversion Agent (if other than the Trustee) and deliver to the Holder of each Note a written notice of the increase, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) Notwithstanding anything to the contrary in this Article 13, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program or employee stock purchase plan of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction (including, without limitation, any structured or derivative transactions such as an accelerated share repurchase transaction) that is not a tender offer or exchange offer of the nature described in Section 13.04(e);

(v) for a change in the par value of the Common Stock; or

(vi) for accrued and unpaid interest, if any.

(k) All calculations and other determinations under this Article 13 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. The Company shall not adjust the Conversion Rate pursuant to this Section 13.04 unless the adjustment would result in a change of at least 1% in the then-effective Conversion Rate. However, the Company shall carry forward any adjustment that it would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made with respect to the Notes (i) in connection with any subsequent adjustment to the Conversion Rate that (taken together with such carried-forward adjustments) would result in a change of at least 1% in the Conversion Rate and (ii)(x) on the Conversion Date for any Notes (in the case of Physical Settlement) or (y) on each VWAP Trading Day of any Conversion Reference Period related to the conversion of Notes (in the case of Cash Settlement or Combination Settlement).

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 13.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 13.05 Adjustments of Prices. Whenever any provision of this Indenture requires the Company to calculate the Closing Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including a Conversion Reference Period and the period, if any, for determining the Stock Price for purposes of a Make-Whole Fundamental Change or a Redemption Notice), the Company shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Closing Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 13.06 Shares to Be Fully Paid, Etc. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable). The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof. The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will use commercially reasonable efforts to list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 13.07 Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger, binding share exchange or combination involving the Company, or

(iii) any sale, lease or other conveyance to another Person or entity of the consolidated assets of the Company and its subsidiaries substantially as an entirety,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**", and such stock, other securities, other property or assets, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one share of Common Stock would be entitled to receive on account of such Share Exchange Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property) a "**Reference Property Unit**"), then, at and after the effective time of such Share Exchange Event, (A) the consideration due upon conversion of any Note, and the conditions to any such conversion, shall be determined in the same manner as if each reference to any number of shares of Common Stock in Article 13 (or in any related definitions or provisions) were instead a reference to the same number of Reference Property Units; (B) the Daily VWAP shall be calculated based on the value of a Reference Property Unit; and (C) for purposes of the definitions of "Fundamental Change" and "Make-Whole Fundamental Change," the term "Common Stock" shall be deemed to mean Common Equity (or ADRs or other interests in respect of Common Equity), if any, forming part of such Reference Property. In addition, prior to or at the effective time of such Share Exchange Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(c) providing that the Notes will be convertible as described in this Section 13.07.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the Reference Property Unit shall be deemed to be the weighted average of the types and amounts of consideration actually received by all holders of Common Stock. The Company shall notify Holders and, in writing, the Trustee and the Conversion Agent (if other than the Trustee) of such composition of the Reference Property Unit as soon as reasonably practicable after such determination is made. If the holders of the Common Stock receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs on or after the effective date of such Share Exchange Event (i) the consideration due upon conversion of each $1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 13.03), *multiplied by* the price paid per share of Common Stock in such Share Exchange Event and (ii) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on or before the second Business Day immediately following the relevant Conversion Date.

Any supplemental indenture providing that the Notes will be convertible as described in the second immediately preceding paragraph shall, to the extent applicable, also provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 13; *provided* that, for the avoidance of doubt, if the Reference Property in respect of any such Share Exchange Event consists solely of cash, such supplemental indenture will not be required to provide for such anti-dilution adjustments. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (or any combination thereof) of a Person other than the successor or purchasing corporation, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Company shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 14.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 13.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a Reference Property Unit after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 13.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 13.01 and Section 13.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 13.08 Responsibility of Trustee. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 13.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate and Opinion of Counsel (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 13.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 13.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 13.01(b). Except as otherwise expressly provided herein, neither the Trustee nor any other agent acting under this Indenture (other than the Company, if acting in such capacity) shall have any obligation to make any calculation or to determine whether the Notes may be surrendered for conversion pursuant to this Indenture, or to notify the Company or the Depositary or any of the Holders if the Notes have become convertible pursuant to the terms of this Indenture.

Section 13.09 Stockholder Rights Plans. To the extent that the Company has a stockholder rights plan in effect upon conversion of the Notes into Common Stock, a Holder who converts Notes shall receive, in addition to the Common Stock, the rights under the rights plan (and the certificates representing the Common Stock upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time), unless prior to any conversion, the rights have separated from the Common Stock, in which case the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all holders of Common Stock shares of the Company's Capital Stock, evidences of indebtedness or assets or property as described in Section 13.04(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights. A further adjustment shall occur as described in Section 13.04(c) if such rights become exercisable to purchase different securities, evidences of indebtedness or assets or property, subject to readjustment in the event of the expiration, termination or redemption of such rights. Notwithstanding anything to the contrary, the adoption or distribution of rights pursuant to a rights plan will not result in an adjustment to the Conversion Rate pursuant to Section 13.04 or this Section 13.09 except to the extent described in the preceding two sentences.

Section 13.10 Exchange in Lieu of Conversion.

(a) When a Holder surrenders Notes for conversion and the Conversion Date for such Notes occurs prior to January 15, 2025, the Company may, at its election, direct the Conversion Agent to surrender, on or prior to the Scheduled Trading Day immediately preceding the first Trading Day of the applicable Conversion Reference Period (or, if we have elected Physical Settlement, on or prior to the Business Day immediately following the relevant Conversion Date), such Notes to a financial institution designated by us for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to pay and/or deliver, as the case may be, in exchange for such Notes, all of the cash, shares of Common Stock or a combination thereof due upon conversion, all as provided under Section 13.02. By the close of business on the Scheduled Trading Day immediately preceding the first Trading Day of the applicable Conversion Reference Period (or, if we have elected Physical Settlement, by the close of business on the Business Day immediately following the relevant Conversion Date), we will notify in writing the Holder surrendering Notes for conversion, the Trustee and the Conversion Agent that we have directed the designated financial institution to make an exchange in lieu of conversion.

(b) If the designated financial institution accepts any such Notes, it will pay and/or deliver, as the case may be, the cash, shares of Common Stock or a combination thereof due upon conversion to the Conversion Agent, and the Conversion Agent will pay and/or deliver such cash and/or shares of Common Stock to such Holder on the second Business Day immediately following the last Trading Day of the applicable Conversion Reference Period (or, if we have elected Physical Settlement, on the second Business Day immediately following the relevant Conversion Date). Any Notes exchanged by the designated institution will remain outstanding, subject to the Depositary's applicable procedures. If the designated financial institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the related cash, shares of Common Stock or a combination thereof, as the case may be, or if such designated financial institution does not accept the Notes for exchange, we will convert the Notes and pay and/or deliver, as the case may be, the cash, shares of Common Stock or a combination thereof due upon conversion on the second Business Day immediately following the last trading day of the applicable Conversion Reference Period (or, if we have elected Physical Settlement, on the second Business Day immediately following the relevant Conversion Date).

(c) The Company's designation of a financial institution to which the Notes may be submitted for exchange does not require the financial institution to accept any Notes (unless the financial institution has separately made an agreement with the Company). The Company may, but will not be obligated to, enter into a separate agreement with any designated financial institution that would compensate it for any such transaction.

ARTICLE 14
Repurchase of Notes at Option of Holders

Section 14.01 Repurchase at Option of Holders Upon a Fundamental Change.

(a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is no less than 20 Business Days and no more than 40 Business Days after the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* any accrued and unpaid interest thereon to, but not including, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). If the Fundamental Change Repurchase Date occurs after a Regular Record Date and on or prior to the corresponding Interest Payment Date to which such Regular Record Date relates, the Company shall instead pay the full amount of such accrued and unpaid interest no later than the relevant Interest Payment Date to Holders of record on such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 14. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with any change in applicable law or exchange requirements after the date of this Indenture.

(b) Repurchases of Notes under this Section 14.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the paying agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depositary's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case, on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the paying agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the paying agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(i) if Physical Notes have been issued, the certificate numbers of the Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, *however*, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the paying agent the Fundamental Change Repurchase Notice contemplated by this Section 14.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice by delivery of a written notice of withdrawal to the paying agent in accordance with Section 14.02 prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date.

The paying agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) No later than 15 Business Days after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee, the Conversion Agent and the paying agent (in the case of a paying agent other than the Trustee), a written notice (the "**Fundamental Change Company Notice**") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof and the procedures that each Holder of a Note must follow to require the Company to repurchase such Note. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 14;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the paying agent and the Conversion Agent, if applicable;

(vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 14.01.

At the Company's written request, given at least five days prior to the date the Fundamental Change Company Notice is to be sent, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The paying agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding anything to the contrary in this Indenture, the Company shall be deemed to satisfy its obligations to repurchase Notes upon a Fundamental Change pursuant to this Article 14 if one or more third parties conduct the repurchase offer and repurchase Notes surrendered for repurchase in a manner that would have satisfied the Company's obligations to do the same if conducted directly by the Company.

(f) Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to send a Fundamental Change Company Notice, or offer to repurchase or repurchase any Notes pursuant to this Article 14, in connection with a Fundamental Change occurring pursuant to clause (b)(i) or (b)(ii) (or, for the avoidance of doubt, pursuant to clause (a) that also constitutes a Fundamental Change pursuant to clause (b)(i) or (b)(ii)) of the definition thereof, if:

(i) such Fundamental Change constitutes a Share Exchange Event for which the resulting Reference Property consists entirely of cash in U.S. dollars;

(ii) immediately after such Fundamental Change, the Notes become convertible (pursuant to the provisions described in Section 13.07 and, if applicable, Section 13.03) into consideration that consists solely of U.S. dollars in an amount per $1,000 principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per $1,000 principal amount of Notes (calculated assuming a Fundamental Change Repurchase Date that results in a Fundamental Change Repurchase Price that includes the maximum amount of accrued interest); and

(iii) the Company timely sends the notice relating to such Fundamental Change required pursuant to Section 13.01(b)(iii).

Section 14.02 Withdrawal of Fundamental Change Repurchase Notice. A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the paying agent in accordance with this Section 14.02 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(a) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

(b) if Physical Notes have been issued, the certificate numbers of the Notes in respect of which such notice of withdrawal is being submitted; and

(c) the principal amount of such Note, if any, that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000;

provided, *however*, that if the Notes are Global Notes, the notice of withdrawal must comply with appropriate procedures of the Depositary.

Section 14.03 Deposit of Fundamental Change Repurchase Price.

(a) The Company shall deposit with the Trustee (or other paying agent appointed by the Company, or if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other paying agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 14.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other paying agent appointed by the Company) by the Holder thereof in the manner required by Section 14.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other paying agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, immediately after the Fundamental Change Repurchase Date (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or paying agent) and (iii) all other rights of the Holders of such Notes will terminate, other than the right to receive the Fundamental Change Repurchase Price and, if applicable, accrued and unpaid interest, upon book-entry transfer of such Notes or delivery of such Notes to the Trustee or paying agent.

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 14.01, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Physical Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Physical Note surrendered.

Section 14.04 Covenant to Comply with Applicable Laws Upon Repurchase of Notes In connection with any repurchase offer, the Company will, if required:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 14 to be exercised in the time and in the manner specified in this Article 14.

ARTICLE 15
Optional Redemption

Section 15.01 Optional Redemption. No sinking fund is provided for the Notes. The Notes shall not be redeemable by the Company prior to April 15, 2023. On or after April 15, 2023, the Company may redeem (an "**Optional Redemption**") for cash all or any portion of the Notes, at the Company's option, if the Closing Price of the Common Stock has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive), including the Trading Day immediately preceding the date on which the Company provides the Redemption Notice in accordance with Section 15.02, during any 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides such Redemption Notice in accordance with Section 15.02.

Section 15.02 Notice of Optional Redemption; Selection of Notes.

(a) If the Company exercises its Optional Redemption right to redeem all or any part of the Notes pursuant to Section 15.01, it shall fix a date for redemption (each, a "**Redemption Date**") and it or, at its written request received by the Trustee not less than 5 Business Days before such notice is to be sent (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such Optional Redemption (a "**Redemption Notice**") not less than 50 nor more than 65 Scheduled Trading Days prior to the Redemption Date to the Trustee, the Conversion Agent, the Paying Agent and each Holder of Notes so to be redeemed as a whole or in part; *provided*, *however*, that, if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee and the Paying Agent (if other than the Trustee); *provided further*, that if, in accordance with Section 13.02, the Company elects to settle all conversions with a Conversion Date that occurs on or after the date on which the Company provides the Redemption Notice and on or before the Scheduled Trading Day immediately preceding the relevant Redemption Date by Physical Settlement, then the Company may instead provide such Redemption Notice no less than 5 nor more than 30 calendar days before the Redemption Date. The Redemption Date must be a Business Day and the Company may not specify a Redemption Date that falls on or after the 41st Scheduled Trading Day immediately preceding the Maturity Date. Upon surrender of a Note that is to be redeemed in part pursuant to this Article 15, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in principal amount equal to the unredeemed portion of the Note surrendered.

(b) A Redemption Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such Redemption Notice. In any case, failure to send such Redemption Notice or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. A Redemption Notice, once sent, shall be irrevocable.

(c) Each Redemption Notice shall specify:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date (except, if applicable, as provided in the parenthetical in the definition of Redemption Price);

(iv) that Holders of Notes called for Optional Redemption may surrender their Notes for conversion at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Redemption Date;

(v) the procedures a converting Holder must follow to convert its Notes and the Settlement Method and Specified Dollar Amount (if applicable) for Conversion Dates occurring during the period set forth in Section 13.01(b)(v);

(vi) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate pursuant to Section 13.03;

(vii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(viii) in case the Notes are to be redeemed in part only, that upon surrender of any Note to be redeemed in part, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

(d) If the Company is to redeem fewer than all of the outstanding Notes and the Notes to be redeemed are Global Notes, the Notes or portions thereof to be redeemed shall be selected by the Depositary in accordance with the applicable procedures of the Depositary. If the Company is to redeem fewer than all of the outstanding Notes and the Notes to be redeemed are not Global Notes, the Trustee shall select the Notes or portions thereof to be redeemed by lot, on a *pro rata* basis or by another method the Trustee considers to be fair and appropriate; *provided* that, in each case, Notes will be selected for Optional Redemption only in principal amounts of $1,000 or integral multiples of $1,000 in excess thereof.

If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be from the portion selected for Optional Redemption. In the event of any redemption in part, the Company shall not be required to register the transfer of or exchange for other Notes any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part.

If the Company elects to call fewer than all of the outstanding Notes for Optional Redemption, and the Holder of any Note, or any owner of a beneficial interest in any Global Note, is reasonably not able to determine, before the close of business on the 41st Scheduled Trading Day immediately preceding the relevant Redemption Date, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such Optional Redemption, then such Holder or owner, as applicable, will be entitled to convert such Note or beneficial interest, as applicable, at any time before the close of business on Scheduled Trading Day immediately preceding such Redemption Date, unless the Company defaults in the payment of the Redemption Price in which case such Holder or owner, as applicable, will be entitled to convert such Note or beneficial interest, as applicable, until the Redemption Price has been paid or duly provided for, and each such conversion shall be deemed to be of a Note called for redemption for purposes of this Article 15, Section 13.01(b)(v) and Section 13.03. The Trustee shall have no obligation to make any determination in connection with the foregoing.

Section 15.03 Payment of Notes Called for Redemption.

(a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 15.02, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Subject to receipt of funds by the Paying Agent prior to 11:00 a.m. New York City time on the Redemption Date, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds deposited pursuant to Section 4.04 in excess of the Redemption Price.

Section 15.04 Restrictions on Redemption. The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 16
MISCELLANEOUS PROVISIONS

Section 16.01 Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 16.02 Official Acts by Successor Corporation. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 16.03 Addresses for Notices, Etc. Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be sufficient if in writing and in English and (1) delivered in person, (2) mailed by first-class mail (certified or registered, return receipt requested), postage prepaid, or overnight air courier guaranteeing next day delivery or (3) sent by facsimile or electronic transmission in PDF or other electronic form (it being understood that such notice to the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Trustee). Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is delivered by the Company to the Trustee) to Burlington Stores, Inc., 1830 Route 130 North, Burlington, NJ 08016, fax: (609) 239-9675, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, when received by the Trustee, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office. In no event shall the Trustee or the Conversion Agent be obligated to monitor any website maintained by the Company or any press releases issued by the Company.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed; *provided* that notices given to Holders of Global Notes may be given through the facilities of the Depositary or any successor depositary. In addition, subject to the procedures of the Trustee, the Company is permitted to request that the Trustee provide all notices to Holders of the Notes on the Company's behalf. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the applicable procedures of the Depositary and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 16.04 Governing Law; Jurisdiction. THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 16.05 Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture (other than the initial application for authentication of Notes), the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel stating that such action is permitted by the terms of this Indenture and that all conditions precedent thereto have been complied with.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent thereto have been complied with.

Section 16.06 Legal Holidays. In any case where any Interest Payment Date, the Maturity Date, any Fundamental Change Repurchase Date, any Redemption Date or any settlement date falls on a day that is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue for the period from and after such Interest Payment Date, Maturity Date, Fundamental Change Repurchase Date, Redemption Date or settlement date, as the case may be, to that next succeeding Business Day.

Section 16.07 No Security Interest Created. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 16.08 Benefits of Indenture. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 16.09 Table of Contents, Headings, Etc. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 16.10 Authenticating Agent. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.07, Section 2.08, Section 10.04 and Section 14.03 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 16.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 16.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 16.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,
as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

Section 16.11 Execution in Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF transmission or other electronic signature or transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. Unless otherwise provided herein or in the Notes, the words "execute", "execution", "signed", and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any Note or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest 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, and any other similar state laws based on the Uniform Electronic Transactions Act, *provided* that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to procedures approved by the Trustee.

Section 16.12 Severability. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 16.13 Waiver of Jury Trial. **EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY**.

Section 16.14 Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, pandemics, epidemics, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or the unavailability of the Federal Reserve Bank wire or telex wire or communication facility; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 16.15 Calculations. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Closing Prices and/or Daily VWAPs of the Common Stock, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes, any additional interest on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. Upon request, the Company shall provide a schedule of its calculations to the Trustee or the Conversion Agent, as the case may be, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Company shall forward its calculations to any Holder of Notes upon the request of that Holder. Neither the Trustee nor the Conversion Agent will have any responsibility to make calculations under this Indenture, nor will either of them have any responsibility to monitor the Company's stock or trading price, determine whether the conditions to convertibility of the Notes have been met or determine whether the circumstances requiring changes to the Conversion Rate have occurred.

Section 16.16 Applicable Law. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("**Applicable Law**"), the Trustee is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Trustee. Accordingly, the Company agrees to provide to the Trustee upon its reasonable request from time to time such identifying information and documentation as may be available to the Company in order to enable the Trustee to comply with Applicable Law.

Section 16.17 Tax Matters. Notwithstanding any other provision of this Indenture, if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of a Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, set off such payments against payments of cash and shares of Common Stock on the Notes (or any payments on the Company's Common Stock) to, sales proceeds received by, or other funds or assets of, such Holder or beneficial owner. The Company shall give the Trustee notice of the set off of any such payments.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

BURLINGTON STORES, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

[*Signature Page to Indenture*]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

[*Signature Page to Indenture*]

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF BURLINGTON STORES, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.][1]

1 This paragraph and the immediately preceding paragraph will be deemed to be removed from the face of this Note at such time when the Company delivers written notice to the Trustee of such deemed removal pursuant to Section 2.06 of the within-mentioned Indenture.

Burlington Stores, Inc.

2.25% Convertible Senior Note due 2025

No. [_____] [Initially][2] $[_____]

CUSIP No. [_____][*Insert for a "restricted" CUSIP number*: [3]]
ISIN No. [_____][*Insert for a "restricted" CUSIP number*: [3]]

Burlington Stores, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][4] [_____][5], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][6] [of $[_____]][7], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $805,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on April 15, 2025, and interest thereon as set forth below.

This Note shall bear interest at the rate of 2.25% per year from April 16, 2020, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until April 15, 2025. Interest is payable semi-annually in arrears on each April 15 and October 15, commencing on October 15, 2020, to Holders of record at the close of business on the preceding April 1 and October 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) or Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

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2 Include if a global note.

3 This Note will be deemed to be identified by CUSIP No. [___] and ISIN No. [___] from and after such time when the Company delivers, pursuant to Section 2.06 of the within-mentioned Indenture, written notice to the Trustee of the deemed removal of the Restricted Note Legend affixed to this Note, subject to the applicable procedures of the Depositary.

4 Include if a global note.

5 Include if a physical note.

6 Include if a global note.

7 Include if a physical note.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and its agency in the United States of America, as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into, at the Company's election, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

BURLINGTON STORES, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

Dated: _____

[FORM OF REVERSE OF NOTE]

Burlington Stores, Inc.
2.25% Convertible Senior Note due 2025

This Note is one of a duly authorized issue of Notes of the Company, designated as its 2.25% Convertible Senior Notes due 2025 (the "**Notes**"), limited to the aggregate principal amount of $805,000,000 all issued or to be issued under and pursuant to an Indenture dated as of April 16, 2020 (the "**Indenture**"), between the Company and Wilmington Trust, National Association, as trustee (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date, the Redemption Price on the Redemption Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase Price and the Redemption Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples in excess thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes shall be redeemable at the Company's option on or after April 15, 2023 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into, at the Company's election, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A[8]

SCHEDULE OF EXCHANGES OF NOTES

Burlington Stores, Inc.
2.25% Convertible Senior Notes due 2025

The initial principal amount of this Global Note is [_____] DOLLARS ($[_____]). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

8 Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

Burlington Stores, Inc.
2.25% Convertible Senior Notes due 2025

To: Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: Burlington Stores Notes Administrator

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple in excess thereof) below designated, into, at the Company's election, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 13.02(d) and Section 13.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____ _____

_____
Signature(s)

_____
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

_____
(Name)

_____
(Street Address)

_____
(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all): $_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

_____
Social Security or Other Taxpayer Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

Burlington Stores, Inc.
2.25% Convertible Senior Notes due 2025

To: Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: Burlington Stores Notes Administrator

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Burlington Stores, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 14.01 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple in excess thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all): $_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

Burlington Stores, Inc.
2.25% Convertible Senior Notes due 2025

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To Burlington Stores, Inc. or a subsidiary thereof; or

☐ Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

Dated: _____

_____

_____
Signature(s)

_____
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 4.2

BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION

6.250% SENIOR SECURED NOTES DUE 2025

INDENTURE

DATED AS OF APRIL 16, 2020

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Trustee and Collateral Agent

TABLE OF CONTENTS

This Indenture, dated as of April 16, 2020 is by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "*Issuer*"), the initial guarantors listed on the signature pages hereto (the "*Guarantors*") and Wilmington Trust, National Association, as trustee (in such capacity, the "*Trustee*") and as Collateral Agent (in such capacity, the "*Collateral Agent*").

The Issuer, the Guarantors, the Trustee and the Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the holders of (i) the Issuer's 6.250% Senior Secured Notes due 2025 issued on the date hereof (the "*Initial Notes*") and (ii) Additional Notes (together with the Initial Notes, the "*Notes*"):

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 Definitions.

"*2025 Convertible Notes*" mean the 2.25% Convertible Senior Notes due 2025 issued by Burlington Stores, Inc.

"*ABL Borrowings Amount*" means, as of any date (the "*Reference Date*"), an amount equal to (a) the sum of the aggregate amount of Revolving Credit Loans of the Issuer and its Subsidiaries outstanding as of the Reference Date and the last day of each of the eleven months ending immediately prior to the Reference Date *divided by* (b) twelve.

"*ABL Collateral Agent*" means Bank of America, N.A., as collateral agent under the ABL Credit Agreement, and its successors in such capacity.

"*ABL Credit Agreement*" means that certain Second Amended and Restated Credit Agreement, dated as of September 2, 2011, among the Issuer, as lead borrower, the Guarantors from time to time party thereto, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent and collateral agent (and its successors in such capacities), as the same may be amended, restated, supplemented, replaced, refinanced or increased (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions including increasing the amount available for borrowing or adding or removing any Person as a borrower or guarantor thereunder).

"*ABL Facility*" means the revolving credit facility established pursuant to the ABL Credit Agreement.

"*ABL Intercreditor Agreement*" means that certain Amended and Restated Intercreditor Agreement, to be dated the Issue Date, among the Issuer, the Guarantors, the ABL Collateral Agent, the Term Loan Collateral Agent, the Collateral Agent and each additional agent from time to time party thereto, and acknowledged by the grantors party thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms and this Indenture.

"*ABL Loan Documents*" means the "Loan Documents" (or comparable term) as defined in the ABL Credit Agreement.

"*ABL Secured Obligations*" means all "Obligations" under and as defined in the ABL Credit Agreement and the other ABL Loan Documents.

"*Account(s)*" has the meaning set forth in the ABL Intercreditor Agreement.

"*Acquired EBITDA*" means, with respect to any entity or business acquired in a Permitted Acquisition or Person, business unit or business division or other Acquisition or any Unrestricted Subsidiary redesignated as a Restricted Subsidiary (any of the foregoing, an "*Acquired Entity*"), for any period, the amount of Consolidated EBITDA of such Acquired Entity for such period (determined using such definition as if references to Holdings and its Restricted Subsidiaries therein were to such Acquired Entity and its Restricted Subsidiaries), all as determined on a Consolidated basis for such Acquired Entity in accordance with GAAP.

"*Acquired Entity*" has the meaning provided in the definition of "Acquired EBITDA."

"*Acquisition*" means, with respect to a specified Person, (a) an Investment in or a purchase of a 50% or greater interest in the Capital Stock of any other Person, (b) a purchase or acquisition of all or substantially all of the assets of any other Person, (c) a purchase or acquisition of a Real Estate portfolio or Stores from any other Person, or (d) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a 50% or greater interest in the Capital Stock of, any Person, in each case in any transaction or group of transactions which are part of a common plan.

"*Additional Notes*" means Notes (other than the Initial Notes) issued pursuant to Article II and otherwise in compliance with the provisions of this Indenture.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power (a) to vote 50% or more of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power or by contract.

"*Agent*" means any Registrar, Paying Agent, Collateral Agent or co-registrar.

"*Agreement Value*" means for each Hedge Agreement, on any date of determination, an amount equal to:

(a) in the case of a Hedge Agreement documented pursuant to an ISDA Master Agreement, the amount, if any, that would be payable by any Notes Party to its counterparty to such Hedge Agreement, as if (i) such Hedge Agreement was being terminated early on such date of determination and (ii) such Notes Party was the sole "Affected Party" (as therein defined);

(b) in the case of a Hedge Agreement traded on an exchange, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss, if any, on such Hedge Agreement to the Notes Party which is party to such Hedge Agreement, based on the settlement price of such Hedge Agreement on such date of determination; or

(c) in all other cases, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss, if any, on such Hedge Agreement to the Notes Party that is party to such Hedge Agreement as the amount, if any, by which (i) the present value of the future cash flows to be paid by such Notes Party exceeds (ii) the present value of the future cash flows to be received by such Notes Party, in each case pursuant to such Hedge Agreement.

"*Applicable Authorized Representative*" has the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"*Applicable Law*" means as to any Person: (a) all laws, statutes, rules, regulations, orders, codes, ordinances or other requirements having the force of law; and (b) all court orders, decrees, judgments, injunctions, enforceable notices, binding agreements and/or rulings, in each case of or by any Governmental Authority which has jurisdiction over such Person, or any property of such Person.

"*Applicable Premium*" means, with respect to any Note on any applicable redemption date, the excess of:

(a) the present value at such redemption date of (i) the redemption price at April 15, 2022, with respect to such Note (such redemption price being set forth in Section 3.7(b)) plus (ii) all required interest payments due on such Note through April 15, 2022 (excluding accrued but unpaid interest to, but excluding, the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

(b) the then outstanding principal amount of such Note;

as calculated by the Issuer; *provided* that the Trustee will have no duty to calculate or verify the accuracy of the Issuer's calculation of the Applicable Premium.

"*Asset Sale*" means (i) the sale, conveyance, transfer, lease (as lessor) or other voluntary disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of a sale and leaseback) of the Issuer (other than the sale of Equity Interests of the Issuer) or any of its Restricted Subsidiaries (each referred to in this definition as a "*disposition*") or (ii) the issuance or sale of Equity Interests of any Restricted Subsidiary (whether in a single transaction or a series of related transactions), in each case for clauses (i) and (ii),other than Permitted Dispositions.

"*Available Amount*" means, on any date (the "*Specified Date*"), an amount equal at such time to the sum, without duplication, of

(1) an amount, not less than zero, equal to 50% of Consolidated Net Income of the Issuer for the period (taken as one accounting period) from the first Fiscal Quarter commencing following the Issue Date to the end of the Issuer's most recently ended Fiscal Quarter for which internal financial statements are available at the Specified Date (or, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit), *plus*

(2) $1,250,000,000, *plus*

(3) the aggregate net cash proceeds (excluding any proceeds that were relied upon as the basis for taking any other action under this Indenture the permissibility of which was conditioned on the application of such proceeds for such purpose) received by the Issuer after the Issue Date from the issuance and sale (other than to a Notes Party or a Subsidiary) of its Capital Stock (other than Disqualified Capital Stock) or contributions to the capital of the Issuer, *plus*

(4) all Declined Proceeds, *plus*

(5) the aggregate amount received by the Issuer or any Restricted Subsidiary after the Issue Date from cash (or Cash Equivalents) dividends and distributions made by any Unrestricted Subsidiary or any joint venture and returns of principal, cash repayments and similar payments made by any Unrestricted Subsidiary or joint venture in respect of Investments made by the Issuer or any Restricted Subsidiary to any Unrestricted Subsidiary or joint venture, and the Net Proceeds in connection with the sale, transfer or other disposition of assets or the Capital Stock of any Unrestricted Subsidiary or joint venture of the Issuer to any Person other than the Issuer or a Restricted Subsidiary after the Issue Date; *plus*

(6) in the event that the Issuer redesignates any Unrestricted Subsidiary as a Restricted Subsidiary after the Issue Date (which, for purposes hereof, shall be deemed to also include (A) the merger, consolidation, liquidation or similar amalgamation of any Unrestricted Subsidiary into the Issuer or any Restricted Subsidiary, so long as the Issuer or such Restricted Subsidiary is the surviving Person, and (B) the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Issuer or any Restricted Subsidiary), the fair market value (as determined in good faith by the Issuer) of the Investment in such Unrestricted Subsidiary at the time of such redesignation; *plus*

(7) net cash proceeds received by the Issuer or any of its Restricted Subsidiaries from Indebtedness or Disqualified Capital Stock of the Issuer or any of its Restricted Subsidiaries issued after the Issue Date (other than to a Notes Party or a Subsidiary) that is subsequently converted into Capital Stock (other than Disqualified Capital Stock) of the Issuer or any of its direct or indirect parent companies; *minus*

(8) the aggregate amount of Investments made in reliance on clause (t) of the definition of "Permitted Investments" after the Issue Date (net of any cash return on such Investments received by any Notes Party or Restricted Subsidiary from such Investments (including in connection with any disposition thereof) after the Issue Date and in the case of any Investment in any Person that was an Unrestricted Subsidiary from the Available Amount, net of the fair market value of any such Investment at the time, if any such Unrestricted Subsidiary was redesignated as a Restricted Subsidiary) *minus*

(9) the aggregate amount of payments in respect of Specified Indebtedness made pursuant to Section 4.7(b)(5) after the Issue Date *minus*

(10) the aggregate amount of Restricted Payments made pursuant to Section 4.7(a)(8) after the Issue Date.

"*Bankruptcy Code*" means Title 11, U.S.C., as now or hereinafter in effect, or any successor thereto.

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

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "*Beneficially Owns*," "*Beneficially Owned*" and "*Beneficial Ownership*" have a corresponding meaning.

"*Board of Directors*" means:

(a) with respect to a corporation, the board of directors of the corporation;

(b) with respect to a partnership, the board of directors of the general partner of the partnership; and

(c) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Borrowing Base*" means, as of any date, an amount equal to the sum of (x) 95% of the face value of all accounts receivable of the Notes Parties and their Restricted Subsidiaries and (y) 65% of the net book value of all inventory owned by the Notes Parties and their Restricted Subsidiaries, in each case, calculated on a consolidated basis; *provided*, *however*, that if Indebtedness is being incurred to finance an Acquisition pursuant to which any accounts receivable or inventory will be acquired (whether through the direct acquisition of assets or the acquisition of Capital Stock of a Person), the Borrowing Base shall be calculated to give appropriate pro forma effect to any increase in the amount of the Notes Parties' and their Restricted Subsidiaries' accounts receivable and inventory resulting from such Acquisition.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York or in the jurisdiction of the place of payment are authorized or required by law to close.

"*Capital Expenditure*" means, with respect to Holdings and its Restricted Subsidiaries for any period, the additions to property, plant and equipment and other capital expenditures of Holdings and its Restricted Subsidiaries that are (or would be) set forth in a Consolidated statement of cash flows of Holdings and its Restricted Subsidiaries for such period prepared in accordance with GAAP; *provided* that "Capital Expenditures" shall not include (i) any additions to property, plant and equipment and other capital expenditures made with (A) the proceeds of any equity securities issued or capital contributions received by any Notes Party or any Subsidiary in connection with such capital expenditures, (B) the proceeds from any casualty insurance or condemnation or eminent domain, to the extent that the proceeds therefrom are utilized for capital expenditures within twelve months of the receipt of such proceeds or (C) the proceeds or consideration received from any sale, trade in or other disposition of assets (other than assets constituting Collateral consisting of Inventory and Accounts), to the extent that the proceeds and/or consideration therefrom are utilized for capital expenditures within twelve months of the receipt of such proceeds (or, in the case of any disposition of Real Estate committed to be reinvested within 12 months of receipt of such proceeds and actually reinvested within 18 months of such receipt), (ii) any such expenditures which constitute a Permitted Acquisition and (iii) any expenditures which are contractually required to be, and are, reimbursed to the Notes Parties in cash by a third party (including landlords) during such period of calculation.

"*Capital Lease Obligation*" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required (or if such lease or other arrangement conveying the right to use had been in effect, would have been required) to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP as in effect on August 13, 2014; for purposes of this Indenture, the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP (except for temporary treatment of construction related expenditures under EITF 97-10, "The Effects of Lessee Involvement in Asset Construction" which will ultimately be treated as operating leases upon a sale-leaseback transaction). Notwithstanding anything in this Indenture to the contrary, any change in GAAP as in effect on August 13, 2014 or the application or interpretation thereof that would require operating leases (or leases that would be operating leases if they existed on such date) to be treated similarly as a capital lease shall not be given effect in the definitions of Indebtedness or Liens or any related definitions or in the computation of any financial ratio or requirement.

"*Capital Stock*" means, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise Control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing; *provided*, that any instrument evidencing Indebtedness convertible or exchangeable for Capital Stock shall not be deemed to be Capital Stock, unless and until any such instruments are so converted or exchanged.

"*Cash Equivalents*" means Permitted Investments set forth in clauses (a) through (k) in the definition thereof.

"*Certificated Notes*" means Notes that are in the form of Exhibit A attached hereto other than Global Notes.

"*Change of Control*" means the occurrence of any of the following:

(1) the sale, lease, transfer, or other conveyance, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries, taken as a whole, to any Person other than to Burlington Stores, Inc. or any of its Subsidiaries; or

(2) any person or "group" (within the meaning of the Securities and Exchange Act of 1934, as amended) is or becomes the beneficial owner (within the meaning of Rule 13d-3 or 13d-5 of the Securities and Exchange Act of 1934, as amended, except that such person shall be deemed to have "beneficial ownership" of all Capital Stock that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of fifty percent (50%) or more (on a fully diluted basis) of the total then outstanding Capital Stock of Burlington Stores, Inc. entitled to vote for the election of directors of Burlington Stores, Inc.; or

(3) Burlington Stores, Inc. fails at any time to own, directly or indirectly, 100% of the Capital Stock of the Issuer.

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

"*Collateral*" means, collectively, all of the real, personal and mixed property (including Equity Interests) (other than Excluded Assets) in which Liens are granted or purported to be granted pursuant to the Collateral Documents as security for the Term Loan/Notes Secured Obligations.

"*Collateral Agent*" has the meaning set forth in the preamble to this Indenture.

"*Collateral Documents*" means, collectively, any security agreements, hypothecs, intellectual property security agreements, mortgages, deeds of trust, security deeds, collateral assignments, security agreement supplements, pledge agreements, bonds or any similar agreements, guarantees and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for its benefit and the benefit of the Trustee and the Holders of the Notes and the holders of Future Term Loan/Notes Indebtedness, if any, in all or any portion of the Collateral, as amended, extended, renewed, restated, refunded, replaced, refinanced, supplemented, modified or otherwise changed from time to time.

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

"*Consolidated*" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Restricted Subsidiaries.

"*Consolidated EBITDA*" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication and to the extent deducted in determining Consolidated Net Income for such period (other than in the case of clause (17)):

(1) depreciation, amortization, and all other non-cash charges, non-cash expenses or non-cash losses, *plus*

(2) provisions for Consolidated Taxes based on income, *plus*

(3) Consolidated Interest Expense, *plus*

(4) [reserved], *plus*

(5) all transactional costs, expenses and charges in connection with, the consummation of the Transactions, any amendment, waiver or modification of any Indebtedness and any transaction related to any Investment, Restricted Payment, Permitted Acquisition, Permitted Disposition, issuance of Permitted Indebtedness or issuance of Capital Stock, in each case whether or not consummated, *plus*

(6) to the extent not already included in Consolidated Net Income, proceeds from business interruption insurance, *plus*

(7) to the extent not already included in Consolidated Net Income and actually indemnified or reimbursed, or so long as the Issuer has made a determination that there exists reasonable evidence that such amount will in fact be indemnified or reimbursed (and such amount is in fact reimbursed within 365 days of the date of such charge or payment (with a deduction for any amount so added back to the extent not so reimbursed within such 365 days)), any expenses and charges that are covered by indemnification or reimbursement provisions in connection with any Permitted Acquisition, Permitted Investment or any Permitted Disposition, *plus*

(8) cash receipts (or reduced cash expenditures) in respect of income received in connection with subleases to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (19) below for any previous period, *plus*

(9) the amount of any restructuring charge, reserve, integration cost or other business optimization expense or cost (including charges directly related to implementation of cost-savings initiatives) that is deducted (and not added back) in such period in computing Consolidated Net Income including, without limitation, those related to severance, retention, signing bonuses, relocation, recruiting and other employee related costs, future lease commitments, contract and lease termination expenses and costs related to the opening and closure and/or consolidation of facilities, *plus*

(10) unusual, nonrecurring, exceptional, extraordinary or nonrecurring expenses, losses or charges, *plus*

(11) any after-tax effect of income (loss) from the early retirement, extinguishment or cancellation of Indebtedness or Hedge Agreements or other derivative instruments shall be excluded, *plus*

(12) gains and losses on the sale, exchange or other disposition of assets outside the ordinary course of business or abandonment of assets and from discontinued operations, *plus*

(13) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary deducted in calculating Consolidated Net Income (and not added back in such period to Consolidated Net Income), *plus*

(14) any other charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period, including any impairment charges or the impact of purchase accounting, or other items classified by the Holdings as special items, *plus*

(15) any costs or expense incurred by the Notes Parties or any Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of Holdings or net cash proceeds of an issuance of Capital Stock (other than Disqualified Capital Stock) of Holdings or any parent of Holdings to the extent contributed to the Issuer's Capital Stock (other than Disqualified Capital Stock), *plus*

(16) costs related to the implementation of operational and reporting systems and technology initiatives, *plus*

(17) all items described in Pro Forma Adjustments, *minus*

(18) non-cash gains for such period to the extent included in Consolidated Net Income, *minus*

(19) cash payments made during such period on account of non-cash charges added back in the calculation of Consolidated EBITDA pursuant to clause (1) above for any previous period *minus*

(20) all cash payments made during such period to the extent made on account of non-cash reserves and other non-cash charges added back to Consolidated Net Income pursuant to clause (11) above in a previous period (it being understood that this clause (20) shall not be utilized in reversing any non-cash reserve or charge added to Consolidated Net Income).

"*Consolidated Interest Coverage Ratio*" means, on the last day of any Fiscal Quarter, the ratio of (a) Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the period of four consecutive Fiscal Quarters most recently ended on and prior to such date, taken as one accounting period, to (b) Consolidated Interest Expense of the Issuer and its Restricted Subsidiaries for the period of four consecutive Fiscal Quarters most recently ended on and prior to such date, taken as one accounting period.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, total interest expense (including that attributable to Capital Lease Obligations in accordance with GAAP but excluding any imputed interest as a result of purchase accounting) of such Person on a Consolidated basis with respect to all outstanding Indebtedness of such Person, including, without limitation, the Notes Obligations and all commissions, discounts and other fees and charges owed with respect thereto, but excluding amortization or write-off of deferred financing costs and bridge facility fees, all as determined on a Consolidated basis in accordance with GAAP and reduced by interest income received or receivable in cash for such period. For purposes of the foregoing, interest expense of any Person shall be determined after giving effect to any net payments made or received by such Person with respect to interest rate Hedge Agreements.

"*Consolidated Leverage Ratio*" means, as of any date, the ratio of (a) the sum of (i) Consolidated Total Debt (other than any portion of such Consolidated Total Debt that is attributed to Revolving Credit Loans of the Issuer and its Restricted Subsidiaries outstanding at such date) *plus* (ii) the ABL Borrowings Amount on such date *less* (iii) unrestricted cash and Cash Equivalents of the Issuer and its Restricted Subsidiaries on such date to (b) Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date, taken as one accounting period.

"*Consolidated Net Income*" means, with respect to any Person for any period, the net income (or loss) of such Person on a Consolidated basis for such period taken as a single accounting period determined in accordance with GAAP; *provided*, *however*, that there shall be excluded the income (or loss) of any Person that is not a Restricted Subsidiary, except to the extent of the amount of dividends or other distributions actually paid in cash to such Person and its Restricted Subsidiaries by such Person during such period.

"*Consolidated Secured Leverage Ratio*" means, as of any date, the ratio of (a) the sum of (i) Consolidated Total Debt (other than any portion of such Consolidated Total Debt that is (x) attributed to Revolving Credit Loans of the Issuer and its Restricted Subsidiaries outstanding at such date or (y) not secured by any Liens on any assets of the Issuer or any of its Restricted Subsidiaries) *plus* (ii) the ABL Borrowings Amount on such date *less* (iii) unrestricted cash and Cash Equivalents of the Issuer and its Restricted Subsidiaries on such date to (b) Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date, taken as one accounting period.

"*Consolidated Taxes*" means, as of any date for the applicable period ending on such date with respect to the Issuer and its Restricted Subsidiaries on a Consolidated basis, the aggregate of all income, withholding, franchise and similar taxes and foreign withholding taxes, as determined in accordance with GAAP, to the extent the same are paid or accrued during such period.

"*Consolidated Total Assets*" means, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption "total assets" (or any like caption) on the most recent consolidated balance sheet of the Parent and its Restricted Subsidiaries and that is attributable to assets of the Issuer and its Restricted Subsidiaries at such date or, for the period prior to the time any such statements are so delivered.

"*Consolidated Total Debt*" means, at any date, the aggregate principal amount of all funded Indebtedness for borrowed money and Capital Lease Obligations of the Issuer and its Restricted Subsidiaries on a Consolidated basis outstanding at such date in the amount that would be reflected on a balance sheet prepared on such date in accordance with GAAP.

"*Control*" means the possession, directly or indirectly, of the power (a) to vote 50% or more of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "*Controlling*" and "*Controlled*" have meanings correlative thereto.

"*Corporate Trust Office*" shall be at the address of the Trustee or Collateral Agent, as applicable, specified in Section 12.2 or such other address as to which the Trustee or Collateral Agent, as applicable, shall specify for receipt of notices under this Indenture.

"*Default*" means any event or condition described under Section 6.1 that constitutes an Event of Default or that upon notice, lapse of any cure period set forth under Section 6.1 would, unless cured or waived become an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 as the Depositary with respect to the Notes, until a successor shall have been appointed and become such pursuant to Section 2.6 hereof, and, thereafter, "Depositary" shall mean or include such successor.

"*Designated Noncash Consideration*" means the fair market value (as determined in good faith by the Issuer) of noncash consideration received by the Notes Parties or one of their Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Noncash Consideration pursuant to an Officer's Certificate delivered to the Trustee setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Noncash Consideration. A particular item of Designated Noncash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 4.10.

"*Disqualified Capital Stock*" means, any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) is mandatorily redeemable in whole or in part prior to the final maturity date of the Notes or the date on which the Notes are no longer outstanding, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Indebtedness or any Capital Stock referred to in (a) above prior to the final maturity date of the Notes or the date on which the Notes are no longer outstanding, or (c) contains any mandatory repurchase obligation which comes into effect prior to the final maturity date of the Notes or the date on which the Notes are no longer outstanding, *provided*, that Capital Stock shall not constitute Disqualified Capital Stock to the extent (i) such redemption or conversion is (x) upon payment in full of the Notes Obligations (other than contingent obligations for which no claim has been made) or (y) upon a "*change in control*," asset sale or similar event or (ii) such Capital Stock is issued pursuant to a plan for the benefit of employees of Parent (or any parent entity), the Issuer or the Restricted Subsidiaries or by any such plan to such employees, and such plan requires such Capital Stock to be repurchased by the Issuer or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"*Domestic Subsidiary*" means any direct or indirect Subsidiary of the Issuer that was created or organized in or under the laws of the United States, any state of the United States or the District of Columbia.

"*DTC*" means The Depository Trust Company or any successor securities clearing agency.

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

"*Equity Offering*" means any public or private sale of common stock or preferred stock of the Issuer or any of its direct or indirect parent corporations (excluding Disqualified Capital Stock of such entity) or contributions to its common equity capital, other than (i) public offerings with respect to common stock of the Issuer or of any of its direct or indirect parent corporations registered on Form S-4 or Form S-8 or (ii) an issuance to any Subsidiary of the Issuer.

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

"*Excluded Assets*" means:

(1) any interest in any Real Estate other than a Mortgaged Property;

(2) any rights or property acquired under a lease, contract, property rights agreement or license, or any intent to use trademark applications filed pursuant to Section 1(b) of the Lanham Act, if and to the extent that the grant of a security interest in which shall constitute or result in (x) the abandonment, cancellation, invalidation or unenforceability of any right, title or interest of the Issuer or any Guarantor therein or (y) a breach or termination pursuant to the terms of, or a default under, any lease, contract, property rights agreement or license (other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity), *provided* that the Proceeds from any such lease, contract, property rights agreement or license shall not be excluded from the Collateral to the extent that the assignment of such Proceeds is not prohibited, and *provided further* that any rights under any intent to use trademark applications filed pursuant to Section 1(b) of the Lanham Act shall be excluded from Collateral only to the extent and until a statement of use or amendment to allege use is filed in connection with therewith and accepted by the United States Patent and Trademark Office and only if inclusion of intent to use applications prior to such time would result in the cancellation or invalidation of the alleged trademark;

(3) any governmental permit or franchise that prohibits Liens on or collateral assignments of such permit or franchise (other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity); and

(4) any Security, Investment Property or other equity interest representing more than 65% of the outstanding voting stock of (i) any Foreign Subsidiary or (ii) any Subsidiary in which substantially all of its assets consist of the Capital Stock of one or more Foreign Subsidiaries.

"*Fiscal Month*" means any fiscal month of any Fiscal Year, which month shall generally consist of (i) in the case of the first, third, fourth, sixth, seventh, ninth and tenth Fiscal Months of each Fiscal Year, four calendar weeks, (ii) in the case of the second, fifth, eighth and eleventh Fiscal Months of each Fiscal Year, five calendar weeks and (iii) in the case of the twelfth Fiscal Month of each Fiscal Year, the period from the first day following the eleventh Fiscal Month of such Fiscal Year through the last day of such Fiscal Year, in accordance with the fiscal accounting calendar of Holdings and its Subsidiaries.

"*Fiscal Quarter*" means any fiscal quarter of any Fiscal Year, which quarter shall generally end on (i) in the case of the first three Fiscal Quarters of each Fiscal Year, on the date that is 13 weeks after the last day of the preceding Fiscal Quarter and (ii) in the case of the last Fiscal Quarter of each Fiscal Year, on the last day of such Fiscal Year, in accordance with the fiscal accounting calendar of Holdings and its Subsidiaries.

"*Fiscal Year*" means any period of twelve consecutive Fiscal Months ending on the Saturday closest to January 31 of any calendar year.

"*Fitch*" means Fitch Ratings, Inc. and its successors.

"*Foreign Subsidiary*" means any Restricted Subsidiary of the Issuer that is not a Domestic Subsidiary.

"*Future Term Loan/Notes Indebtedness*" means any Indebtedness of the Issuer and/or the Guarantors that is secured by a Lien in favor of the Collateral Agent pursuant to the Collateral Documents, and that was permitted to be incurred and so secured under each applicable Term Loan/Notes Document; *provided* that (i) the trustee, agent or other authorized representative for the holders of such Indebtedness (other than in the case of Additional Notes) and the Issuer and the Guarantors shall execute a joinder to the Pari Passu Intercreditor Agreement and (ii) the Issuer shall designate such Indebtedness as "Additional Pari Passu Obligations" under the Pari Passu Intercreditor Agreement.

"*Future Term Loan/Notes Indebtedness Secured Parties*" means holders of any Future Term Loan/Notes Obligations and any trustee, authorized representative or agent of such Future Term Loan/Notes Obligations.

"*Future Term Loan/Notes Obligations*" means Obligations in respect of Future Term Loan/Notes Indebtedness (other than Obligations with respect to Additional Notes which shall constitute Notes Obligations).

"*GAAP*" means generally accepted accounting principles in effect from time to time in the United States of America which are consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made.

"*Global Note Legend*" means the legend identified as such in Exhibit A hereto.

"*Global Notes*" means the Notes that are in the form of Exhibit A hereto issued in global form and registered in the name of the Depositary or its nominee.

"*Governmental Authority*" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"*guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness or other obligations. When used as a verb, "*guarantee*" shall have a corresponding meaning.

"*Guarantee*" means any guarantee of the Notes Obligations under this Indenture and the Notes by Holdings and its Restricted Subsidiaries which are or hereafter become Guarantors in accordance with the provisions of this Indenture. When used as a verb, "Guarantee" shall have a corresponding meaning.

"*Guarantor*" means any Person that has provided a Guarantee pursuant to the terms of this Indenture and the Notes; *provided* that upon the release and discharge of such Person from its Guarantee in accordance with this Indenture, such Person shall cease to be a Guarantor. On the Issue Date, the Guarantors will be each Domestic Subsidiary of the Issuer that is a Restricted Subsidiary, a guarantor under the Term Loan Agreement and a borrower or guarantor under the ABL Credit Agreement.

"Hedge Agreement" means any derivative agreement, or any interest rate protection agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"*Holder*" means a Person in whose name a Note is registered in the security register.

"*Holdings*" means Burlington Coat Factory Holdings, LLC.

"*Indebtedness*" of any Person means, without duplication:

(1) all obligations of such Person for borrowed money (including any obligations which are without recourse to the credit of such Person);

(2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(3) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;

(4) all obligations of such Person in respect of the deferred purchase price of property or services;

(5) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed or is limited in recourse;

(6) all guarantees by such Person of Indebtedness of others described in clauses (1) - (5), and (7) - (12) of this definition;

(7) all Capital Lease Obligations of such Person;

(8) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty;

(9) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances;

(10) the Agreement Value of all Hedge Agreements;

(11) the principal and interest portions of all rental obligations of such Person under any Synthetic Lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP; and

(12) all mandatory obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock of such Person (including, without limitation, Disqualified Capital Stock) to the extent required by GAAP to be accounted for as indebtedness.

Notwithstanding the foregoing, Indebtedness shall not include (A) any sale-leaseback transactions to the extent the lease or sublease thereunder is not required to be recorded under GAAP as a Capital Lease Obligation, (B) any obligations relating to overdraft protection, netting services, and other cash management services, (C) any preferred stock required to be included as Indebtedness in accordance with GAAP, (D) items that would appear as a liability on a balance sheet prepared in accordance with GAAP as a result of the application of EITF 97-10, "The Effects of Lessee Involvement in Asset Construction," (E) trade accounts payable, deferred revenues, liabilities associated with customer prepayments and deposits and any such obligations incurred under ERISA, and other accrued obligations (including transfer pricing), in each case incurred in the ordinary course of business, (F) operating leases, (G) customary obligations under employment agreements and deferred compensation, (H) deferred revenue and deferred tax liabilities and (I) contingent post-closing purchase price adjustments, non-compete or consulting obligations or earn-outs to which the seller in an Acquisition or Investment may become entitled. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

The Indebtedness of any Person shall include the Indebtedness of any other entity (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 entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Initial Notes*" has the meaning set forth in the preamble hereto.

"*Initial Purchasers*" means, collectively, J.P. Morgan Securities LLC, BofA Securities, Inc., Goldman Sachs & Co. LLC, Wells Fargo Securities, LLC, SunTrust Robinson Humphrey, Inc. and U.S. Bancorp Investments, Inc.

"*insolvency or liquidation proceeding*" means:

(1) any case or proceeding commenced by or against the Issuer or any other Guarantor under any Bankruptcy Law, any other case or proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Issuer or any other Guarantor, any receivership or assignment for the benefit of creditors relating to the Issuer or any other Guarantor or any similar case or proceeding relative to the Issuer or any other Guarantor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Issuer or any other Guarantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other case or proceeding of any type or nature in which substantially all claims of creditors of the Issuer or any other Guarantor are determined and any payment or distribution is or may be made on account of such claims.

"*Intellectual Property*" means all present and future: trade secrets, know-how and other proprietary information; trademarks, Internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing), indicia and other source and/or business identifiers, all of the goodwill related thereto, and all registrations and applications for registrations thereof; works of authorship and other copyrighted works (including copyrights for computer programs), and all registrations and applications for registrations thereof; inventions (whether or not patentable) and all improvements thereto; patents and patent applications, together with all continuances, continuations, continuations-in-part, divisions, revisions, extensions, reissuances, and reexaminations thereof; industrial design applications and registered industrial designs; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property and intellectual property rights; all rights to sue and recover at law or in equity for any past, present or future infringement, dilution or misappropriation, or other violation thereof; and all common law and other rights throughout the world in and to all of the foregoing.

"*Intercompany Loan*" means the note entered into on the Issue Date, by and among Burlington Stores, Inc., Burlington Merchandising Corporation and the Issuer.

"*Intercreditor Agreements*" means the Pari Passu Intercreditor Agreement and the ABL Intercreditor Agreement.

"*Investment*" means with respect to any Person, any direct or indirect acquisition or investment by such Person, whether by means of:

(a) any Capital Stock of another Person, evidence of Indebtedness or other security of another Person, including any option, warrant or right to acquire the same;

(b) any loan, advance, contribution to capital, extension of credit (except for current trade and customer accounts receivable for inventory sold or services rendered in the ordinary course of business) to, or guaranty of Indebtedness of, another Person; and

(c) any Acquisition;

in all cases whether now existing or hereafter made. For purposes of calculation, the amount of any Investment outstanding at any time shall be the aggregate cash Investment less all cash returns, cash dividends and cash distributions (or the fair market value of any non-cash returns, dividends and distributions) received by such Person.

"*Investment Grade*" means, with respect to a rating of the Notes, a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

"*Investment Property*" has the meaning assigned to such term in the UCC.

"*ISDA Master Agreement*" means the form entitled "2002 ISDA Master Agreement" or such other replacement form then currently published by the International Swap and Derivatives Association, Inc., or any successor thereto.

"*Issue Date*" means April 16, 2020.

"*Issuer*" has the meaning set forth in the preamble hereto.

"*Lease*" means any agreement pursuant to which a Notes Party is entitled to the use or occupancy of any space in a structure, land, improvements, or premises for any period of time.

"*Lien*" means, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"*Limited Condition Transaction*" means (i) any Permitted Acquisition or other similar Investment permitted hereunder whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (ii) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (iii) any asset sale or other disposition, or (iv) any declaration of a Restricted Payment in respect of, or irrevocable advance notice of, or any irrevocable offer to, purchase, redeem or otherwise acquire or retire for value, any Capital Stock of Burlington Stores Inc. or any of its Subsidiaries.

"*Material Adverse Effect*" means any event, facts, or circumstances, which has a material adverse effect on (i) the business, assets or financial condition of the Notes Parties taken as a whole or (ii) the validity or enforceability of this Indenture and the other Notes Documents, taken as a whole, or the rights or remedies of the Notes Secured Parties hereunder or thereunder, taken as a whole.

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

"*Mortgage*" means the mortgages and deeds of trust and any and all other security documents, including any amendments thereto, granting a Lien on Mortgaged Property between the Notes Party owning, leasing or otherwise holding the Mortgaged Property encumbered thereby and the Collateral Agent for its own benefit and the benefit of the other Notes Secured Parties, which shall be in form and substance substantially consistent with the mortgages granting Liens on the Mortgaged Properties for the benefit of the Term Loan Secured Parties.

"*Mortgaged Property*" means the Real Estate set forth on Schedule 4.21 hereto.

"*Net Proceeds*" means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds or amounts escrowed pursuant to clause (iv) of this definition, but only as and when received, (ii) in the case of a casualty, cash insurance proceeds, and (iii) in the case of a condemnation or similar event, cash condemnation awards and similar payments, in each case net of (b) the sum of (i) all fees and out-of-pocket fees and expenses (including appraisals and brokerage, legal, title and recording or transfer tax expenses, underwriting discounts and commissions) paid by any Notes Party or a Restricted Subsidiary to third parties in connection with such event, and (ii) in the case of a sale or other disposition of an asset (including pursuant to a casualty or condemnation), the amount of all payments required to be made by any Notes Party or any of their respective Restricted Subsidiaries as a result of such event to repay (or to establish an escrow for the repayment of) any Indebtedness (other than the Notes Obligations and other obligations secured by Liens ranking *pari passu* with the Notes Obligations pursuant to a Pari Passu Intercreditor Agreement) secured by a Permitted Encumbrance on the assets disposed of that is senior to the Lien of the Collateral Agent; *provided* that to the extent any Qualifying Secured Debt or Indebtedness outstanding under the Term Loan Agreement with a Lien ranking pari passu with the Liens securing the Notes Obligations pursuant to the terms of a pari passu lien intercreditor agreement requires a prepayment (or in respect of which any Notes Party or a Restricted Subsidiary elects to make a voluntary prepayment) from the proceeds of any disposition or casualty event, then the amount of Net Proceeds otherwise actually required to be applied or invested as described under Section 4.10 shall be the product of (x) the amount of such Net Proceeds as determined above and (y) a fraction (A) the numerator of which is the aggregate principal amount of Notes then outstanding and (B) the denominator of which is the aggregate principal amount of Notes then outstanding and such other Qualifying Secured Debt or such Indebtedness outstanding under the Term Loan Agreement requiring such prepayment, (iii) capital gains or other income taxes paid or payable as a result of any such sale or disposition (after taking into account any available tax credits or deductions) and (iv) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition.

"*Note Custodian*" means the Trustee when serving as custodian for the Depositary with respect to the Global Notes, or any successor entity thereto.

"*Notes*" means the 6.250% Senior Secured Notes due 2025 of the Issuer issued on the date hereof and any Additional Notes. The Notes and the Additional Notes, if any, shall be treated as a single class for all purposes under this Indenture.

"*Notes Documents*" means the Notes (including Additional Notes), the Guarantees, the Collateral Documents, the Intercreditor Agreements, the Second Lien Intercreditor Agreement and this Indenture.

"*Notes Obligations*" means all Obligations of the Issuer and the Guarantors under this Indenture, the Notes and the Collateral Documents.

"*Notes Party or Notes Parties*" means the Issuer and the Guarantors.

"*Notes Secured Parties*" means the Trustee, the Collateral Agent and the Holders of the Notes.

"*Obligations*" means any principal, interest, fees, expenses (including any interest, fees or expenses that accrue following the commencement of any insolvency or liquidation proceeding, whether allowed or allowable in such proceeding), penalties, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"*Offer*" has the meaning set forth in the definition of "Offer to Purchase."

"*Offer to Purchase*" means an offer (the "*Offer*") sent, or caused to be sent, by the Issuer by first class mail or electronically, to each Holder at its address appearing in the security register on the date of the Offer or otherwise in accordance with the procedures of the Depositary, offering to purchase up to the aggregate principal amount of Notes set forth in such Offer at the purchase price set forth in such Offer (as determined pursuant to this Indenture). The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase. The Offer shall also state:

(1) the section of this Indenture pursuant to which the Offer to Purchase shall occur;

(2) the purchase date of the Notes, subject to any conditions precedent (the "*Purchase Date*");

(3) the aggregate principal amount of the outstanding Notes offered to be purchased pursuant to the Offer to Purchase (including, if less than 100%, the manner by which such amount has been determined pursuant to Indenture covenants requiring the Offer to Purchase) (the "*Purchase Amount*");

(4) the purchase price to be paid by the Issuer for each $1,000 principal amount of Notes accepted for payment (as specified pursuant to this Indenture) (the "*Purchase Price*");

(5) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in an integral multiple of $1,000 principal amount;

(6) the place or places where Notes are to be surrendered for tender pursuant to the Offer to Purchase, if applicable;

(7) that, subject to any conditions precedent to the Offer to Purchase, unless the Issuer defaults in making such purchase, any Note accepted for purchase pursuant to the Offer to Purchase will cease to accrue interest on and after the Purchase Date, but that any Note not tendered or tendered but not purchased by the Issuer pursuant to the Offer to Purchase will continue to accrue interest at the same rate;

(8) that, subject to any conditions precedent to the Offer to Purchase, on the Purchase Date, the Purchase Price will become due and payable upon each Note accepted for payment pursuant to the Offer to Purchase;

(9) that each Holder electing to tender a Note pursuant to the Offer to Purchase will be required to surrender such Notes, with the form titled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the paying agent or to comply with the applicable procedures of the Depositary for such tender;

(10) that, subject to the specific terms of the Offer to Purchase, Holders will be entitled to withdraw all or any portion of Notes tendered if the Issuer (or its Paying Agent) receives, not later than the close of business on the second (2nd) Business Day prior to the expiration time of the Offer to Purchase, an electronic transmission, a facsimile transmission or letter setting forth the name of the Holder, the aggregate principal amount of the Notes the Holder tendered, the certificate number of the Note the Holder tendered and a statement that such Holder is withdrawing all or a portion of its tender;

(11) that, subject to any conditions precedent to the Offer to Purchase, (a) if Notes having an aggregate principal amount less than or equal to the Purchase Amount are duly tendered and not withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase all such Notes and (b) if Notes having an aggregate principal amount in excess of the Purchase Amount are validly tendered and not validly withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase Notes having an aggregate principal amount equal to the Purchase Amount on a *pro rata* basis (with such adjustments as may be deemed appropriate so that only Notes in denominations of $1,000 principal amount or integral multiples thereof shall be purchased); and

(12) if applicable, that, in the case of any Holder whose Note is purchased only in part, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in the aggregate principal amount equal to and in exchange for the unpurchased portion of the aggregate principal amount of the Notes so tendered.

"*Offering Memorandum*" means the final offering memorandum related to the issuance of the Notes on the Issue Date, dated April 13, 2020.

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

"*Officer's Certificate*" means a certificate signed on behalf of the Issuer, by an Officer of the Issuer.

"*Opinion of Counsel*" means an opinion from counsel who is reasonably acceptable to the Trustee (which opinion may be subject to customary assumptions, qualifications and exclusions) from legal counsel. The counsel may be an employee of or counsel to the Issuer or any Subsidiary of the Issuer.

"*Outstanding Securitization Amount*" means, at any time with respect to any Qualified Securitization Financing or Receivables Facility, the amount advanced or received (in the case of a sale) at such time in respect of Receivables Assets that are not yet due in accordance with their payment terms.

"*Parent*" means Burlington Coat Factory Investment Holdings, Inc.

"*Pari Passu Intercreditor Agreement*" means that certain intercreditor agreement, dated as of the Issue Date, by and among the Issuer, the Guarantors, the Trustee, the Collateral Agent, the Term Loan Collateral Agent, the administrative agent for the Term Loan Agreement and each additional agent from time to time party thereto, and acknowledged by the grantors party thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms and this Indenture.

"*Participant*" means, with respect to DTC, a Person who has an account with DTC.

"*Paying Agent*" means any Person authorized by the Issuer to pay the principal of, premium, if any, or interest on any Notes on behalf of the Issuer.

"*Permitted Acquisition*" means an Acquisition in which each of the following conditions are satisfied:

(a) no Specified Default then exists or would arise from the consummation of such Acquisition;

(b) if the Acquisition is an Acquisition of Capital Stock, the Person whose Capital Stock is acquired shall become a Restricted Subsidiary; *provided* that the aggregate amount expended by Notes Parties in connection with all Permitted Acquisitions with respect to the assets that are not owned by a Notes Party immediately after giving effect to the applicable Permitted Acquisition shall not exceed the greater of (x) $150,000,000 and (y) 6.0% of Consolidated Total Assets, except as otherwise permitted by the definition of "Permitted Investments"; and

(c) any material assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or stock acquisition, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by the Issuer under this Indenture.

"*Permitted Business*" means the business and any services, activities or businesses incidental, or directly related or similar to, any line of business engaged in by the Issuer and its Subsidiaries as of the Issue Date or any business activity that is a reasonable extension, development or expansion thereof or ancillary thereto.

"*Permitted Disposition*" means any of the following:

(a) licenses of Intellectual Property of a Notes Party or any of its Restricted Subsidiaries entered into in the ordinary course of business;

(b) licenses for the conduct of licensed departments within the Notes Parties' or any of their Restricted Subsidiaries' Stores in the ordinary course of business;

(c) dispositions of Securitization Assets in connection with Qualified Securitization Financings and Receivables Facilities permitted by clause (bb) of the definition of "Permitted Indebtedness";

(d) dispositions of assets, including abandonment of or failure to maintain Intellectual Property, that are worn, damaged, obsolete, uneconomical or, in the judgment of a Notes Party or its Restricted Subsidiary, no longer used or useful or necessary in, or material to, its business or that of any Restricted Subsidiary;

(e) sales, transfers and dispositions, including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, among the Notes Parties and their Restricted Subsidiaries;

(f) any disposition in a single transaction or series of related transactions that does not result in more than $5,000,000 of Net Proceeds;

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

(h) leases, subleases, licenses and sublicenses of real or personal property (other than Intellectual Property) entered into by Notes Parties and their Restricted Subsidiaries in the ordinary course of business at arm's length or on market terms;

(i) sales of non-core assets acquired in connection with Permitted Acquisitions or other Permitted Investment;

(j) sales or other dispositions of Permitted Investments described in clauses (a) through and including (k) of the definition thereof;

(k) any disposition of Real Estate to a Governmental Authority as a result of a condemnation of such Real Estate;

(l) the making of Permitted Investments and payments permitted under Section 4.7;

(m) the sale, transfer or disposition of (i) the property located at 8320 South Cicero Avenue, Burbank, IL and/or (ii) the property located at 310 Andover Street, Essex County, Danvers/Peabody, MA;

(n) leasing of Real Estate no longer used or useful in the business of the Notes Parties and their Restricted Subsidiaries to the extent not otherwise prohibited hereunder;

(o) forgiveness of Permitted Investments;

(p) exchanges or swaps, including, but not limited to, transactions covered by Section 1031 of the Code, of Leases and other Real Estate of the Notes Parties and their Restricted Subsidiaries so long as such exchange or swap is made for fair market value and on an arm's-length basis;

(q) sales of inventory and the use of cash or cash equivalents in the ordinary course of business;

(r) any issuance, sale (including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law) or pledge of Capital Stock in, or Indebtedness, or other securities of, an Unrestricted Subsidiary;

(s) condemnation or any similar action on assets or casualty or insured damage to assets;

(t) the Issuer and any Restricted Subsidiary may surrender or waive contractual rights and settle or waive contractual or litigation claims;

(u) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased or (ii) the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased);

(v) the disposition of assets that do not constitute Collateral in an amount not to exceed $100,000,000 from and after the Issue Date;

(w) the incurrence of Permitted Encumbrances, sales, transfers and other dispositions constituting any Restricted Payment permitted by Section 4.7; and

(x) the sale, conveyance, transfer, lease (as lessor) or other voluntary disposition (or series of related transactions) of all or substantially all assets in a manner permitted under Section 5.1 or any transaction (or series of related transactions) that constitutes a Change of Control pursuant to this Indenture.

"*Permitted Encumbrances*" means:

(a) Liens imposed by law for Taxes (i) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Notes Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, or (ii) the failure to make payment for, individually or in the aggregate, would not reasonably be expected to result in a material adverse effect;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's and other like Liens imposed by Applicable Law, (i) arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days, (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Notes Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, or (iii) the existence of which would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect;

(c) Liens provided in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) Liens to secure or relating to the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds (and Liens arising in accordance with Applicable Law in connection therewith), and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 6.1(5);

(f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, other land use laws, rights-of-way, development, site plan or similar agreements and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property when used in a manner consistent with current usage or materially interfere with the ordinary conduct of business of a Notes Party as currently conducted and such other minor title defects, or survey matters that are disclosed by current surveys, but that, in each case, do not interfere with the current use of the property in any material respect;

(g) any Lien on any property or asset existing on the Issue Date (other than Liens securing the Term Loan/Notes Secured Obligations and the ABL Secured Obligations);

(h) Liens on fixed or capital assets acquired by any Notes Party or any of its Restricted Subsidiaries to secure Indebtedness permitted under clause (e) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within two hundred seventy (270) days after such acquisition or the completion of the construction or improvement thereof (other than refinancings thereof permitted hereunder) and (ii) such Liens shall not extend to any other property or assets of the Notes Parties or any of their Restricted Subsidiaries (other than any replacements of such property or assets and additions and accessions thereto and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender);

(i) Liens in favor of the Collateral Agent, for its own benefit and the benefit of the other Notes Secured Parties, securing Notes Obligations in respect of the Notes issued on the Issue Date, this Indenture or the Collateral Documents and excluding, for the avoidance of doubt, Additional Notes;

(j) landlords' and lessors' Liens in respect of rent not in default for more than sixty (60) days or the existence of which, individually or in the aggregate, would not reasonably be expected to result in a material adverse effect;

(k) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and other Permitted Investments, *provided* that such Liens (a) attach only to such Investments or other Investments held by such broker or dealer and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens on Real Estate; *provided* that such Liens shall only secure obligations with respect to a Permitted Real Estate Financing;

(n) Liens (i) attaching solely to cash advances and earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition, Permitted Investment or Investment that will be consummated in connection with refinancing the Term Loan Agreement or (ii) consisting of an agreement to dispose of any property in an Asset Sale permitted hereunder (or to be reasonably expected to be permitted hereunder) or a Permitted Disposition;

(o) Liens arising from precautionary UCC filings regarding "true" operating leases or the consignment of goods to a Notes Party;

(p) any Lien existing on any property or asset prior to the acquisition thereof by a Notes Party or any Restricted Subsidiary or existing on any property or asset of any Person that became or becomes a Restricted Subsidiary (including as a result of any Unrestricted Subsidiary being redesignated as a Restricted Subsidiary) after the Issue Date prior to the time such Person became or becomes a Restricted Subsidiary; *provided* that (i) such Lien is not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary as the case may be, (ii) such Lien shall not apply to any other property or asset of a Notes Party or any Restricted Subsidiary (other than any replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations incurred prior to such time, a pledge of after-acquired property, and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender) and (iii) such Lien shall secure only those obligations and unused commitments (and to the extent such obligations and commitments constitute Indebtedness, such Indebtedness is permitted hereunder) that it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be, and extensions, renewals and replacements thereof so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the obligations being extended, renewed or replaced (plus any accrued but unpaid interest (including any portion thereof which is payable in kind in accordance with the terms of such extended, renewed or replaced Indebtedness) and premium payable by the terms of such obligations thereon and fees and expenses associated therewith);

(q) Liens in favor of customs and revenues authorities imposed by Applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Notes Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, or (iii) the existence of which would not reasonably be expected to result in a material adverse effect;

(r) (i) Liens granted by the Notes Parties or any of their Restricted Subsidiaries to the secured parties under the ABL Loan Documents and any refinancings thereof permitted hereunder so long as such Liens are subject to the terms of the ABL Intercreditor Agreement and (ii) Liens granted by the Notes Parties or any of their Restricted Subsidiaries to the secured parties under the Term Loan Documents and any refinancings permitted hereunder so long as such Liens are subject to the terms of the Pari Passu Intercreditor Agreement;

(s) any interest or title of a licensor, sublicensor, lessor or sublessor under any license or operating or true lease agreement;

(t) leases or subleases granted to third Persons in the ordinary course of business;

(u) licenses or sublicenses of Intellectual Property granted in the ordinary course of business;

(v) the replacement, refinancing, extension or renewal of any Permitted Encumbrance; *provided* that such Lien shall at no time be extended to cover any assets or property other than such assets or property subject thereto on the Issue Date or the date such Lien was incurred, as applicable (other than any replacements of such property or assets and additions and accessions thereto and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender or Liens otherwise permitted hereunder);

(w) Liens on insurance policies and insurance proceeds incurred in the ordinary course of business in connection with the financing of insurance premiums;

(x) Liens on securities which are the subject of repurchase agreements incurred in the ordinary course of business;

(y) Liens arising by operation of law under Article 4 of the UCC in connection with collection of items provided for therein;

(z) Liens arising by operation of law under Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods;

(aa) Liens on deposit accounts or securities accounts in connection with overdraft protection netting services, other cash management services, automatic clearinghouse arrangements, overdraft protections and similar arrangements or otherwise in connection with securities accounts and deposit accounts, in each case, in the ordinary course of business;

(bb) security given to a public or private utility or any Governmental Authority as required in the ordinary course of business;

(cc) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements with the Notes Parties or any of their Restricted Subsidiaries in the ordinary course of business;

(dd) other Liens securing obligations in an amount not to exceed the greater of (x) $75,000,000 and (y) 3.0% of Consolidated Total Assets (measured at the time such Liens are created) in the aggregate at any time outstanding;

(ee) Liens in favor of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods;

(ff) purchase options, call and similar rights of, and restrictions for the benefit of, a third party with respect to Capital Stock held by the Issuer or any Restricted Subsidiary in joint ventures;

(gg) Liens disclosed as exceptions to coverage in the final title policies and endorsements issued to the Collateral Agent with respect to any Mortgaged Properties;

(hh) Liens on assets of any Restricted Subsidiary that is not a Notes Party to the extent such Liens secure Indebtedness of such Restricted Subsidiary permitted by Section 4.9;

(ii) on and after the Ratio Resumption Date, Liens securing Indebtedness permitted under clause (v)(iii) of "Permitted Indebtedness" *provided* that the pro forma Consolidated Secured Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder is equal to or less than 3.5 to 1.0 and, to the extent such Indebtedness is secured by Liens on Collateral, such Indebtedness is subject to either (i) the terms of a Pari Passu Intercreditor Agreement as "Additional First Lien Obligations" or (ii) the terms of the Second Lien Intercreditor Agreement as obligations secured by Liens ranking junior to the Liens securing the Obligations;

(jj) Liens securing any Hedge Agreement so long as the fair market value of the collateral securing such Hedge Agreement does not exceed $25,000,000 at any time;

(kk) Liens on Collateral securing Qualifying Secured Debt issued pursuant to clause (v)(i) or (v)(ii) of the definition of "Permitted Indebtedness"; and

(ll) Liens on (i) Securitization Assets arising in connection with a Qualified Securitization Financing or (ii) the Receivables Assets arising in connection with a Receivables Facility, in each case securing Indebtedness permitted under clause (bb) of "Permitted Indebtedness."

"*Permitted Indebtedness*" means each of the following:

(a) [reserved];

(b) Indebtedness of any Notes Party in existence on the Issue Date (other than Indebtedness described in clause (h) or (i) of this definition);

(c) Indebtedness of (i) any Notes Party to any other Notes Party, (ii) any Notes Party to any Restricted Subsidiary that is not a Guarantor and (iii) any Restricted Subsidiary that is not a Guarantor to any Restricted Subsidiary that is not a Guarantor;

(d) guarantees by any Notes Party or any of its Restricted Subsidiaries of Indebtedness or other obligations arising in the ordinary course of business of any other Notes Party or any of its Restricted Subsidiaries;

(e) Indebtedness of any Notes Party or any of its Restricted Subsidiaries to finance the improvement, acquisition, development, construction, restoration, replacement, rebuilding, maintenance, upgrade or improvement of any fixed or capital assets (including Real Estate), including Capital Lease Obligations (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted under clause (k) of this definition), and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, *provided* that the aggregate principal amount of Indebtedness permitted by this clause (e) outstanding at any time, when aggregated with the amount of Permitted Refinancings in respect thereof pursuant to clause (bb) below, shall not exceed the greater of (x) $75,000,000 and (y) 3.0% of Consolidated Total Assets (measured at the time of incurrence);

(f) Indebtedness under Hedge Agreements, other than for speculative purposes, entered into in the ordinary course of business;

(g) contingent liabilities under surety bonds, customs and appeal bonds, governmental contracts and leases or similar instruments incurred in the ordinary course of business;

(h) Indebtedness represented by the Notes (including any Guarantee thereof) on the Issue Date;

(i) Indebtedness under the ABL Facility; *provided* that in no event shall the aggregate principal amount of loans and the face amount of letters of credit and bank guaranties issued under the ABL Facility exceed the greater of (x) $900,000,000 and (y) the Borrowing Base as of the time such Indebtedness is incurred;

(j) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition or Permitted Investment, *provided* that such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments and Indebtedness described in clause (p)) prior to the maturity date of the notes, has a maturity which extends beyond the maturity date of the Notes, and is subordinated to the Obligations on terms customary for senior subordinated high yield debt securities (as determined in good faith by the Issuer);

(k) Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder;

(l) Subordinated Indebtedness in an amount, when aggregated with the amount of Permitted Refinancing in respect thereof pursuant to clause (bb), not to exceed $200,000,000 in the aggregate; and *provided* that, in each case, such Subordinated Indebtedness (i) shall not have a maturity date or be subject to amortization, mandatory repurchase or redemption (except pursuant to customary asset sale, and similar event, and similar events and change of control provisions and AHYDO payments) prior to the date that is three months after the maturity date of the notes, and (ii) shall not be exchangeable or convertible into any other Indebtedness (other than any Indebtedness that is otherwise permitted to be incurred under this Indenture at the time of such exchange or conversion);

(m) Indebtedness incurred in the ordinary course of business in connection with the financing of insurance premiums;

(n) on and after the Ratio Resumption Date, Indebtedness of any Notes Party or any of its Restricted Subsidiaries incurred or assumed in connection with a Permitted Acquisition or other Acquisition permitted hereunder; *provided* that on a Pro Forma Basis the Consolidated Interest Coverage Ratio for the most recent four Fiscal Quarter period for which financial statements have been or are required to be delivered hereunder would either be (x) at least 2.0 to 1.0 or (y) not less than the Consolidated Interest Coverage Ratio for such period immediately prior to such acquisition;

(o) Indebtedness relating of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees, workers' compensation claims, letters of credit, bank guarantees and banker's acceptances, warehouse receipts or similar instruments and similar obligations (other than in respect of other Indebtedness for borrowed money) including, without limitation, those incurred to secure health, safety and environmental obligations, in each case provided in the ordinary course of business or consistent with past practice;

(p) Indebtedness constituting the obligation to make purchase price adjustments for working capital, indemnities and similar obligations (including earnouts) in connection with Permitted Acquisition, Permitted Investments and Permitted Dispositions;

(q) guarantees and letters of credit and surety bonds (other than guarantees of, or letters of credit and surety bonds related to, Indebtedness) issued in connection with Permitted Acquisitions, Permitted Investments and Permitted Dispositions;

(r) without duplication of any other Indebtedness, non-cash accruals of interest, accretion or amortization of original issue discount and payment-in-kind interest with respect to Indebtedness permitted hereunder;

(s) Indebtedness due to any landlord in connection with the financing by such landlord of leasehold improvements;

(t) without duplication of, or accumulation with, other categories of Indebtedness permitted hereunder, other Indebtedness of any Notes Party or Restricted Subsidiary in an aggregate principal amount not to exceed the greater of $150,000,000 and 6.0% of Consolidated Total Assets at any time outstanding;

(u) Indebtedness under Permitted Real Estate Financings;

(v) Qualifying Other Debt or Qualifying Secured Debt (i) that is either (x) issued solely for cash consideration, the net proceeds of which are applied solely to the prepayment (in whole or in part) of Term Loan Obligations or Notes Obligations or (y) issued in exchange for Term Loan Obligations or Notes Obligations, or (ii) in the case of Qualifying Secured Debt and, at the option of the Issuer, Qualifying Other Debt, so long as (x) no Specified Default has occurred and is continuing or would result therefrom and (y) the aggregate principal amount of such Qualifying Secured Debt and Qualifying Other Debt, would not exceed the Qualifying Other Debt/Qualifying Secured Debt Amount or (iii) in the case of Qualifying Other Debt, so long as on a Pro Forma Basis (x) no Event of Default has occurred or is continuing or would result therefrom and (y) the Consolidated Interest Coverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder is at least 2.0 to 1.0 for the most recent four Fiscal Quarter period;

(w) Indebtedness of any Restricted Subsidiary that is not a Notes Party; *provided* that the aggregate amount of Indebtedness outstanding at any time pursuant to this clause (w) shall not exceed the greater of $25,000,000 and 1.0% of Consolidated Total Assets;

(x) Indebtedness with respect of treasury, depositary, cash management and netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements or otherwise in connection with securities accounts and deposit accounts, in each case, in the ordinary course of business;

(y) Indebtedness consisting of take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with past practice;

(z) Indebtedness incurred in connection with the repurchase of Capital Stock pursuant to Section 4.7; *provided* that the original principal amount of any such Indebtedness incurred pursuant this clause (z) shall not exceed the amount of such Capital Stock so repurchased with such Indebtedness (or with the proceeds thereof);

(aa) Indebtedness in an amount equal to 100% of the aggregate Net Proceeds received by Parent after August 13, 2014 from the issue or sale of Capital Stock (other than Disqualified Capital Stock) plus cash contributed to Parent and to the extent such Net Proceeds or cash have been contributed as common equity to the Issuer and have not been applied pursuant to Section 4.7(a)(14), clause (gg) of the definition of "Permitted Investments" or utilized to increase the Available Amount;

(bb) Indebtedness of (i) any Securitization Subsidiary arising under any Securitization Facility or (ii) the Issuer or any Restricted Subsidiary arising under any Receivables Facility; *provided* that the Outstanding Securitization Amount permitted by this clause (bb) shall not exceed $150,000,000 at any time outstanding;

(cc) Indebtedness of any Notes Party or of any Restricted Subsidiary that is not a Notes Party to the Specified Captive Insurance Company, in an aggregate principal amount outstanding at any time not to exceed the aggregate amount of Restricted Payments made pursuant to Section 4.7(a)(21);

(dd) Indebtedness under the Intercompany Loan; and

(ee) extensions, renewals, refinancings, and replacements of any such Indebtedness described in clauses (b), (e), (f), (j), (k), (m), (n), (r), (s), (u), (v), (z) and (aa) above and this clause (ee); *provided* that such Indebtedness constitutes a Permitted Refinancing.

"*Permitted Investments*" means each of the following:

(a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America) or any state or state agency thereof, in each case maturing within one (1) year from the date of acquisition thereof;

(b) Investments in commercial paper maturing within one (1) year from the date of acquisition thereof and having, at the date of acquisition, the highest or next highest credit rating obtainable from S&P, Moody's or Fitch;

(c) Investments in certificates of deposit, banker's acceptances and time deposits maturing within one (1) year from the date of acquisition thereof which are issued or guaranteed by, or placed with, and demand deposit and money market deposit accounts issued or offered by, any lender under the Term Loan Agreement or the ABL Credit Agreement or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $100,000,000;

(d) master demand notes and fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer;

(e) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America, any province of Canada, any member of the European Union, any other foreign government or any political subdivision or taxing authority thereof, in each case, having one of the two highest rating categories obtainable from Moody's, S&P or Fitch (or, if at the time, no such nationally recognized statistical rating organization is issuing comparable ratings, then a comparable rating of another nationally recognized statistical rating organization) with maturities of not more than two years from the date of acquisition;

(f) Indebtedness or preferred stock issued by Persons with a rating of "BBB-" or higher from S&P, "Baa3" or higher from Moody's or "BBB-" or higher from Fitch (or, if at the time, no such nationally recognized statistical rating organization is issuing comparable ratings, then a comparable rating of another nationally recognized statistical rating organization) with maturities of 12 months or less from the date of acquisition;

(g) bills of exchange issued in the United States, Canada, or a member state of the European Union for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(h) instruments and investments of the type and maturity described in clause (a) through (g) denominated in any foreign currency or of foreign obligors, which investments or obligors are, in the reasonable judgment of the Issuer, comparable in investment quality to those referred to above;

(i) solely with respect to any Restricted Subsidiary that is a Foreign Subsidiary, investments of comparable tenor and credit quality to those described in the foregoing clauses (a) through (h) customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes.

(j) (i) dollars, Euro, or any national currency of any member state of the European Union; or (ii) any other foreign currency held by a Notes Party or any of its Restricted Subsidiaries in the ordinary course of business (notwithstanding the foregoing, cash equivalents shall include amounts denominated in currencies other than set forth in this clause; *provided* that such amounts are converted into currencies listed in this clause within ten Business Days following the receipt of such amounts).

(k) shares of any money market or mutual fund that has substantially all of its assets invested in the types of investments referred to in clauses (a) through (i), above;

(l) Investments existing on the Issue Date;

(m) capital contributions, loans or other Investments made by (i) (x) any Notes Party to any other Notes Party and (y) any Restricted Subsidiary that is not a Guarantor to any other Restricted Subsidiary that is not a Guarantor or (ii) so long as no Specified Default then exists or would arise therefrom, any Notes Party to any Restricted Subsidiary or Affiliate of any Notes Party in an aggregate amount not to exceed the greater of $125,000,000 and 5.0% of Consolidated Total Assets at any time outstanding; *provided* that the aggregate amount of all Investments of the type described in this clause (m)(ii) and clause (x) of this definition may not exceed the greater of $125,000,000 and 5.0% of Consolidated Total Assets in the aggregate outstanding at any time;

(n) guarantees constituting Permitted Indebtedness;

(o) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(p) loans or advances to employees for the purpose of travel, entertainment or relocation in the ordinary course of business, *provided* that all such loans and advances to employees shall not exceed $5,000,000 in the aggregate at any time outstanding, and determined without regard to any write-downs or write-offs thereof;

(q) Investments received from purchasers of assets pursuant to dispositions permitted pursuant to Section 4.10 including, for the avoidance of doubt, in connection with a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law;

(r) Permitted Acquisitions and existing Investments of the Persons acquired in connection with Permitted Acquisitions or other Acquisition permitted hereunder so long as such Investment was not made in contemplation of such Permitted Acquisition;

(s) Hedge Agreements entered into in the ordinary course of business for non-speculative purposes;

(t) to the extent permitted by Applicable Law, notes from officers and employees in exchange for equity interests of Holdings (or any direct or indirect parent) purchased by such officers or employees pursuant to a stock ownership or purchase plan or compensation plan;

(u) earnest money required in connection with Permitted Acquisitions and other Permitted Investments;

(v) Investments in deposit accounts opened in the ordinary course of business;

(w) Capital Expenditures;

(x) guarantee of Indebtedness under clause (m)(ii) above of Restricted Subsidiaries that are not Notes Parties not in excess of the greater of $125,000,000 and 5.0% of Consolidated Total Assets in the aggregate at any time outstanding; *provided* that the aggregate amount of all Investments of the type described in this clause (x) and clause (m) (ii) of this definition may not exceed the greater of $125,000,000 and 5.0% of Consolidated Total Assets in the aggregate outstanding at any time;

(y) other Investments in an amount not to exceed the greater of (x) $100,000,000 and (y) 4.0% of Consolidated Total Assets (measured as of the time any such Investment is made) in the aggregate outstanding at any time;

(z) Investments out of the portion of the Available Amount that any Notes Party or any Restricted Subsidiary elects to apply pursuant to this clause (z);

(aa) on and after the Ratio Resumption Date , so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) on a Pro Forma Basis, the Consolidated Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder would be less than or equal to 3.5 to 1.0, any Notes Party or any Restricted Subsidiary may make any Investment;

(bb) Investments made by a Notes Party or any Restricted Subsidiary in any joint venture or any Unrestricted Subsidiary in an aggregate amount of such Investments made after February 11, 2011 pursuant to this clause (bb) by (x) Notes Parties and Restricted Subsidiaries in joint ventures and (y) the Notes Parties and their Restricted Subsidiaries in Unrestricted Subsidiaries shall not exceed the greater of (A) $25,000,000 and (B) 1.0% of Consolidated Total Assets at any time;

(cc) Investments resulting from Permitted Encumbrances;

(dd) Investments solely to the extent such Investments reflect an increase in the value of Investments otherwise permitted under Section 4.18;

(ee) Investments consisting of or resulting from Indebtedness, Liens, Restricted Payments, fundamental changes and Permitted Dispositions;

(ff) Indebtedness outstanding under the Term Loan Agreement repurchased by the Issuer or a Restricted Subsidiary pursuant to and in accordance with the terms of the Term Loan Agreement;

(gg) Investments to the extent that payment for such Investments is made solely with Capital Stock (other than any Disqualified Capital Stock) of the Issuer (or any direct or indirect parent) or proceeds of an equity contribution initially made to Holdings in each case to the extent contributed to the Capital Stock of the Issuer and have not been applied pursuant to Section 4.7(a)(14), clause (aa) of the definition of "Permitted Indebtedness" or utilized to also increase the Available Amount;

(hh) loans and advances to Holdings (or any direct or indirect parent entity) in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made in accordance with Section 4.7;

(ii) Investments consisting of purchases and acquisitions of inventory, supplies, material, equipment, or other similar assets in the ordinary course of business;

(jj) cash or property distributed from any Restricted Subsidiary that is not a Notes Party (i) may be contributed to other Restricted Subsidiaries that are not Notes Parties, and (ii) without duplication of amounts that increase the amount available under to any other clause above, may pass through the Issuer and/or any intermediate Restricted Subsidiaries, so long as all part of a series of related transactions and such transaction steps are not unreasonably delayed and are otherwise permitted hereunder; and

(kk) (i) Investments in any Receivables Facility or any Securitization Subsidiary in order to effectuate a Qualified Securitization Financing, including the ownership of Equity Interests in such Securitization Subsidiary and (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing or a Receivables Facility;

provided, *however*, that for purposes of calculation, the amount of any Investment outstanding at any time shall be the aggregate cash Investment less all cash returns, cash dividends and cash distributions (or the fair market value of any non-cash returns, dividends and distributions) received by such Person and less all liabilities expressly assumed by another Person in connection with the sale of such Investment.

"*Permitted Real Estate Financing*" means any financing by one or more Notes Parties or Restricted Subsidiaries that is secured solely by Real Estate of such Notes Parties or such Restricted Subsidiaries, as the case may be; *provided* that (a) the Indebtedness incurred in connection with such financing shall not be directly or indirectly guaranteed by, or directly or indirectly collateralized or secured by, or otherwise have any recourse to, such Notes Party or any such Restricted Subsidiary or any of the assets of such Notes Party or such Restricted Subsidiary, other than (i) the Real Estate that is the subject of such financing and/or (ii) except for the security described in clause (i), unsecured guarantees by such Notes Parties and such Restricted Subsidiaries, and by their direct or indirect parent companies, (b) none of the Notes Parties or any of their Restricted Subsidiaries shall provide any other direct or indirect credit support of any kind in respect of such Indebtedness (other than the security interest on the Real Estate that is the subject of such financing and the guarantees as described in clause (a) above, and as provided in clause (c) below), (c) such Notes Parties and Restricted Subsidiaries may be subject to customary representations, warranties, covenants and indemnities in connection with such facilities, (d) such Notes Parties and Restricted Subsidiaries, as the case may be, shall have received proceeds with respect to such financing in an amount equal to not less than 75% of the fair market value of the Real Estate that is the subject of such financing, (e) the Indebtedness incurred in connection with such financing shall have a final maturity that is no sooner than the date that is three months following the maturity date of the Notes and a weighted average life to maturity that is no shorter than the Notes and (f) all Net Proceeds received in connection therewith are applied to repay Term Loan Obligations or Notes Obligations.

"*Permitted Refinancing*" means any Indebtedness that replaces, renews, extends or refinances any other Permitted Indebtedness, as long as, after giving effect thereto (i) the principal amount of the Indebtedness outstanding at such time is not increased (except by the amount of any accrued interest, closing costs, expenses, fees, and premium paid in connection with such extension, renewal or replacement plus an amount equal to any unused commitment thereunder), (ii) the result of such refinancing of or replacement shall not be an earlier maturity date or decreased weighted average life, (iii) the obligor or obligors under any such refinancing Indebtedness and the collateral, if applicable, granted pursuant to any such refinancing Indebtedness are the same as or less than the obligor(s) and collateral under the Indebtedness being extended, renewed or replaced, (iv) the subordination, to the extent applicable, of the refinancing Indebtedness are not materially less favorable to the Holders than those subordination terms of the Indebtedness being refinanced (as determined by the Issuer in good faith) and (v) the refinancing Indebtedness is not exchangeable or convertible into any other Indebtedness which does not comply with clauses (i) through (iv) above.

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

"*Post-Acquisition Period*" means, with respect to any Permitted Acquisition or Investment the period beginning on the date such Permitted Acquisition is consummated and ending 18 months following the date on which such Permitted Acquisition or Investment is consummated.

"*Pro Forma Adjustments*" means, for any applicable period that includes all or any part of a Fiscal Quarter included in any Post-Acquisition Period, with respect to the Acquired EBITDA of the applicable Acquired Entity or the Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, the pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, as the case may be, projected by the Issuer in good faith as a result of (a) actions taken (or commenced) during such Post-Acquisition Period for the purposes of realizing reasonably identifiable cost savings, operating expense reductions, other operating improvements and initiatives and synergies projected by the Issuer in good faith or (b) any additional costs incurred during such Post-Acquisition Period, in each case in connection with the combination of the operations of such Acquired Entity with the operations of the Issuer and its Restricted Subsidiaries; *provided* that (i) so long as such actions are taken (or commenced) during such Post-Acquisition Period or such costs are incurred (or commenced) during such Post-Acquisition Period, as applicable, the cost savings, operating expense reduction, other operating improvements and initiatives and synergies related to such actions or such additional costs, as applicable, it may be assumed, for purposes of projecting such pro forma increase or decrease in such Acquired EBITDA or such Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, as the case may be, that such costs savings, operating expense reductions, other operating improvements and initiatives and synergies will be realizable during the entirety of such period, or such additional costs, as applicable, will be incurred during the entirety of such period and (ii) any such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, as the case may be, shall be without duplication for cost savings or additional costs already included in such Acquired EBITDA or such Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, as the case may be, for such period; and *provided further* that any such increase, decrease and other adjustments of such Acquired EBITDA or such Consolidated EBITDA of the Issuer and its Restricted Subsidiaries, as the case may be, either (x) would be permitted to be included in *pro forma* financial statements prepared in accordance with Regulation S-X under the Securities Act of 1933, as amended, or (y) shall have been certified by the chief financial officer of the Issuer as having been calculated in good faith and in compliance with the requirements of this definition; *provided* that any such adjustment pursuant to this clause (y) does not exceed 20% of the most recently calculated Consolidated EBITDA of the Issuer and its Restricted Subsidiaries (prior to giving effect to the adjustments pursuant to this subclause (y)).

"*Pro Forma Basis*" and "*Pro Forma Effect*" means, with respect to compliance with any test or covenant hereunder, that (A) to the extent applicable, the Pro Forma Adjustments shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a disposition of all or substantially all equity interests in any Subsidiary of the Issuer or any division, product line, or facility used for operations of the Issuer or any of its Subsidiaries, shall be excluded, and (ii) in the case of a Permitted Acquisition or Investment described in the definition of "Specified Transaction," shall be included, (b) any retirement of Indebtedness, and (c) any Indebtedness incurred or assumed by the Issuer or any of the Restricted Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination; *provided* that, without limiting the application of the Pro Forma Adjustments pursuant to (a) above, the foregoing pro forma adjustments may be applied to any such test or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and give effect to events (including operating expense reductions and operating initiatives) that are consistent with the definition of Pro Forma Adjustment.

"*Proceeds*" means (a) "proceeds," as defined in the UCC, with respect to the Collateral, and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected or disposed of, whether voluntary or involuntary.

"*Purchase Amount*" has the meaning set forth in the definition of "Offer to Purchase."

"*Purchase Date*" has the meaning set forth in the definition of "Offer to Purchase."

"*Qualified Securitization Financing*" means any Securitization Facility of a Securitization Subsidiary that meets the following conditions: (i) the Issuer shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Issuer and its Restricted Subsidiaries; (ii) all sales of Securitization Assets and related assets by the Issuer or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made at fair market value (as determined in good faith by the Issuer); (iii) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings; and (iv) the obligations under such Securitization Facility are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Issuer or any of its Restricted Subsidiaries (other than a Securitization Subsidiary).

"*Qualifying Other Debt*" means any Indebtedness, no part of the principal of which is required to be paid (whether by way of mandatory sinking fund, mandatory redemption, mandatory prepayment or otherwise) prior to the maturity date of the Notes other than (i) any required (x) offer to purchase or (y) prepayment obligation in respect of such Indebtedness as a result of a change of control, similar event or asset sale or AHYDO payment or (ii) amortization no greater than 1% per annum.

"*Qualifying Other Debt/Qualifying Secured Debt Amount*" means the sum of:

(a) $650,000,000, *plus*

(b) the aggregate amount of voluntary prepayments of Term Loan Obligations made after the Issue Date (including purchases of the Term Loan Obligations by the Parent or any Notes Party at or below par, in which case the amount of voluntary prepayments of Term Loan Obligations shall be deemed not to exceed the actual purchase price of such Term Loan Obligations below par), other than from proceeds of long term Indebtedness (other than revolving Indebtedness), after giving effect to the incurrence of any incremental term loans under the Term Loan Agreement (other than Refinancing Term Loans) and the aggregate principal amount of Qualifying Secured Debt and Qualifying Other Debt issued pursuant to clause (v)(ii) of the definition of "Permitted Indebtedness" pursuant to clause (a) above on a Pro Forma Basis (excluding the cash proceeds to the borrower of any incremental term loans under the Term Loan Agreement, treating all Qualifying Other Debt issued pursuant to clause (v)(ii) of the definition of "Permitted Indebtedness" as secured (whether or not secured) and without giving effect to any simultaneous incurrence of any incremental term loans under the Term Loan Agreement or Qualifying Secured Debt made pursuant to clauses (a) or (c), *plus*

(c) on and after the Ratio Resumption Date, the maximum aggregate principal amount that can be incurred without causing the Consolidated Secured Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder, after giving effect to the incurrence of any incremental term loans under the Term Loan Agreement (other than Refinancing Term Loans) and the aggregate principal amount of Qualifying Secured Debt and Qualifying Other Debt issued pursuant to clause (v)(ii) of the definition of "Permitted Indebtedness" on a Pro Forma Basis (excluding the cash proceeds to the borrower of any incremental term loans under the Term Loan Agreement, treating all Qualifying Other Debt issued pursuant to clause (v)(ii) of the definition of "Permitted Indebtedness" as secured (whether or not secured) and without giving effect to any simultaneous incurrence of any incremental term loans under the Term Loan Agreement or Qualifying Secured Debt made pursuant to the foregoing clauses (a) and (b), to exceed 3.5 to 1.0, at the Issuer's option, either (A) at the time of the effectiveness of such incremental term loans under the Term Loan Agreement or Qualifying Secured Debt (as applicable) or (B) at any earlier time permitted in accordance with Section 1.6 (it being understood and agreed that the Issuer may redesignate any Indebtedness originally designated as incurred under clauses (a) or (b) above as having been incurred under clause (c), so long as at the time of such redesignation, the Issuer would be permitted to incur under clause (c) the aggregate principal amount of Indebtedness being so redesignated (for purposes of clarity, with any such redesignation having the effect of increasing the Issuer's ability to incur such Indebtedness as of the date of such redesignation by the amount of such Indebtedness so redesignated)).

"*Qualifying Secured Debt*" means any secured Indebtedness of any Notes Party, no part of the principal of which is required to be paid (whether by way of mandatory sinking fund, mandatory redemption, mandatory prepayment or otherwise) prior to the maturity date of the Notes other than (i) any required (x) offer to purchase or (y) prepayment obligation in respect of such Indebtedness or AHYDO payment or (ii) amortization no greater than 1% per annum and which is subject to either (i) the terms of the Pari Passu Intercreditor Agreement as "Additional First Lien Obligations" or (ii) the terms of the Second Lien Intercreditor Agreement as obligations secured by Liens ranking junior to the Liens securing the Obligations.

"*Rating Agencies*" means each of Moody's, S&P and Fitch and, if any of Moody's, S&P or Fitch ceases to exist or ceases to rate the Notes for reasons outside of the control of the Issuer, any other "nationally recognized statistical rating organization" as such term is defined under Section 3(a)(62) of the Exchange Act selected by the Issuer as a replacement agency.

"*Ratio Resumption Date*" means the date on which the Issuer furnishes the information required by Section 4.3 for the second Fiscal Quarter of the Issuer's Fiscal Year 2020.

"*Real Estate*" means all interests in real property now or hereafter owned or held by any Notes Party, including all leasehold interests held pursuant to Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Notes Party, including all easements, rights-of-way, appurtenances and other rights relating thereto and all leases, tenancies, and occupancies thereof.

"*Receivables Assets*" means (a) any accounts receivable owed to the Issuer or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement and which are sold, conveyed, assigned or otherwise transferred or pledged by the Issuer or a Restricted Subsidiary to a commercial bank or an Affiliate thereof in connection with a Receivables Facility.

"*Receivables Facility*" means an arrangement between the Issuer or a Restricted Subsidiary and a commercial bank or an Affiliate thereof pursuant to which (a) the Issuer or such Restricted Subsidiary, as applicable, sells (directly or indirectly) to such commercial bank (or such Affiliate) accounts receivable owing by customers, together with Receivables Assets related thereto, at a maximum discount, for each such account receivable, not to exceed 5.0% of the face value thereof, (b) the obligations of the Issuer or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to the Issuer and such Restricted Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Issuer) and may include Standard Securitization Undertakings, and shall include any guaranty in respect of such arrangement.

"*Redemption Price*," when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"*Refinancing Term Loans*" means "Incremental Term Loans" or any similar term under the Term Loan Agreement that are designated as 'Refinancing Term Loans' or any similar term in the applicable amendment to the Term Loan Agreement.

"*Resale Restriction Termination Date*" means for any Transfer Restricted Note (or beneficial interest therein), other than a Regulation S Temporary Global Note, which shall not have a Resale Restriction Termination Date and shall remain subject to the transfer restrictions specified therefor in this Indenture until such Global Note is cancelled by the Trustee, that is (a) not a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.6(b)), one year (or such other period specified in Rule 144 under the Securities Act) from the Issue Date or, if any Additional Notes that are Transfer Restricted Notes have been issued before the Resale Restriction Termination Date for any Transfer Restricted Notes, from the latest such original issue date of such Additional Notes, and (b) a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.6(b)) (other than a Regulation S Temporary Global Note), the date on or after the 40th consecutive day beginning on and including the later of (i) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S) pursuant to Regulation S and (ii) the issue date for such Notes.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer assigned to the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant treasurer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter relating to this Indenture, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject and when used with respect to the Collateral Agent, any officer assigned to the Corporate Trust Office of the Collateral Agent, including any vice president, assistant vice president, assistant treasurer, or any other officer of the Collateral Agent customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter relating to this Indenture, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"*Restricted Notes Legend*" means the legend identified as such in Exhibit A hereto.

"*Restricted Payment*" means any dividend or other distribution (whether in cash, securities or other property) with respect to any class of Capital Stock of a Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Capital Stock of a Person or any option, warrant or other right to acquire any Capital Stock of a Person or on account of any return of capital to the Person's stockholders, partners or members, *provided* that "Restricted Payments" shall not include any dividends payable solely in Capital Stock of a Notes Party.

"*Restricted Subsidiary*" means each Subsidiary of Holdings that is not an Unrestricted Subsidiary.

"*Revolving Credit Loans*" has the meaning set forth in the ABL Facility for such term or any similar term.

"*S&P*" means S&P Global Ratings, a business unit of Standard and Poor's Financial Services LLC and any successor to its rating business.

"*Second Lien Intercreditor Agreement*" means an intercreditor agreement in form and substance reasonably satisfactory to the Term Loan/Notes Controlling Collateral Agent providing that the Liens securing the Notes Obligations rank prior to the Liens securing Qualifying Secured Debt which is intended to be secured by Liens ranking junior to the Liens securing the Notes Obligations.

"*Securitization Asset*" means (a) any accounts receivable or related assets and the proceeds thereof, in each case subject to a Securitization Facility and (b) all collateral securing such receivable or asset, all contracts and contract rights, guaranties or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted), together with accounts or assets in a securitization financing and which in the case of clause (a) and (b) above are sold, conveyed, assigned or otherwise transferred or pledged by the Issuer or a Restricted Subsidiary in connection with a Qualified Securitization Financing.

"*Securitization Facility*" means any transaction or series of securitization financings that may be entered into by the Issuer or any of its Restricted Subsidiaries pursuant to which the Issuer or any of its Restricted Subsidiaries may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Issuer or any of its Subsidiaries.

"*Securitization Fees*" means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or participation interest therein issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Restricted Subsidiary in connection with, any Qualified Securitization Financing or a Receivables Facility.

"*Securitization Repurchase Obligation*" means any obligation of a seller (or any guaranty of such obligation) of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including, without limitation, as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Securitization Subsidiary*" means any Subsidiary of the Issuer in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings and other activities reasonably related thereto or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Issuer or any Subsidiary of the Issuer makes an Investment and to which the Issuer or any Subsidiary of the Issuer transfers Securitization Assets and related assets.

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

"*Series*" has the meaning set forth in the Pari Passu Intercreditor Agreement.

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

"*Specified Captive Insurance Company*" means a captive insurance company that is subject to regulation as a captive insurance company and is a direct or indirect Subsidiary of Burlington Stores, Inc.

"*Specified Default*" means the occurrence of any Event of Default specified in clauses (1), (2) or (8) under Section 6.1.

"*Specified Indebtedness"* means Indebtedness that is subordinated in right of payment to the Notes Obligations.

"*Specified Transaction*" means any (a) disposition of all or substantially all the assets or Capital Stock of any Subsidiary or of any division or product line of the Issuer or any of the Subsidiaries, (b) Permitted Acquisition or Acquisition constituting a Permitted Investment, (c) [reserved], (d) proposed incurrence of Indebtedness in respect of which compliance with a financial ratio are by the terms of this Indenture required to be calculated on a Pro Forma Basis or giving Pro Forma Effect to any such transaction or event, and (e) any other event that by the terms of this Indenture requires a test or covenant hereunder to be calculated on a Pro Forma Basis or giving Pro Forma Effect to any such transaction or event.

"*Standard Securitization Undertakings*" means representations, warranties, covenants and indemnities entered into by the Issuer or any Subsidiary of the Issuer which the Issuer has determined in good faith to be customary in a Securitization Facility, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivable Facility, a non-credit related recourse accounts receivable factoring arrangement.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Store*" means any retail store (which includes any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Notes Party.

"*Subordinated Indebtedness*" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Notes Obligations.

"*Subsidiary*" means with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity (a) of which Capital Stock representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"*Synthetic Lease*" means any lease or other agreement for the use or possession of property creating obligations which do not appear as Indebtedness on the balance sheet of the lessee thereunder but which, upon the insolvency or bankruptcy of such Person, may be characterized as Indebtedness of such lessee without regard to the accounting treatment.

"*Taxes*" means all current or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges) or withholdings imposed by any Governmental Authority, and all interest, additions to tax and penalties related thereto

"*Term Loan Agreement*" means that certain Credit Agreement, dated as of February 24, 2011, by and among the Issuer, the guarantors from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (and its successors in such capacities), and each lender from time to time party thereto, as amended, extended, renewed, restated, refunded, replaced, refinanced, supplemented, modified or otherwise changed (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any one or more agreements (and related documents) governing Indebtedness, including indentures, incurred to refinance, substitute, supplement, replace or add to (including increasing the amount available for borrowing or adding or removing any Person as a borrower, issuer or guarantor thereunder, in whole or in part), the borrowings and commitments then outstanding or permitted to be outstanding under such Term Loan Agreement or one or more successors to the Term Loan Agreement or one or more new credit agreements.

"*Term Loan Collateral Agent*" means JPMorgan Chase Bank, N.A., in its capacity as collateral agent under the Term Loan Agreement, and its successors in such capacity.

"*Term Loan Documents*" means the collective reference to the Term Loan Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, and any other documents, certificates, instruments or agreements executed and delivered by or on behalf of the Issuer or any Guarantor for the benefit of the Term Loan Collateral Agent or any Term Loan Secured Party in connection therewith that specifically identifies itself as a "Credit Document," a "Loan Document" or similar term, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified, in whole or in part, from time to time.

"*Term Loan Facility*" means the term loan facility established pursuant to the Term Loan Agreement.

"*Term Loan/Notes Controlling Collateral Agent*" means the "Applicable Collateral Agent" as defined in the Pari Passu Intercreditor Agreement.

"*Term Loan/Notes Documents*" means the Notes Documents, the Term Loan Documents and all other documents governing Term Loan/Notes Secured Obligations.

"*Term Loan/Notes Secured Obligations*" means (i) the Term Loan Obligations, (ii) the Notes Obligations and (iii) all Future Term Loan/Notes Obligations.

"*Term Loan/Notes Secured Parties*" means (1) the Term Loan Secured Parties, (2) the Notes Secured Parties and (3) any Future Term Loan/Notes Indebtedness Secured Parties.

"*Term Loan Obligations*" means all Obligations under the Term Loan Agreement and the other Term Loan Documents.

"*Term Loan Secured Parties*" means the Term Loan Collateral Agent and the holders from time to time of Term Loan Obligations.

"*Transactions*" means the issuance of the Notes, the payment of expenses in connection with the Transactions and the consummation of the transactions described in this Offering Memorandum.

"*Transfer Restricted Notes*" means Notes that bear or are required to bear the Restricted Notes Legend.

"*Treasury Rate*" means the weekly average for each Business Day during the most recent week that has ended at least two Business Days prior to the redemption date of the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the redemption date to April 15, 2022; *provided, however*, that if the period from the redemption date to April 15, 2022 is not equal to the constant maturity of a United States Treasury security for which a yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to such applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"*Trustee*" has the meaning set forth in the preamble to this Indenture.

"*UCC*" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; *provided* that to the extent that the Uniform Commercial Code is used to define any term in any security document and such term is defined differently in differing Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern; *provided, further*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, Liens of any person is governed by the Uniform Commercial Code or foreign personal property security laws as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" will mean the Uniform Commercial Code or such foreign personal property security laws as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

"*Unrestricted Subsidiary*" means (i) any Subsidiary of the Issuer designated by the Board of Directors of the Issuer as an Unrestricted Subsidiary pursuant to Section 4.16 and (ii) any Subsidiary of an Unrestricted Subsidiary.

"*U.S. Dollar Equivalent*" means with respect to any monetary amount in a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in *The Wall Street Journal* in the "Exchange Rates" column under the heading "Currency Trading" on the date two business days prior to such determination.

Except as described under Section 4.9 whenever it is necessary to determine whether the Issuer has complied with any covenant in this Indenture or a Default has occurred and an amount is expressed in a currency other than U.S. dollars, such amount will be treated as the U.S. Dollar Equivalent determined as of the date such amount is initially determined in such currency.

"*U.S. Government Securities*" means securities that are

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

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

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

SECTION 1.2 Other Definitions.

Term	Defined in Section
“Act”	12.14(a)
“Agent Members”	2.6(a)
“Asset Sale Offer”	4.10(e)
“Change of Control Offer”	4.14
“Change of Control Payment”	4.14
“Change of Control Payment Date”	4.14
“Covenant Defeasance”	8.3
“Covenant Suspension Event”	4.20(a)
“Declined Proceeds”	4.10(g)
“Event of Default”	6.1
“Excess Proceeds”	4.10(d)
“Fixed Amounts”	1.6
“LCT Election”	1.5
“LCT Test Date”	1.5
“Legal Defeasance”	8.2
“Offer Amount”	3.9
“QIB”	2.1(c)
“QIB Global Note”	2.1(c)
“Registrar”	2.3
“Regulation S”	2.1(c)
“Regulation S Global Note”	2.1(c)
“Regulation S Permanent Global Note”	2.1(c)
“Regulation S Temporary Global Note”	2.1(c)
“Reversion Date”	4.20(c)
“Rule 144A”	2.1(c)
“Subsequent Transaction”	1.6
“Successor Issuer”	5.1(a)(1)
“Suspended Covenants”	4.20(a)
“Suspension Period”	4.20(c)
“TIA”	1.3
“Title Company”	4.21(a)(2)
“Title Policy”	4.21(a)(2)
“USA PATRIOT Act”	12.15

SECTION 1.3 Inapplicability of the Trust Indenture Act.

This Indenture is not, and will not be, qualified under, subject to, or incorporate, restate or make reference to, any provisions of the Trust Indenture Act of 1939, as amended, as in effect on the Issue Date (the “TIA”), and the provisions of the TIA that would otherwise be made part of the Indenture are not, and will not be, included in the Indenture.

SECTION 1.4 Rules of Construction.

Unless the context otherwise requires:

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

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

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) unless otherwise specified, any reference to Section or Article refers to such Section or Article of this Indenture;

(6) provisions apply to successive events and transactions;

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

(8) unless otherwise provided herein or in any other Notes Document, the words "execute", "execution", "signed", and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any other Notes Document or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest 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, and any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything herein to the contrary, neither the Trustee nor the Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Collateral Agent pursuant to reasonable procedures approved by the Trustee or the Collateral Agent.

SECTION 1.5 Limited Condition Transactions.

Notwithstanding anything to the contrary in this Indenture or any other Notes Document, in connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(1) determining compliance with any provision of this Indenture which requires the calculation of any financial ratio or test, including the Consolidated Leverage Ratio, the Consolidated Secured Leverage Ratio, and the Consolidated Interest Coverage Ratio, including, but not limited to, in connection with incurrence of Indebtedness, the creation of Liens, the making of any asset sale or other disposition, the making of an Investment or Restricted Payment, the designation of a "Subsidiary" as restricted or unrestricted or the repayment or prepayment of Indebtedness; or

(2) determining compliance with defaults or events of default (other than Specified Defaults); or

(3) testing availability under baskets set forth in this Indenture (including baskets measured as a percentage of Consolidated EBITDA or Consolidated Total Assets);

in each case, at the option of the Issuer (the Issuer's election to exercise such option in connection with any Limited Condition Transaction, an "*LCT Election*"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into, the date an irrevocable repayment or prepayment notice is given with respect thereto, or at the time of declaration thereof, as applicable (the "*LCT Test Date*"), and if, after giving Pro Forma Effect to the Limited Condition Transaction, the Issuer or any of its Restricted Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test, defaults, specified defaults, events of default, or basket, such ratio, test, defaults, specified defaults, events of default, or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Issuer has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been satisfied as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA, Consolidated Total Assets, Consolidated Total Debt, Consolidated Interest Expense, or Consolidated Net Income, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have failed to have been satisfied as a result of such fluctuations. Notwithstanding anything to the contrary in this Indenture or any other Notes Document, if the Issuer has made an LCT Election for any Limited Condition Transaction, then in connection with any event or transaction occurring after the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for disposition, redemption, repurchase, defeasance, satisfaction and discharge or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction (a "*Subsequent Transaction*") in connection with which a ratio, test or basket availability calculation must be made on a Pro Forma Basis or giving Pro Forma Effect to such Subsequent Transaction, for purposes of determining whether such ratio, test or basket availability has been complied with under this Indenture, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated until such time as the applicable Limited Condition Transaction has actually closed or the definitive agreement with respect thereto has been terminated; *provided*, that for purposes of any Restricted Payment, such ratio, basket or compliance with any other provision hereunder shall also be tested as if such Limited Condition Transaction and other transactions in connection therewith (including any incurrence or issuance of Indebtedness and the use of proceeds thereof) had not been consummated.

SECTION 1.6 Certain Compliance Calculations.

In the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), disposition, Restricted Payment, affiliate transaction, restrictive agreement or prepayment of Indebtedness meets the criteria of one or more than one of the categories of transactions then permitted pursuant to any clause of such covenants, such transaction (or portion thereof) at any time, and from time to time, shall be permitted under one or more of such clauses as determined by the Issuer in its sole discretion at such time. The Issuer is entitled in its sole discretion to divide and classify such transaction (or portion thereof) in any one or more of the clauses of covenants referred to in the immediately preceding sentence and will only be required to include the amount and type of such transaction in such of the above clauses as determined by the Issuer at such time; *provided* that after such designation it may not subsequently reclassify such transaction (or portion thereof) except as provided in Sections 4.9 and 4.12.

With respect to any amounts incurred or transactions entered into (or consummated) in reliance upon a provision of this Indenture that does not require compliance with a financial ratio or leverage test (any such amounts, the "*Fixed Amounts*") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Indenture that requires compliance with a financial ratio or leverage test (any such amounts, the "*Incurrence-Based Amounts*"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or leverage test applicable to the Incurrence-Based Amounts in connection with such substantially concurrent incurrence, except that incurrences of Indebtedness and Liens constituting Fixed Amounts shall be taken into account for purposes of Incurrence-Based Amounts other than Incurrence-Based Amounts contained in the definition of Qualifying Other Debt/Qualifying Secured Debt Amount and Sections 4.9 and 4.12.

ARTICLE II

THE NOTES

SECTION 2.1 Form and Dating.

(a) The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A attached hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes initially shall be issued only in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) The Notes shall be issued initially in the form of one or more Global Notes substantially in the form attached as Exhibit A hereto, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee as custodian for the Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6 hereof.

Except as set forth in Section 2.6 hereof, the Global Notes may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor of the Depositary or its nominee.

(c) The Initial Notes are being issued by the Issuer only (i) to persons reasonably believed to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act ("*Rule 144A*")) ("*QIBs*") and (ii) in reliance on Regulation S under the Securities Act ("*Regulation S*"). After such initial offers, Initial Notes that are Transfer Restricted Notes may be transferred to QIBs, in reliance on Rule 144A or outside the United States pursuant to Regulation S or to the Issuer, in accordance with certain transfer restrictions. Initial Notes that are offered in reliance on Rule 144A shall be issued in the form of one or more permanent Global Notes substantially in the form set forth in Exhibit A (the "*QIB Global Note*") deposited with the Trustee, as Note Custodian, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. Initial Notes that are offered in offshore transactions in reliance on Regulation S shall be issued in the form of one or more temporary Global Notes substantially in the form set forth in Exhibit A, including the Regulation S Temporary Global Note legend (the "*Regulation S Temporary Global Note*") deposited with the Trustee, as Note Custodian, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. Except as set forth in Section 2.1(c), beneficial ownership interests in the Regulation S Temporary Global Note will not be exchangeable for interests in a QIB Global Note, a permanent global note in registered form substantially in the form of Exhibit A (the "*Regulation S Permanent Global Note*," and together with the Regulation S Temporary Global Note, the "*Regulation S Global Note*") or any other Note prior to the expiration of the date that is 40 days after the later of the commencement of the offering of the Notes in reliance on Regulation S and the Issue Date. The QIB Global Note and the Regulation S Global Note shall each be issued with separate CUSIP numbers. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as Note Custodian. Transfers of Notes between QIBs and to or by purchasers pursuant to Regulation S shall be represented by appropriate increases and decreases to the respective amounts of the appropriate Global Notes, as more fully provided in Section 2.16.

(d) Section 2.1(c) shall apply only to Global Notes deposited with or on behalf of the Depositary.

The Issuer shall execute and the Trustee shall, in accordance with Section 2.1(c) and this Section 2.1(d), authenticate and deliver the Global Notes that (i) shall be registered in the name of the Depositary or the nominee of the Depositary and (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions or held by the Trustee as Note Custodian for the Depositary.

Participants shall have no rights either under this Indenture with respect to any Global Note held on their behalf by the Depositary or by the Note Custodian as custodian for the Depositary or under such Global Note, and the Depositary may be treated by the Issuer, the Trustee, the Collateral Agent, any Agent and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any Agent or other agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Participants, the operation of customary practices of such Depositary governing the exercise of the rights of an owner of a beneficial interest in any Global Note.

The Trustee shall have no responsibility or obligation to any Holder that is a member of (or a participant in) DTC or any other Person with respect to the accuracy of the records of DTC (or its nominee) or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to the Notes. The Trustee may rely (and shall be fully protected in relying) upon information furnished by DTC with respect to its members, participants and any beneficial owners in the Notes.

(e) Notes issued in certificated form shall be substantially in the form of Exhibit A attached hereto.

SECTION 2.2 Execution and Authentication.

An Officer shall sign the Notes for the Issuer by manual, facsimile or electronic signature.

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

A Note shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall, upon a written order of the Issuer signed by one Officer directing the Trustee to authenticate the Notes, authenticate Notes for original issue up to the aggregate principal amount stated in paragraph 4 of the Notes. In addition, at any time, from time to time, the Trustee shall, upon receipt of a written order of the Issuer signed by one Officer directing the Trustee to authenticate Additional Notes, authenticate Additional Notes for original issue for an aggregate principal amount specified in such written order for such Additional Notes issued hereunder.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate Notes. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or the Issuer or an Affiliate of the Issuer.

SECTION 2.3 Registrar; Paying Agent.

The Issuer shall maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and (ii) an office or agency where Notes may be presented for payment to a Paying Agent. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Issuer shall notify the Trustee of the name and address of any Agent not a party to this Indenture. The Issuer or any Guarantor may act as Paying Agent or Registrar. The Issuer shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Issuer shall notify the Trustee of the name and address of any such Agent. If the Issuer fails to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such, and shall be entitled to appropriate compensation in accordance with Section 7.7 hereof.

The Issuer initially appoints the Trustee to act as the Note Custodian, Registrar and Paying Agent.

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

SECTION 2.4 Paying Agent to Hold Money in Trust.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any Default by the Issuer in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon the occurrence of events specified in Section 6.1(8) hereof, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least five (5) Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders, including the aggregate principal amount of the Notes held by each Holder thereof.

SECTION 2.6 Book-Entry Provisions for Global Securities.

(a) Each Global Note shall (i) be registered in the name of the Depositary for such Global Notes or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear legends as required by Section 2.6(e).

Members of, or participants in, the Depositary ("*Agent Members*") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as Note Custodian, or under the Global Note, and the Depositary may be treated by the Issuer, the Trustee, the Note Custodian and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee, the Note Custodian or any agent of the Issuer or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Note may be transferred in accordance with Section 2.16 and the rules and procedures of the Depositary. In addition, Certificated Notes shall be transferred to all beneficial owners (or the requesting beneficial owners, in the case of clause (ii)) in exchange for their beneficial interests only if (i) the Depositary notifies the Issuer that it is unwilling or unable to continue as Depositary for the Global Notes or the Depositary ceases to be a "clearing agency" registered under the Exchange Act and a successor depositary is not appointed by the Issuer within ninety (90) days of such notice or (ii) an Event of Default of which a Responsible Officer of the Trustee has actual notice has occurred and is continuing and the Registrar has received a request from any beneficial owner of an interest in the Global Note to issue such Certificated Notes.

(c) In connection with the transfer of the entire Global Note to beneficial owners pursuant to clause (b) of this Section, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note an equal aggregate principal amount of Certificated Notes of authorized denominations.

(d) The registered holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interest through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(e) Each Global Note shall bear the Global Note Legend on the face thereof.

(f) At such time as all beneficial interests in Global Notes have been exchanged for Certificated Notes, redeemed, repurchased or cancelled, all Global Notes shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Certificated Notes, redeemed, repurchased or cancelled, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note, by the Trustee or the Note Custodian, at the direction of the Trustee, to reflect such reduction.

(g) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Global Notes and Certificated Notes at the Registrar's request.

(2) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any stamp or transfer tax or similar governmental charge payable in connection therewith (other than any such stamp or transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.2, 2.10, 3.7, 4.10, 4.14 and 9.5 hereto).

(3) All Global Notes and Certificated Notes issued upon any registration of transfer or exchange of Global Notes or Certificated Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Certificated Notes surrendered upon such registration of transfer or exchange.

(4) The Registrar shall not be required (A) to issue, to register the transfer of or to exchange Notes during a period beginning at the opening of fifteen (15) days before the day of any selection of Notes for redemption under Section 3.2 and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part or tendered for repurchase in connection with a Change of Control Offer or an Asset Sale Offer, except the unredeemed portion of any Note being redeemed in part, or (C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(5) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and neither the Trustee, any Agent nor the Issuer shall be affected by notice to the contrary.

(6) The Trustee shall authenticate Global Notes and Certificated Notes in accordance with the provisions of Section 2.2 hereof. Except as provided in Section 2.6(b), neither the Trustee nor the Registrar shall authenticate or deliver any Certificated Note in exchange for a Global Note.

(7) Each Holder agrees to provide reasonable indemnity to the Issuer and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

(8) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, or the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Issuer shall issue and the Trustee, upon the written order of the Issuer signed by an Officer of the Issuer, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee to protect itself and in the judgment of the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge for their expenses in replacing a Note.

Every replacement Note is an additional obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

SECTION 2.8 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.8 as not outstanding. Except as set forth in Section 2.9 hereof, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.7 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.1 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

SECTION 2.9 Treasury Notes.

In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or by any Affiliate of the Issuer shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes shown on the register as being owned shall be so disregarded. Notwithstanding the foregoing, Notes that are to be acquired by the Issuer or an Affiliate of the Issuer pursuant to an exchange offer, tender offer or other agreement shall not be deemed to be owned by such entity until legal title to such Notes passes to such entity.

SECTION 2.10 Temporary Notes.

Until Certificated Notes are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Notes upon a written order of the Issuer signed by one Officer of the Issuer. Temporary Notes shall be substantially in the form of Certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall upon receipt of a written order of the Issuer signed by one Officer authenticate Certificated Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

SECTION 2.11 Cancellation.

The Issuer at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder or which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. All Notes surrendered for registration of transfer, exchange or payment, if surrendered to any Person other than the Trustee, shall be delivered to the Trustee. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation. Subject to Section 2.7 hereof, the Issuer may not issue new Notes to replace Notes that it has redeemed or paid or that have been delivered to the Trustee for cancellation. All cancelled Notes held by the Trustee shall be disposed of in accordance with its customary practice, and certification of their cancellation shall be delivered to the Issuer upon request.

SECTION 2.12 Defaulted Interest.

If the Issuer defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, which date shall be at the earliest practicable date prior to the payment date, in each case at the rate provided in the Notes and in Section 4.1 hereof. The Issuer shall fix or cause to be fixed each such special record date and payment date and shall thereafter notify the Trustee of any such date. At least fifteen (15) days before the special record date, the Issuer (or the Trustee, in the name and at the expense of the Issuer given at least five (5) days before prior to the date such notice is to be sent or caused to be sent to Holders (or such shorter period as shall be acceptable to the Trustee)) shall send or cause to be sent to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

SECTION 2.13 [Reserved].

SECTION 2.14 Computation of Interest.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.15 CUSIP Number.

The Issuer in issuing the Notes may use a "CUSIP" number, and if it does so, the Trustee shall use the CUSIP number in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number printed in the notice or on the Notes and that reliance may be placed only on the other identification numbers printed on the Notes. The Issuer shall promptly notify the Trustee of any change in the CUSIP number.

SECTION 2.16 Special Transfer Provisions.

Each Initial Note and each Additional Note issued pursuant to an exemption from registration under the Securities Act will constitute a Transfer Restricted Note and be required to bear the Restricted Notes Legend until the expiration of the Resale Restriction Termination Date therefor, unless and until such Transfer Restricted Note is transferred or exchanged pursuant to an effective registration statement under the Securities Act. The following provisions shall apply to the transfer of a Transfer Restricted Note:

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Transfer Restricted Note (other than pursuant to Regulation S):

(i) The Registrar shall register the transfer of a Transfer Restricted Note by a Holder to a QIB if such transfer is being made by a proposed transferor who has provided the Registrar with (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit B hereto.

(ii) If the proposed transferee is an Agent Member and the Transfer Restricted Note to be transferred consists of an interest in the Regulation S Global Note, upon receipt by the Registrar of (x) the items required by paragraph (i) above and (y) instructions given in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the QIB Global Note in an amount equal to the principal amount of the beneficial interest in the Regulation S Global Note to be so transferred, and the Registrar shall reflect on its books and records the date and an appropriate decrease in the principal amount of such Regulation S Global Note.

(b) Transfers Pursuant to Regulation S. The following provisions shall apply with respect to registration of any proposed transfer of a Transfer Restricted Note pursuant to Regulation S:

(i) The Registrar shall register any proposed transfer of a Transfer Restricted Note pursuant to Regulation S by a Holder upon receipt of (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit C hereto from the proposed transferor.

(ii) If the proposed transferee is an Agent Member holding a beneficial interest in a QIB Global Note and the Transfer Restricted Note to be transferred consists of an interest in a QIB Global Note, upon receipt by the Registrar of (x) the letter, if any, required by paragraph (i) above and (y) instructions in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Regulation S Global Note in an amount equal to the principal amount of the beneficial interest in the QIB Global Note to be transferred, and the Registrar shall reflect on its books and records the date and an appropriate decrease in the principal amount of the QIB Global Note.

(c) Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes not bearing the Restricted Notes Legend, the Registrar shall deliver Notes that do not bear the Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes bearing the Restricted Notes Legend, the Registrar shall deliver only Notes that bear the Restricted Notes Legend unless there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Issuer and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(d) General. By its acceptance of any Note bearing the Restricted Notes Legend, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Restricted Notes Legend and agrees that it shall transfer such Note only as provided in this Indenture. A transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note shall be subject to compliance with applicable law and the applicable procedures of the Depositary, but is not subject any procedure required by this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to this Section 2.16.

SECTION 2.17 Issuance of Additional Notes.

The Issuer shall be entitled to issue Additional Notes under this Indenture that shall be identical in all material respects to the Initial Notes, except that Notes offered in the future will have different issuance dates and may have different issuance prices (and, if such Additional Notes shall be issued in the form of Transfer Restricted Notes, other than with respect to transfer restrictions, any registration rights agreement and additional interest with respect thereto); *provided* that such issuance is not prohibited by the terms of this Indenture, including Section 4.9 and Section 4.12. The Initial Notes and any Additional Notes shall be treated as a single class for all purposes under this Indenture. In addition, a separate CUSIP or ISIN will be issued for the Additional Notes, unless the Notes and the Additional Notes are treated as fungible for U.S. federal income tax purposes.

With respect to any Additional Notes, the Issuer shall set forth in an Officer's Certificate, a copy of each of which shall be delivered to the Trustee, the following information:

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

(2) the issue price, the issue date, the CUSIP number of such Additional Notes, the first interest payment date and the amount of interest payable on such first interest payment date applicable thereto and the date from which interest shall accrue; and

(3) whether such Additional Notes shall be Transfer Restricted Notes.

ARTICLE III

REDEMPTION AND PREPAYMENT

SECTION 3.1 Notices to Trustee.

If the Issuer elects to redeem Notes pursuant to the optional redemption provisions of Section 3.7 hereof, it shall furnish to the Trustee, at least five (5) days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to Section 3.3 (or such shorter period as is acceptable to the Trustee), an Officer's Certificate setting forth (i) the section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the Redemption Price.

If the Issuer is required to make an offer to purchase Notes pursuant to Section 4.10 or 4.14 hereof, it shall furnish to the Trustee, at least five (5) days before a Change of Control Offer or Asset Sale Offer, as applicable (or such shorter period as is acceptable to the Trustee), is made to the Holders, an Officer's Certificate setting forth (i) the section of this Indenture pursuant to which the offer to purchase shall occur, (ii) the terms of the offer, (iii) the principal amount of Notes to be purchased, (iv) the purchase price and (v) the purchase date and further setting forth a statement to the effect that (a) the Issuer or one of its Subsidiaries has effected an Asset Sale and there are Excess Proceeds aggregating more than $50,000,000 or (b) a Change of Control has occurred, as applicable.

The Issuer will also provide the Trustee with any additional information that the Trustee reasonably requests in connection with any redemption or offer.

SECTION 3.2 Selection of Notes to Be Redeemed.

If less than all of the Notes are to be redeemed or repurchased at any time, the Trustee shall select the Notes to be redeemed or repurchased as follows: (1) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or (2) if the Notes are not so listed, on a *pro rata* basis to the extent practicable and with adjustments so that no Notes are redeemed in part in an unauthorized denomination or by lot or such other method as the Trustee shall deem fair and appropriate.

SECTION 3.3 Notice of Redemption.

Notice of any redemption will be mailed (or, in the case of book-entry interests, transmitted electronically) at least 15 days but not more than 60 days before the redemption date to each registered holder of the Notes to be redeemed (with a copy to the Trustee), except that redemption notices may be given more than 60 days prior to a redemption if the notice is issued in connection with a legal defeasance or covenant defeasance of the Notes or a satisfaction and discharge of this Indenture as described under Article VIII.

The notice shall identify the Notes to be redeemed and shall state:

(1) the redemption date;

(2) the Redemption Price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Notes to be redeemed and that, after the redemption date (whether the original redemption date or the redemption date so delayed), upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(4) the name, telephone number and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(6) that, unless the Issuer defaults in making such redemption payment, interest, if any, on Notes called for redemption ceases to accrue on and after the redemption date (whether the original redemption date or the redemption date so delayed);

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

(8) any condition to such redemption as permitted by Section 3.4 hereof; and

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed, in which case a portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice (including any conditions contained therein), Notes called for redemption become due on the date fixed for redemption. On and after the redemption date (whether the original redemption date or the redemption date so delayed), unless the Issuer defaults in the payment of the redemption price, interest ceases to accrue on Notes or portions of them called for redemption.

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense; *provided*, *however*, that the Issuer shall have delivered to the Trustee, at least five (5) days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to Section 3.3 (or such shorter period as is acceptable to the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in the notice as provided in the preceding paragraph. The notice sent in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives such notice. In any case, failure to give send a notice or any defect in the notice to the Holder of any Note shall not affect the validity of the proceeding for the redemption of any other Note.

SECTION 3.4 Effect of Notice of Redemption.

Once notice of redemption is sent or transmitted electronically in accordance with Section 3.3 hereof, subject to the terms of the applicable redemption notice (including any conditions contained therein) Notes called for redemption become irrevocably due and payable on the redemption date (whether the original redemption date or the redemption date so delayed) at the Redemption Price plus accrued and unpaid interest to such date. Any redemption or notice of redemption may, at the Issuer's option and discretion, be subject to the satisfaction of any conditions precedent contained in such notice of redemption. Notice of any redemption of the Notes may be subject to the satisfaction (or waiver by the Issuer in the Issuer's discretion) of any conditions precedent to such redemption specified in the applicable notice. If such redemption is subject to satisfaction of one or more conditions precedent, the redemption date may be delayed, in the Issuer's discretion, until such time as any or all such conditions shall be satisfied (or waived by the Issuer in the Issuer's discretion), or such redemption may not occur and the notice of redemption may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in the Issuer's discretion) by the applicable redemption date (whether the original redemption date or the redemption date so delayed).

SECTION 3.5 Deposit of Redemption of Purchase Price.

On or before 10:00 a.m. (New York City time) on each redemption date or the date on which Notes must be accepted for purchase pursuant to Section 4.10 or 4.14, the Issuer shall deposit with the Trustee or with the Paying Agent (other than the Issuer or an Affiliate of the Issuer) money sufficient to pay the Redemption Price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the Redemption Price of (including any applicable premium), and accrued interest on, all Notes to be redeemed or purchased.

If Notes called for redemption or tendered in an Asset Sale Offer or Change of Control Offer are paid or if the Issuer has deposited with the Trustee or Paying Agent money sufficient to pay the redemption or purchase price of, and unpaid and accrued interest, if any, on, all Notes to be redeemed or purchased, on and after the redemption or purchase date, interest, if any, shall cease to accrue on the Notes or the portions of Notes called for redemption or tendered and not withdrawn in an Asset Sale Offer or Change of Control Offer (regardless of whether certificates for such securities are actually surrendered). If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case, at the rate provided in the Notes and in Section 4.1 hereof.

SECTION 3.6 Notes Redeemed in Part.

Upon surrender of a Note that is redeemed in part, the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed portion of the Note surrendered; *provided* that each such new Note will be in a principal amount of $2,000 or integral multiples of $1,000 in excess thereof.

SECTION 3.7 Optional Redemption.

(a) At any time prior to April 15, 2022, the Issuer may redeem the Notes, in whole or in part, at its option, upon notice of redemption as described in Section 3.3 at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable redemption date (subject to the right of the Holders on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the applicable redemption date).

(b) On or after April 15, 2022, the Issuer may redeem the Notes, in whole or in part, at its option, upon notice of redemption as described in Section 3.3 at the following Redemption Prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of Holders of record on the relevant regular record date to receive interest due on an interest payment date falling on or prior to the applicable redemption date), if redeemed during the 12-month period beginning April 15 of the years indicated:

Year	Redemption Price
2022	103.125%
2023	101.563%
2024 and thereafter	100.000%

(c) In addition, at any time prior to April 15, 2022, the Issuer may, at its option, upon notice as described in Section 3.3, on one or more occasions redeem in the aggregate up to 35% of the principal amount of the outstanding Notes (including Additional Notes) issued under this Indenture with an amount equal to or less than the net cash proceeds received by the Issuer from one or more Equity Offerings at a Redemption Price of 106.250% of the principal amount of Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date; *provided*, *however*, that at least 65% of the aggregate principal amount of Notes originally issued under this Indenture must remain outstanding immediately after the occurrence of each such redemption (excluding in such calculation Notes held by Holdings or its Subsidiaries) (except to the extent otherwise repurchased or redeemed or to be repurchased or redeemed and for which a notice of repurchase or redemption has been issued at or about such time in accordance with this Indenture) and that any such redemption occurs within 90 days following the date of the closing of such Equity Offering.

(d) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuer, or any third party making a Change of Control Offer in lieu of the Issuer as described above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Issuer or such third party will have the right, upon not less than 15 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to but excluding the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the applicable redemption date).

SECTION 3.8 Mandatory Redemption.

The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes. The Issuer may be required to make an Offer to Purchase pursuant to Sections 3.9, 4.10 and 4.14. The Issuer may at any time and from time to time purchase Notes in the open market or otherwise.

SECTION 3.9 Offer to Purchase.

In the event that the Issuer shall be required to commence an Offer to Purchase pursuant to an Asset Sale Offer or a Change of Control Offer, the Issuer shall follow the procedures specified below.

On the Purchase Date, the Issuer shall purchase the aggregate principal amount of Notes required to be purchased pursuant to Section 4.10 or Section 4.14 (the "*Offer Amount*"), or if less than the Offer Amount has been tendered, all Notes tendered in response to the Offer to Purchase. Payment for any Notes so purchased shall be made in the same manner as interest payments are made. If the Purchase Date is on or after the interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest, if any, shall be payable to the Holders who tender Notes pursuant to the Offer to Purchase. The Issuer shall notify the Trustee at least five (5) days before a Change of Control Offer or Asset Sale Offer, as applicable (or such shorter period as is acceptable to the Trustee), is made to the Holders, and the Offer shall be sent by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase.

On or before 10:00 a.m. (New York City time) on each Purchase Date, the Issuer shall irrevocably deposit with the Trustee or Paying Agent (other than the Issuer or an Affiliate of the Issuer) in immediately available funds the aggregate purchase price equal to the Offer Amount, together with accrued and unpaid interest, if any, thereon, to be held for payment in accordance with the terms of this Section 3.9. On the Purchase Date, the Issuer shall, to the extent lawful, (i) accept for payment, on a *pro rata* basis to the extent necessary, *provided however*, with such adjustments so that no Notes are purchased in part in an unauthorized denomination, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Purchase, or if less than the Offer Amount has been tendered, all Notes tendered, (ii) deliver or cause the Paying Agent or depositary, as the case may be, to deliver to the Trustee Notes so accepted and (iii) deliver to the Trustee an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this Section 3.9. The Issuer, the Depositary or the Paying Agent, as the case may be, shall promptly (but in any case not later than three (3) Business Days after the Purchase Date) mail or otherwise deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Issuer for purchase, plus any accrued and unpaid interest thereon, and the Issuer shall promptly issue a new Note, and the Trustee, at the written request of the Issuer, shall authenticate and mail or otherwise deliver at the expense of the Issuer such new Note to such Holder, equal in principal amount to any unpurchased portion of such Holder's Notes surrendered. Any Note not so accepted shall be promptly mailed or otherwise delivered by the Issuer to the Holder thereof. The Issuer shall publicly announce in a newspaper of general circulation or in a press release provided to a nationally recognized financial wire service the results of the Offer to Purchase on the Purchase Date.

Other than as specifically provided in this Section 3.9, any purchase pursuant to this Section 3.9 shall be made pursuant to the provisions of Sections 3.1 through 3.6 hereof.

ARTICLE IV

COVENANTS

SECTION 4.1 Payment of Notes.

(a) The Issuer shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid for all purposes hereunder on the date the Paying Agent, if other than the Issuer or a Subsidiary thereof, holds, as of 10:00 a.m. (New York City time), money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all such principal, premium, if any, and interest then due.

(b) The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period), at the same rate to the extent lawful.

SECTION 4.2 Maintenance of Office or Agency.

The Issuer shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee; *provided* that no service of process against the Issuer or any Guarantor may be made at any office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.3 hereof.

SECTION 4.3 Provision of Financial Information.

Whether or not required by the Commission, so long as any Notes are outstanding, if not filed electronically with the Commission through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (or any successor system), the Issuer will furnish to the Holders, within the time periods specified in the Commission's rules and regulations:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K, if the Issuer were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Issuer's certified independent accountants; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Issuer were required to file such reports.

In addition, the Issuer has agreed that, for so long as any Notes remain outstanding, it will furnish to the Trustee and the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

The Issuer may satisfy its obligations in this Section 4.3 by furnishing (A) the financial information and reports of any direct or indirect parent of the Issuer (including Burlington Stores, Inc. (or its successor)) that, directly or indirectly, holds all of the Capital Stock of the Issuer, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the certified independent accountants of such direct or indirect parent of the Issuer or (B) the financial information and reports of the Issuer (or any direct or indirect parent thereof (including Burlington Stores, Inc. (or its successor)), as applicable) filed with the Commission; *provided* that for any period when the financial information provided pursuant to clauses (A) or (B) is financial information of any direct or indirect parent of the Issuer and such parent owns any material assets other than the Issuer and its Subsidiaries or includes the results of any Unrestricted Subsidiary, the Issuer shall furnish, together with such financial information, a reasonably detailed explanation of the assets and results of operations included in such financial information that are attributable to such direct or indirect parent, the Issuer and the Issuer's Restricted Subsidiaries.

Delivery of reports, information and documents to the Trustee under this Indenture is for informational purposes only and the Trustee's receipt thereof shall not constitute actual or constructive notice of any information contained therein, or determinable from information contained therein, including our compliance with any of our covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

SECTION 4.4 Compliance Certificate.

The Issuer shall deliver to the Trustee, within 90 days after the end of each Fiscal Year beginning with the Fiscal Year ended February 1, 2021, an Officer's Certificate stating that a review of the activities of the Issuer and its Subsidiaries during the preceding Fiscal Year has been made under the supervision of the signing Officers with a view to determining whether each has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that, to the best of his or her knowledge, each entity has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuer is taking or proposes to take with respect thereto) and that, to the best of his or her knowledge, no event has occurred and remains in existence by reason of which payments on account of the principal of, premium, if any, or interest on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuer is taking or proposes to take with respect thereto.

The Issuer shall, so long as any of the Notes are outstanding, deliver to the Trustee, within 30 days after any Officer becoming aware of any Default or Event of Default that has occurred and is continuing, an Officer's Certificate specifying such Default or Event of Default, its status and what action the Issuer is taking or proposes to take in respect thereof.

SECTION 4.5 Taxes.

Each Notes Party will pay its taxes before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and such Notes Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (b) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, or (c) the failure to make payment, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 4.6 Stay, Extension and Usury Laws.

The Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.7 Limitation on Restricted Payments.

(a) No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, except:

(1) any Notes Party or any Restricted Subsidiary of a Notes Party may declare and pay Restricted Payments to a Notes Party or a Restricted Subsidiary that is the direct parent of such Restricted Subsidiary and a pro rata Restricted Payment to any third party in respect of non-wholly owned Restricted Subsidiaries;

(2) Restricted Payments made to Holdings or Parent (or any other direct or indirect parent of the Issuer) (w) to pay general corporate and overhead expenses incurred by Holdings, Parent or Burlington Stores, Inc. in the ordinary course of business, or the amount of any indemnification claims made by any director or officer of Holdings, Parent or Burlington Stores, Inc., (x) to pay franchise taxes and other fees, taxes and expenses required to maintain the corporate existence of Holdings, Parent or Burlington Stores, Inc. (or any other direct or indirect Parent of the Issuer), (y) to pay taxes that are due and payable by Holdings as the parent of a consolidated group that includes Parent and its Restricted Subsidiaries or (z) to make other payments that Holdings and Parent are not otherwise prohibited from making pursuant to this Indenture (including to pay fees and expenses in connection with unsuccessful equity (or debt offering) permitted by this Indenture);

(3) [Reserved];

(4) the Notes Parties and their Restricted Subsidiaries may make Restricted Payments consisting of Permitted Dispositions of the type described, and subject to the limitations contained, in the definition thereof;

(5) the Notes Parties and their Restricted Subsidiaries may make Restricted Payments constituting repurchases of Capital Stock in Holdings, Burlington Stores, Inc. or any Restricted Subsidiary (or distributions to Holdings or Burlington Stores, Inc. or any direct or indirect Parent of the Issuer for such purpose) in connection with the exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price of such option or warrants, *provided* that Restricted Payments made pursuant to this clause (5) shall not exceed $10,000,000 in any Fiscal Year of Holdings (with unused amounts from any Fiscal Year available for carry-forward to future Fiscal Years subject to a maximum amount of $20,000,000 in any Fiscal Year);

(6) [Reserved];

(7) on and after the Ratio Resumption Date, so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) the Consolidated Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder would be less than or equal to 3.5 to 1.0, any Notes Party or any Restricted Subsidiary may make any Restricted Payment;

(8) on and after the Ratio Resumption Date, so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) on a Pro Forma Basis the Consolidated Interest Coverage Ratio is at least 2.00 to 1.00 for the most recently ended period of four Fiscal Quarters for which financial statements have been or were required to be delivered hereunder, any Notes Party and any of its Restricted Subsidiaries may make any Restricted Payments from the portion of the Available Amount such Notes Party or such Restricted Subsidiary elects to apply pursuant to this clause (8);

(9) the Issuer and the Restricted Subsidiaries may declare and make Restricted Payments with respect to its Capital Stock payable solely in shares of Capital Stock of the Issuer that is not Disqualified Capital Stock;

(10) [Reserved];

(11) the Restricted Subsidiaries may make a Restricted Payment as consideration for the acquisition of additional Capital Stock in any Restricted Subsidiary from minority shareholders that are not Affiliates;

(12) Restricted Payments made (A) in respect of working capital adjustments or purchase price adjustments pursuant to any Permitted Acquisition or other Permitted Investments and (B) to satisfy indemnity and other similar obligations under Permitted Acquisitions or other Permitted Investments;

(13) Restricted Payments necessary to consummate Investments permitted pursuant to Section 4.18;

(14) the Issuer or any Restricted Subsidiary may make additional Restricted Payments to the extent that such Restricted Payments are in an amount equal to or less than the aggregate Net Proceeds received by the Issuer (or any parent entity) after August 13, 2014 from the issuance or sale of Capital Stock of the Issuer that is not Disqualified Capital Stock (or any parent entity) or proceeds of an equity contribution initially made to Parent, in each case to the extent such proceeds have been contributed to the common equity of the Issuer and have not been applied pursuant to (gg) of the definition of "Permitted Investments," clause (aa) of the definition of "Permitted Indebtedness" or utilized to also increase the Available Amount;

(15) the Notes Parties and the Restricted Subsidiaries may make Restricted Payments to Holdings (or any parent entity) to pay cash in lieu of fractional Capital Stock in connection with (a) any dividend, split or combination thereof or any Acquisition, Investment or other transaction otherwise permitted hereunder and (b) any conversion request by a holder of convertible Indebtedness (to the extent such conversion request is paid solely in shares of Capital Stock of Holdings (or any parent entity) that is not Disqualified Capital Stock);

(16) the Notes Parties and the Restricted Subsidiaries may make Restricted Payments to its direct or indirect parent to declare and pay regular quarterly dividends on its common stock (or similar Capital Stock of its direct or indirect parent) in an amount not to exceed 6% per year of the aggregate net cash proceeds of the initial public offering of such parent that were actually received by or contributed to the Capital Stock of the Issuer in or from such initial public offering;

(17) the Notes Parties and the Restricted Subsidiaries may make Restricted Payments consisting of Capital Stock in any Unrestricted Subsidiary, whether pursuant to a distribution, dividend or any other transaction not prohibited hereunder;

(18) the making of any Restricted Payment within 60 days after the date of declaration thereof, if at the date of such declaration such Restricted Payment would have complied with another provision of this Section 4.7; *provided* that the making of such Restricted Payment will reduce capacity for Restricted Payments pursuant to such other provision when so made;

(19) the Notes Parties and their Restricted Subsidiaries may make other Restricted Payments in an aggregate amount, when taken together with all other Restricted Payments made pursuant to this clause (19) not to exceed the greater of $50,000,000 and 2.0% of Consolidated Total Assets;

(20) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligations, in each case in connection with a Qualified Securitization Financing or a Receivables Facility;

(21) Restricted Payments to the Specified Captive Insurance Company (or to the direct or indirect parent of any Notes Party, the proceeds of which are promptly contributed or distributed, directly or indirectly, to the Specified Captive Insurance Company), in an aggregate amount not to exceed (A) in the twelve month period commencing on the date that the Specified Captive Insurance Company is formed, the greater of (x) $100,000,000 and (y) 4.0% of Consolidated Total Assets, and (B) in each twelve month period thereafter, the greater of (x) $35,000,000 and (y) 1.5% of Consolidated Total Assets; and

(22) distributions or payments to Holdings and/or Parent and/or any parent entity thereof, in order to pay principal, premium, if any, and interest in respect of the Intercompany Loan and, without duplication, the 2025 Convertible Notes.

(b) No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, make any voluntary payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Specified Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Specified Indebtedness, except:

(1) payments in Capital Stock (so long as no Change of Control would result therefrom) and payments of interest in-kind of the Notes Parties and their Restricted Subsidiaries;

(2) payments of regularly scheduled interest in respect of any Specified Indebtedness (subject to applicable subordination provisions relating thereto);

(3) prepayments in whole or in part of Indebtedness permitted to be incurred pursuant to clause (cc) of the definition of Permitted Indebtedness;

(4) prepayment in whole or in part of Specified Indebtedness from any refinancing of such Specified Indebtedness with the proceeds of (x) any equity securities issued or capital contributions received by any Notes Party (or direct or indirect parent of such Person) or any Restricted Subsidiary for the purpose of making such payment or prepayment and/or (y) other Indebtedness not prohibited hereunder;

(5) on and after the Ratio Resumption Date, so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) on a Pro Forma Basis the Consolidated Interest Coverage Ratio is at least 2.00 to 1.00 for the most recently ended period of four Fiscal Quarters for which financial statements have been or were required to be delivered hereunder, any Notes Party and any of its Restricted Subsidiaries may make payments in respect of Specified Indebtedness from the portion of the Available Amount such Notes Party or such Restricted Subsidiary elects to apply pursuant to this clause (5);

(6) refinancings, replacements and renewals of Specified Indebtedness to the extent permitted under this Indenture;

(7) AHYDO catch-up payments relating to Permitted Indebtedness of the Issuer and its Restricted Subsidiaries;

(8) any such payments or other distributions in an amount not to exceed the greater of $50,000,000 and 2.0% of Consolidated Total Assets; and

(9) on and after the Ratio Resumption Date, so long as (x) no Event of Default has occurred and is continuing or would result therefrom and (y) on a Pro Forma Basis, the Consolidated Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been or are then required to have been delivered hereunder would be less than or equal to 3.5 to 1.0, any Notes Party or any Restricted Subsidiary may make any payment on Specified Indebtedness.

SECTION 4.8 Restrictive Agreements.

(a) No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Notes Party to create, incur or permit to exist any Lien upon any of its property or assets in favor of the Collateral Agent to secure Notes Obligations then outstanding or (b) the ability of any Restricted Subsidiary thereof to pay dividends or other distributions with respect to any shares of its Capital Stock to such Notes Party or to make or repay loans or advances to a Notes Party or to guarantee Indebtedness of the Notes Parties, *provided* that:

(1) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law, by any Notes Document, by any documents related to the Term Loan Facility (including intercreditor agreements), by any documents in existence on the Issue Date or under any documents relating to joint ventures of any Notes Party to the extent that such joint ventures are not prohibited hereunder and any Permitted Refinancing thereof;

(2) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of assets or equity permitted hereunder by a Notes Party or a Restricted Subsidiary pending such sale, *provided* such restrictions and conditions apply only to the assets of the Notes Party or Restricted Subsidiary that are to be sold and such sale is permitted hereunder;

(3) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Indenture if such restrictions or conditions apply only to the property or assets securing such Indebtedness;

(4) the foregoing shall not apply to customary provisions in contracts or leases restricting the assignment, subleasing, sublicensing or transfer thereof;

(5) the foregoing shall not apply to any document related to the ABL Facility (including any intercreditor agreements);

(6) the foregoing shall not apply to licenses or contracts which by the terms of such licenses and contracts prohibit the granting of Liens on the rights contained therein;

(7) the foregoing shall not apply to any restrictions in existence prior to the time any such Person became a Subsidiary (or was designated a Restricted Subsidiary) and not created in contemplation of any such acquisition (or designation);

(8) in the case of restrictions of a type described in clause (b) above, the foregoing shall not apply to any restrictions in Indebtedness so long as such restrictions are not (I) materially more onerous, taken as a whole, to the Issuer and its Subsidiaries than the terms of this Indenture or (II) either (X) the Issuer determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, any Issuer's ability to make principal or interest payments required hereunder or (Y) such encumbrance or restriction applies only during the continuance of a default relating to such agreement or instrument;

(9) other agreements evidencing Indebtedness permitted by Section 4.9 *provided* that in each case under this clause (9) such restrictions or conditions (x) apply solely to a Restricted Subsidiary that is not a Notes Party, (y) are no more restrictive than the restrictions or conditions set forth in the Notes Documents, or (z) do not materially impair the Issuer's ability to pay their respective obligations under the Notes Documents as and when due (as determined in good faith by the Issuer);

(10) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale, *provided* that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder (or is reasonably expected to be permitted); (A) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the sale, transfer or other disposition of all or substantially all of the Capital Stock or assets of such Subsidiary or (B) restrictions on transfers of assets subject to Liens permitted by Section 4.12 (but, with respect to any such Lien, only to the extent that such transfer restrictions apply solely to the assets that are the subject of such Lien);

(11) customary provisions in shareholders agreements, joint venture agreements, organizational or constitutive documents or similar binding agreements relating to any joint venture or non-wholly-owned Restricted Subsidiary and other similar agreements applicable to joint ventures and non-wholly-owned Restricted Subsidiaries and applicable solely to such joint venture or non-wholly-owned Restricted Subsidiary and the Capital Stock issued thereby;

(12) any restrictions on cash or other deposits imposed by agreements entered into in the ordinary course of business;

(13) arise in connection with cash or other deposits permitted under Section 4.12 and Section 4.18;

(14) are restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(15) restrictions created in connection with any Qualified Securitization Financing.

SECTION 4.9 Indebtedness and Other Obligations.

(a) No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except Permitted Indebtedness.

(b) For purposes of determining compliance with this Section 4.9 in the event that an item of Indebtedness (or any portion thereof) at any time meets the criteria of more than one of the categories described in "Permitted Indebtedness," or is entitled to be incurred pursuant to multiple clauses in the definition of "Permitted Indebtedness," the Issuer, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such item of Indebtedness (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness in one of such clauses. Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest, premium, if any, fees or expenses, in the form of additional Indebtedness, Disqualified Capital Stock or preferred stock shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 4.9.

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

SECTION 4.10 Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale (including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law) except in compliance with this Section 4.10.

In the case of an Asset Sale of assets with a fair market value in excess of $20,000,000:

(1) the Issuer (or such Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale as determined in good faith by the Issuer) of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents.

(b) For purposes of Section 4.10(a)(2), the amount of (i) any liabilities (as shown on the Issuer's or the applicable Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Issuer or any Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Notes or the Guarantees) that are assumed by the transferee of any such assets and from which the Issuer and all Restricted Subsidiaries have been validly released or indemnified by all creditors in writing or which have been canceled, terminated or extinguished in such Asset Sale, (ii) any securities received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale, (iii) any assets described in Section 4.10(c)(4), and (iv) any Designated Noncash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate fair market value (as determined in good faith by the Issuer), taken together with all other Designated Noncash Consideration received pursuant to this clause (iv) that is at that time outstanding, not to exceed the greater of (x) $35,000,000 and (y) an amount equal to 1.5% of Consolidated Total Assets of the Issuer on the date on which such Designated Noncash Consideration is received (with the fair market value of each item of Designated Noncash Consideration being measured at the time received without giving effect to subsequent changes in value), shall be deemed to be cash for purposes of this paragraph and for no other purpose.

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

(1) to repay ABL Secured Obligations to the extent required by the ABL Credit Agreement;

(2) to repay, redeem, repurchase or otherwise acquire or retire the Notes through (x) open market purchases (to the extent such purchases are at or above 100% of the principal amount of the Notes), (y) as provided under Section 3.7 or (z) by making an Asset Sale Offer;

(3) to the extent such Net Proceeds do not constitute proceeds from an Asset Sale of Collateral, to repay, redeem, repurchase or otherwise acquire or retire Indebtedness of a Restricted Subsidiary that is not a Guarantor; or

(4) to an investment in (i) any one or more Permitted Businesses; *provided* that such investment in any Permitted Businesses is in the form of the acquisition of Capital Stock and results in the Issuer or a Restricted Subsidiary owning an amount of the Capital Stock of such business such that such business constitutes a Restricted Subsidiary, (ii) capital expenditures, and (iii) other properties and assets used or useful in any of the Notes Parties' or Restricted Subsidiaries' business, including to replace, restore or repair the assets in respect of which such Net Proceeds were received.

(d) Any Net Proceeds from an Asset Sale not applied or invested in accordance with the preceding paragraph within 365 days from the date of the receipt of such Net Proceeds shall constitute "*Excess Proceeds*"; *provided* that if during such 365-day period the Issuer or a Restricted Subsidiary enters into a definitive binding agreement committing it to apply such Net Proceeds in accordance with the requirements of Sections 4.10(c)(4) after such 365th day, such 365-day period will be extended with respect to the amount of Net Proceeds so committed for a period not to exceed 180 days until such Net Proceeds are required to be applied in accordance with such agreement (or, if earlier, until termination of such agreement).

(e) When the aggregate amount of Excess Proceeds exceeds $50,000,000, the Issuer or the applicable Restricted Subsidiary will make an offer (an "*Asset Sale Offer*") to all Holders, *provided*, *however*, with such adjustments so that no Notes are purchased in part in an unauthorized denomination, the maximum principal amount of the Notes that may be purchased out of the Excess Proceeds. The offer price for the Notes in any Asset Sale Offer will be equal to 100% of principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase, and will be payable in cash.

(f) Pending the final application of any Net Proceeds, the Issuer or the applicable Restricted Subsidiary may temporarily reduce revolving credit borrowings or otherwise invest or apply the Net Proceeds in any manner that is not prohibited by this Indenture.

(g) If any Excess Proceeds remain after consummation of an Asset Sale Offer (such remaining Excess Proceeds, the "*Declined Proceeds*"), the Issuer or the applicable Restricted Subsidiary may use those Declined Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Excess Proceeds shall be allocated among the Notes to be purchased on a pro rata basis, by lot to the extent practicable or by such other method in accordance with the applicable procedures of DTC on the basis of the aggregate principal amount of tendered Notes; *provided* that no Notes will be selected and purchased in an unauthorized denomination. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(h) The Issuer or the applicable Restricted Subsidiary will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, the Issuer or the applicable Restricted Subsidiary will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of this Indenture by virtue of such conflict.

SECTION 4.11 Limitation on Transactions with Affiliates.

No Notes Party will, nor will it permit any of its Restricted Subsidiaries to sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates in each case with a fair market value in excess of $5,000,000, except:

(1) transactions that are at prices and on terms and conditions, taken as a whole, not less favorable to such Notes Party or Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;

(2) transactions between or among the Notes Parties and their Restricted Subsidiaries not otherwise prohibited by this Indenture;

(3) compensation (including bonuses) and employee benefit arrangements paid to, indemnities provided for the benefit of, and employment and severance arrangements entered into with, directors, officers, managers, consultants or employees of Parent, Holdings (or any parent entity), the Issuer or their Subsidiaries in the ordinary course of business, including in connection with any transaction permitted by this Indenture;

(4) [Reserved];

(5) payments made or performance under any agreement as in effect on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this Section 4.11 or to the extent not more disadvantageous to the Notes Secured Parties in any material respect (taken as a whole);

(6) [Reserved];

(7) payment of director's fees, expenses and indemnities;

(8) stock option, stock incentive, equity, bonus and other compensation plans of the Notes Parties and their Restricted Subsidiaries;

(9) employment contracts with officers, management and consultants of the Notes Parties and their Restricted Subsidiaries;

(10) Restricted Payments to the extent specifically permitted by this Indenture;

(11) advances and loans to officers and employees of the Notes Parties and their Restricted Subsidiaries to the extent specifically permitted by this Indenture;

(12) Investments consisting of notes from officers, directors and employees to purchase equity interests to the extent specifically permitted by this Indenture;

(13) payments pursuant to the tax sharing agreements among the Notes Parties and their Restricted Subsidiaries to the extent attributable to the ownership or operations of Holdings and its Restricted Subsidiaries and to the extent permitted under Section 4.7(a)(2);

(14) other transactions with Affiliates specifically permitted by this Indenture (including, without limitation, sale/leaseback transactions, Permitted Dispositions, Restricted Payments, Permitted Investments and Indebtedness);

(15) [Reserved];

(16) transactions between and among the Issuer and its Subsidiaries which are in the ordinary course of business and transactions between the Issuer, Parent and its direct or indirect shareholders in the ordinary course of business with respect to the Capital Stock of Parent (or any direct or indirect parent entity), such as shareholder agreements, registration agreements and including providing expense reimbursement and indemnities in respect thereof;

(17) any transaction between or among the Issuer or any Restricted Subsidiary and any Affiliate of the Issuer or a joint venture or similar entity that would constitute an Affiliate transaction solely because the Issuer or a Restricted Subsidiary owns Capital Stock in or otherwise controls such Affiliate, joint venture or similar entity; and

(18) transactions in which the Issuer or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an independent financial advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 4.11(1).

SECTION 4.12 Limitation on Liens.

No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except Permitted Encumbrances. For purposes of determining compliance with this Section 4.12 in the event that a Lien (or any portion thereof) at any time meets the criteria of more than one of the categories described in "Permitted Encumbrances" or is entitled to be incurred pursuant to multiple clauses in the definition of "Permitted Encumbrances," the Issuer, in its sole discretion, may classify or reclassify (or later divide, classify or reclassify) such Lien (or any portion thereof) and shall only be required to include the amount and type of such Lien in one of such clauses.

SECTION 4.13 RESERVED.

SECTION 4.14 Offer to Purchase upon Change of Control.

If a Change of Control occurs, unless the Issuer at such time has given notice of redemption under Section 3.7 with respect to all outstanding Notes, or shall have effected a legal defeasance or covenant defeasance under Section 8.4 or a discharge of this Indenture under Section 8.8 and subject to the fifth succeeding paragraph below, the Issuer will make an offer (the "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased, to, but excluding, the date of purchase (the "*Change of Control Payment*"). Within 30 days following any Change of Control, or, at the Issuer's option prior to the date of consummation of any Change of Control but after public announcement of the Change of Control, the Issuer will mail or send (or in the case of holders of book-entry interests, transmit electronically in accordance with the applicable procedures of DTC) a notice to each Holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the date specified in the notice (the "*Change of Control Payment Date*"), which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed or transmitted, pursuant to the procedures required by this Indenture and described in such notice.

The notice shall state, if so mailed or transmitted prior to the date of consummation of the Change of Control, that the offer to repurchase the Notes is conditioned on the Change of Control occurring on or prior to the Change of Control Payment Date specified in the notice; *provided*, that if a conditional Change of Control Offer is made, the Change of Control Payment Date may be delayed, in the Issuer's discretion, until such time as such Change of Control shall have occurred, or if such Change of Control shall not have occurred by the applicable Change of Control Payment Date (whether the original Change of Control Payment Date or the Change of Control Payment Date so delayed), then such Change of Control Offer may be rescinded by the Issuer.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of this Indenture by virtue of such conflict.

On the date of such Change of Control Payment, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered (and not withdrawn) pursuant to the Change of Control Offer;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes so accepted for payment; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted for payment together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuer.

The paying agent will promptly mail or send (or in the case of holders of book-entry interests, transmit electronically in accordance with the applicable procedures of DTC) to each Holder properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail or send (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if (i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer or (ii) a notice of redemption has been given pursuant to Section 3.7 of this Indenture unless and until there is a default in the payment of the applicable redemption price.

The provisions under this Indenture relating to the Issuer's obligation to make an offer to repurchase the Notes as a result of a Change of Control, including the definition of "Change of Control," may be waived or modified at any time with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding.

SECTION 4.15 Corporate Existence.

Each Notes Party will do all things necessary to comply with its organizational documents in all material respects, and to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except, in each case to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect; provided, however, that the foregoing shall not prohibit any asset sale, merger, consolidation, liquidation, disposition or dissolution permitted under Section 4.10, Section 4.14 and Article V.

SECTION 4.16 Designation of Subsidiaries.

(a) Subject to clause (b) below, the Board of Directors of the Issuer may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary. The designation of any Restricted Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Issuer therein at the date of designation in an amount equal to the fair market value of the Issuer's Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time. Upon any such designation (but without duplication of any amount reducing such Investment in such Unrestricted Subsidiary pursuant to the definition of "Investment" included in the Available Amount), the Issuer and/or the applicable Restricted Subsidiaries shall receive a credit against the applicable clause in the definition of "Permitted Investments" that was utilized for the Investment in such Unrestricted Subsidiary for the fair market value of such Restricted Subsidiary at such time. Upon any designation of a Subsidiary as an Unrestricted Subsidiary, notwithstanding anything in any Notes Document to the contrary, the Guarantee of such Subsidiary, and any Liens on the assets of such Subsidiary shall be automatically released.

(b) The Issuer may not (x) designate any Restricted Subsidiary as an Unrestricted Subsidiary or (y) designate an Unrestricted Subsidiary as a Restricted Subsidiary, in each case unless no Event of Default exists or would result therefrom.

(c) Any such designation by the Board of Directors of the Issuer shall be notified by the Issuer to the Trustee by delivering to the Trustee a copy of the board resolution giving effect to such designation and an Officer's Certificate certifying that such designation complies with this Section 4.16.

SECTION 4.17 Additional Guarantees.

If any Domestic Subsidiary of the Issuer guarantees or becomes a borrower in respect of the obligations under the ABL Credit Agreement or the Term Loan Agreement or any other facility evidencing Term Loan/Notes Secured Obligations, the Issuer shall, within thirty (30) Business Days after such Domestic Subsidiary guarantees or becomes a borrower in respect of the obligations under the ABL Credit Agreement, Term Loan Agreement or any other facility evidencing Term Loan/Notes Secured Obligations, notify the Trustee in writing thereof and promptly cause such Domestic Subsidiary to (i) execute and deliver a supplemental indenture to this Indenture providing for a Guarantee by such Domestic Subsidiary, (ii) execute and deliver a supplement or joinder to the Collateral Documents or new Collateral Documents and (iii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates necessary in order to create the Liens intended to be created by the Collateral Documents and to perfect such Liens to the extent required by, and with the priority required by, the Collateral Documents.

Each Guarantee shall be released in accordance with Section 11.6.

SECTION 4.18 Investments, Guarantees and Acquisitions.

No Notes Party will, nor will it permit any of its Restricted Subsidiaries to, make or permit to exist any Investment, except Permitted Investments.

SECTION 4.19 Further Instruments and Acts.

The Issuer shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture and the other Notes Documents, or as it may be reasonably requested by the Trustee or the Collateral Agent.

SECTION 4.20 Suspension of Covenants.

(a) During any period of time after the Issue Date that (i) the Notes are rated Investment Grade by at least two Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), the Issuer and its Restricted Subsidiaries will not be subject to Sections 4.7, 4.8, 4.9, 4.10, 4.11, 4.17 (but only with respect to any Person that is required to become a Guarantor during the Suspension Period), 4.18 and 5.1(a)(4) (collectively, the "*Suspended Covenants*").

(b) During any Suspension Period, the Issuer may not designate any of its Restricted Subsidiaries as Unrestricted Subsidiaries pursuant to Section 4.16.

(c) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the foregoing, and on any subsequent date (the "*Reversion Date*") the condition set forth in Section 4.20(a)(i) is no longer satisfied, then the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events. The period of time between the date of the Covenant Suspension Event and the Reversion Date is a "*Suspension Period*."

On each Reversion Date, all Indebtedness incurred during the Suspension Period prior to such Reversion Date will be deemed to be Indebtedness permitted to be incurred under clause (b) of the definition of Permitted Indebtedness. For purposes of calculating the Available Amount, calculations shall be made as though Section 4.7 and Section 4.18 had been in effect during the entire period of time after the Issue Date (including the Suspension Period). Restricted Payments made during the Suspension Period not otherwise permitted pursuant to Section 4.7 will reduce the Available Amount. If during a Suspension Period any Domestic Subsidiary of the Issuer guarantees or becomes a borrower in respect of obligations under the ABL Credit Agreement or the Term Loan Agreement or any other facility evidencing Term Loan/Notes Secured Obligations such that, but for the Covenant Suspension Event, such Domestic Subsidiary would have been required to guarantee the Notes pursuant to Section 4.17 then, within thirty (30) days after the Reversion Date, the Issuer shall cause such Domestic Subsidiary to comply with Section 4.17.

The Trustee shall have no obligation to monitor the ratings of the Notes or independently determine or verify if a Covenant Suspension Event or Reversion Date has occurred or notify the Holders of any Covenant Suspension Event or Reversion Date.

SECTION 4.21 Post-Closing Collateral Matters.

(a) Not later than one hundred eighty (180) days after the Issue Date or as soon as practicable thereafter using commercially reasonable efforts, for each of the Mortgaged Properties, the Collateral Agent and Initial Purchasers shall have received each of the documents or evidence of completion of the actions set forth in clauses (1) through (6) below with respect to each Mortgaged Property, provided that the properties set forth in clause (m) of the definition of "Permitted Dispositions" will only constitute Mortgaged Property if such properties (a) have not been sold or transferred to a Person (other than the Issuer or a Guarantor) prior to the date that is one year after the Issue Date and (b) are not subject to a binding contract to be sold to a Person (other than the Issuer or a Guarantor) on the date that is one year after the Issue Date (and to the extent the transaction is not consummated or the sale does not close pursuant to such binding contract, such properties will constitute Mortgaged Property). For the avoidance of doubt, any delays due directly or indirectly to the COVID-19 pandemic shall be taken into account for purposes of determining commercially reasonable efforts in this Section 4.21.

(1) Mortgages. One or more counterparts of a Mortgage, duly executed and acknowledged by the owner of such fee or leasehold interest in such Mortgaged Property, in favor of the Collateral Agent for its benefit and the benefit of the Notes Secured Parties, in proper form for recording in the land records in the jurisdiction in which such Mortgaged Property is located, in form and substance reasonably satisfactory to the Initial Purchasers and the Collateral Agent and shall otherwise be in all material respects in the form of mortgage delivered in connection with the Term Loan Agreement, and sufficient to create a valid and enforceable mortgage lien on such Mortgaged Property in favor of the Collateral Agent for its benefit and the benefit of the Notes Secured Parties, subject only to Permitted Encumbrances and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles, and *pari passu* with the mortgage or deed of trust securing the obligations under the Term Loan Facility; *provided*, however that, notwithstanding the generality of the foregoing or anything else in this Indenture to the contrary, with respect to a Mortgage of leasehold interests in a Mortgaged Property, the obligation to deliver such leasehold Mortgage shall be subject to the Issuer obtaining all necessary consents from the applicable landlord to grant such leasehold Mortgage (and the Issuer will use commercially reasonable efforts to obtain such consent).

(2) Title Insurance. A lender's policy of title insurance (or commitment to issue such a policy having the effect of a policy of title insurance) issued by a nationally recognized title insurance company reasonably acceptable to the Initial Purchasers (the "*Title Company*") insuring (or committing to insure) the lien of the applicable Mortgage as valid and enforceable mortgage lien on the Mortgaged Property described therein (each, a "*Title Policy*") which insures that such Mortgage creates a valid and enforceable first priority mortgage lien on such Mortgaged Property free and clear of all defects and encumbrances except Permitted Encumbrances and such Title Policies shall otherwise be in all material respects in the form of the title insurance policies delivered in connection with the Term Loan Agreement or as otherwise reasonably satisfactory to the Initial Purchasers.

(3) Leasehold Real Property Documents. A landlord consent, estoppel and recognition agreement executed by each of the lessors of the leased Mortgaged Properties, along with (a) a memorandum of lease in recordable form with respect to such leasehold interest, executed and acknowledged by the owner of the affected real estate, as lessor, or (b) evidence that the applicable lease with respect to such leasehold interest or a memorandum thereof has been recorded in all places necessary or desirable to give constructive notice to third-party purchasers of such leasehold interest, or (c) if such leasehold interest 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 and Title Company; *provided*, however, if, with respect to any leased Mortgaged Property, the Issuer or applicable Guarantor cannot obtain a landlord consent, estoppel and recognition agreement upon using commercially reasonable efforts, the Issuer or applicable Guarantor shall provide an Officer's Certificate to the Trustee and Collateral Agent certifying as to the use of such efforts.

(4) Survey. A new ALTA survey, surveys using aerial mapping techniques, or other forms of maps (or an existing survey or a map together with a no-change affidavit and any additional documentation reasonably required by the Title Company) of each owned Mortgaged Property in such form as shall be reasonably required by the Title Company to issue, in all material respects, the endorsements that were provided in connection with the Term Loan Agreement for such owned Mortgaged Property and to remove the standard survey exceptions from the Title Policy with respect to such Mortgaged Property, to the extent removed in connection with the Term Loan Agreement.

(5) Counsel Opinions. Opinions addressed to the Initial Purchasers and the Collateral Agent for its benefit and for the benefit of the Notes Secured Parties, substantially similar to those delivered in connection with the Term Loan Agreement or otherwise in form and substance reasonably satisfactory to the Initial Purchasers and the Collateral Agent.

(6) Real Property Collateral Fees and Expenses. Evidence reasonably satisfactory to the Initial Purchasers and the Collateral Agent of payment by the Issuer of all Title Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages, fixture filings and other documents and issuance of the Title Policies contemplated by clause (2) above.

(b) Within sixty (60) days after the Issue Date or as soon as practicable thereafter using commercially reasonable efforts, the Issuer shall deliver to the Collateral Agent insurance certificates and endorsements in form and substance substantially consistent with the certificates and endorsements delivered to the Term Loan Collateral Agent pursuant to the Term Loan Agreement naming the Collateral Agent for its benefit and the benefit of the Notes Secured Parties, as loss payee on property and casualty insurance policies and as an additional insured on all general liability policies maintained by Parent or any of its direct or indirect Subsidiaries.

ARTICLE V

SUCCESSORS

SECTION 5.1 Merger, Consolidation or Sale of Assets.

(a) The Issuer may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Issuer is the surviving corporation); or (2) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to another Person (including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law); unless:

(1) (A) the Issuer is the surviving Person; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is a corporation or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia (the Issuer or such Person, including the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made, as the case may be, being herein called the "*Successor Issuer*");

(2) the Successor Issuer (if other than the Issuer) assumes, by supplemental indenture, all the obligations of the Issuer under the Notes and this Indenture and shall, pursuant to joinders or supplements to the Collateral Documents, take such action as may be required to assume the obligations of the Issuer thereunder and to perfect or maintain the perfection of the Liens securing the Term Loan/Notes Secured Obligations;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if the same had occurred at the beginning of the applicable four-quarter period, either (a) the Successor Issuer would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Interest Coverage Ratio test set forth in clause (y)(iii) of the definition of "Permitted Indebtedness" or (b) the Consolidated Interest Coverage Ratio for the Successor Issuer and its Restricted Subsidiaries would be greater than or equal to such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction; and

(5) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture comply with this Indenture and all conditions precedent to the execution and deliver of such supplemental indenture, if any, comply with this Indenture.

(b) For purposes of this Section 5.1, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Restricted Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Restricted Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, shall be deemed to be the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of the Issuer.

(c) The predecessor company will be released from its obligations under this Indenture and the Successor Issuer will succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture, but, in the case of a lease of all or substantially all its assets, the predecessor will not be released from the obligation to pay the principal of and interest on the Notes.

(d) Notwithstanding the foregoing, Section 5.1(a)(3) and (4) will not be applicable to (1) any Restricted Subsidiary consolidating with, merging into or selling, assigning, transferring, conveying, leasing or otherwise disposing of all or part of its properties and assets to the Issuer or to another Restricted Subsidiary and (2) the Issuer merging with an Affiliate solely for the purpose of converting or reincorporating the Issuer, as the case may be, in or to another jurisdiction.

(e) Subject to the provisions described under Section 11.6 providing for the release of the Guarantee of a Guarantor, no Guarantor will consolidate with or merge with or into another Person or sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of its properties or assets to any Person unless:

(1) the other Person is the Issuer or another Guarantor; or

(2) (1) either (x) a Guarantor is the surviving Person or (y) the Person formed by or surviving any such consolidation or merger or to or which such sale, assignment, transfer, conveyance, lease or other disposition has been made is a corporation nor limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia and expressly assumes all of the obligations of the Guarantor under its Guarantee of the Notes, this Indenture and the Collateral Documents and shall pursuant to a supplemental indenture and joinders or supplements to the Collateral Documents take such action as may be required to assume the obligations of the Issuer thereunder and to perfect or maintain the perfection of the Liens securing the Term Loan/Notes Secured Obligations and (2) immediately after giving effect to the transaction, no Default has occurred and is continuing; or

(3) the transaction does not violate the provisions under Section 4.10.

(f) Notwithstanding the foregoing, clause (e)(2) will not be applicable to a Guarantor merging with an Affiliate solely for the purpose of converting or reincorporating such Guarantor in or to another jurisdiction.

(g) This Section 5.1 will not apply to a sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Issuer and its Restricted Subsidiaries.

SECTION 5.2 Successor Corporation Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer in accordance with Section 5.1 hereof, the successor corporation formed by such consolidation or into or with which the Issuer is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the "*Issuer*" shall refer instead to the successor corporation and not to the Issuer), and shall exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.1 Events of Default.

Each of the following constitutes an "*Event of Default*":

(1) the Issuer defaults in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(2) the Issuer defaults in the payment when due of interest on or with respect to the Notes and such default continues for a period of 30 days;

(3) the Issuer defaults in the performance of, or breaches any covenant or other agreement contained in, this Indenture (other than a default in the performance or breach of a covenant, warranty or agreement which is specifically dealt with in clauses (1) or (2) above) and such default or breach continues for a period of 60 days (or 90 days in the case of Section 4.3) after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes;

(4) a default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Issuer or any Restricted Subsidiary or the payment of which is guaranteed by the Issuer or any Restricted Subsidiary (other than Indebtedness owed to the Issuer or a Restricted Subsidiary), whether such Indebtedness or guarantee now exists or is created after the Issue Date, if (A) such default either (1) results from the failure to pay any such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or (2) relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity and (B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness, each case that is in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $75,000,000 (or its foreign currency equivalent) or more at any one time outstanding;

(5) the failure by the Issuer or any Significant Subsidiary to pay final judgments aggregating in excess of $75,000,000 (other than any judgments covered by indemnities or insurance policies issued by reputable and creditworthy companies), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after the applicable judgment becomes final;

(6) the Guarantee of a Significant Subsidiary that is a Guarantor or any group of Subsidiaries that are Guarantors and that, taken together as of the date of the most recent audited financial statements of the Issuer, would constitute a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms hereof) or any Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee(s), other than by reason of the release of the Guarantee(s) in accordance with the terms of this Indenture, and such Default continues for 30 days; or

(7) (i) any Lien purported to be created under any Collateral Document shall cease to be, or shall be asserted by the Issuer or any Guarantor not to be, a valid and perfected Lien on any material amount of Collateral, in each case for any reason other than (A) in accordance with the terms of this Indenture or the terms of any Collateral Document or (B) as a result of the sale or other disposition of the applicable Collateral to a Person that is not the Issuer or a Guarantor in a transaction not prohibited under this Indenture, or (ii) the Issuer or any Guarantor shall contest the validity or enforceability of its obligations under any Collateral Document in writing or deny in writing that it has any further liability under any Collateral Document to which it is a party.

(8) (i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Notes Party or its debts, or of a substantial part of its assets, under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Notes Party or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(ii) any Notes Party shall:

(a) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under the Bankruptcy Code or any other federal, state, provincial or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect,

(b) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 6.1(8)(i),

(c) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Notes Party or for a substantial part of its assets,

(d) file an answer admitting the material allegations of a petition filed against it in any such proceeding,

(e) make a general assignment for the benefit of creditors, or

(f) take any corporate action for the purpose of authorizing any of the foregoing.

Notwithstanding the foregoing, a default under clauses (3), (4) or (7) above will not constitute an Event of Default until the Trustee or Holders of 25% in principal amount of Notes notify the Issuer in writing (with a copy to the Trustee, if given by the Holders) of the default and, with respect to clause (3), if the Issuer does not cure such default within the time specified in clause (3) after receipt of such notice.

SECTION 6.2 Acceleration.

If an Event of Default (other than an Event of Default specified in clause (8) above with respect to the Issuer) shall occur and be continuing, then and in every such case the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable by a notice in writing to the Issuer and the Trustee specifying the respective Event of Default and that it is a “notice of acceleration,” and the same shall become immediately due and payable. Upon such declaration of acceleration, the aggregate principal of and accrued and unpaid interest on the outstanding Notes shall immediately become due and payable. After such acceleration, but before a judgment or decree based on acceleration, the Holders of a majority in aggregate principal amount of such outstanding Notes may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal of or interest on such Notes, have been cured or waived as provided in this Indenture.

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;

(4) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and

(5) in the event of the cure or waiver of an Event of Default of the type described in clause (8) of Section 6.1, the Trustee shall have received an Officer's Certificate and an opinion of counsel that such Event of Default has been cured or waived.

No such rescission shall affect any subsequent Default or amend any contractual right consequent thereto.

In the event of any Event of Default specified in clause (4) of Section 6.1, such Event of Default and all consequences thereof (excluding, however, any resulting payment default) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose the Issuer delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or otherwise satisfied or otherwise is no longer outstanding or (y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Notes as described above be annulled, waived or rescinded upon the happening of any such events.

If an Event of Default specified in clause (8) above with respect to the Issuer occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

SECTION 6.3 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any contractual right or remedy accruing upon an Event of Default shall not amend the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.4 Waiver of Past Defaults.

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (other than as a result of an acceleration), which shall require the consent of all of the Holders of the Notes then outstanding.

SECTION 6.5 Control by Majority.

Subject to the Intercreditor Agreements, the Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Collateral Agent or exercising any trust power conferred on the Trustee or the Collateral Agent, as the case may be. However, (i) the Trustee and the Collateral Agent, as the case may be, may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee or the Collateral Agent determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee or the Collateral Agent in personal liability, and (ii) the Trustee and the Collateral Agent, as the case may be, may take any other action deemed proper by the Trustee or the Collateral Agent which is not inconsistent with such direction. Notwithstanding any provision to the contrary in this Indenture, neither the Trustee nor the Collateral Agent is under any obligation to exercise any of its rights or powers under this Indenture, the Collateral Documents or the Intercreditor Agreements at the request of any Holder, unless such Holder shall offer, and if requested, provide to the Trustee and the Collateral Agent, as the case may be, security and indemnity satisfactory to each of them against any loss, liability or expense.

SECTION 6.6 Limitation on Suits.

A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

(a) the Holder gives to the Trustee written notice of a continuing Event of Default or the Trustee receives such notice from the Issuer;

(b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer and, if requested, provide to the Trustee indemnity or security reasonably satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of such indemnity or security; and

(e) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.7 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the contractual right of any Holder to receive payment of principal, premium, if any, and interest on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be amended without the consent of such Holder.

SECTION 6.8 Collection Suit by Trustee.

If an Event of Default specified in Section 6.1(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.9 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel), the Collateral Agent (including any claim for reasonable compensation, expenses, disbursements and advances of the Collateral Agent, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other securities or property payable or deliverable upon the conversion or exchange of the Notes or on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Collateral Agent any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their respective agents and counsel, and any other amounts due the Trustee and Collateral Agent under Section 7.7 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their respective agents and counsel, and any other amounts due the Trustee or Collateral Agent under Section 7.7 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee or the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 Priorities.

Subject to the terms of the Collateral Documents and the Intercreditor Agreements with respect to any proceeds of Collateral, if the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money and property in the following order:

FIRST: to the Trustee, the Collateral Agent, their respective agents and attorneys for amounts due under Section 7.7 hereof, including payment of all reasonable compensation, expense and liabilities incurred, and all advances that may have been made, by the Trustee and the Collateral Agent and the costs and expenses of collection;

SECOND: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively;

THIRD: without duplication, to the Holders for any other Obligations owing to the Holders under this Indenture, the Notes, the Guarantees or the Collateral Documents; and

FOURTH: to the Issuer or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

SECTION 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE VII

TRUSTEE AND COLLATERAL AGENT

SECTION 7.1 Duties of Trustee

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture or the other Notes Documents against the Trustee; and

(ii) in the absence of gross negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee under this Indenture, the Notes and the other Notes Documents, as applicable. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions furnished to it to determine whether they conform to the requirements of this Indenture, the Notes and the other Notes Documents as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) Neither the Trustee nor the Collateral Agent may be relieved from liabilities for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct as determined by a final order of a court of competent jurisdiction, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.1;

(ii) neither the Trustee nor the Collateral Agent shall be liable for any error of judgment made in good faith by an officer of the Trustee or Collateral Agent, unless it is proved that the Trustee or the Collateral Agent was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee or Collateral Agent is subject to paragraphs (a), (b), (c) and (e) of this Section 7.1.

(e) No provision of this Indenture or the Notes Documents shall require the Trustee or the Collateral Agent to expend or risk its own funds or incur any liability.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee or Collateral Agent need not be segregated from other funds except to the extent required by law. None of the Trustee, the Collateral Agent or the other Agent shall be liable for interest on any money received by it except as the Trustee, the Collateral Agent and the Agents may agree in writing with the Issuer.

SECTION 7.2 Rights of Trustee and the Collateral Agent.

(a) The Trustee and the Collateral Agent may conclusively rely and shall be fully protected in acting or refraining from acting on any document (whether in original, facsimile or other electronic form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee and the Collateral Agent need not investigate any fact or matter stated in the document. The Trustee and Collateral Agent, if applicable, shall receive and retain financial reports and statements of the Issuer as provided herein, but shall have no duty to review or analyze such reports or statements to determine compliance with covenants or other obligations of the Issuer.

(b) Before the Trustee or the Collateral Agent acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. Neither the Trustee nor the Collateral Agent shall be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. Prior to taking, suffering or admitting any action, the Trustee and the Collateral Agent, as applicable, may consult with counsel of the Trustee's or the Collateral Agent's, as applicable, own choosing and the Trustee and the Collateral Agent shall be fully protected from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in conclusive reliance on the advice or opinion of such counsel.

(c) Each of the Trustee and the Collateral Agent may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) Neither the Trustee nor the Collateral Agent shall be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture or the other Notes Documents. Any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Officer's Certificate. Whenever in the administration of this Indenture or the other Notes Documents the Trustee or the Collateral Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee and Collateral Agent (unless other evidence be herein specifically prescribed) may, in the absence of gross negligence on its part, conclusively rely upon an Officer's Certificate.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer or a Guarantor shall be sufficient if signed by an officer of the Issuer or such Guarantor.

(f) Neither the Trustee nor the Collateral Agent shall be under any obligation to exercise any of the rights or powers vested in it by this Indenture or the Notes Documents, as applicable, at the request or direction of any of the Holders unless such Holders shall have offered and if requested, provided to the Trustee and/or the Collateral Agent, as applicable, security or indemnity satisfactory to the Trustee and/or the Collateral Agent, as applicable, against the costs, losses, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Neither the Trustee nor the Collateral Agent shall be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgement, bond, debenture, note, other evidence of indebtedness or other paper or documents, but the Trustee or the Collateral Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or the Collateral Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine during normal business hours the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee and the Collateral Agent, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee and the Collateral Agent in each of its capacities hereunder and under the other Notes Documents, and to each agent, custodian and other Persons employed to act hereunder.

(i) The Trustee and/or the Collateral Agent, as applicable, may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture and/or the Notes Documents, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(j) Neither the Trustee nor the Collateral Agent shall be deemed to have notice or be charged with knowledge of any Default or Event of Default unless the Trustee and Collateral Agent shall have received from the Issuer or any other obligor upon the Notes or from any Holder written notice thereof at its respective Corporate Trust Office, and such notice references the Notes and this Indenture. In the absence of any such notice, the Trustee and Collateral Agent may conclusively assume that no such Default or Event of Default exists.

(k) Neither the Trustee nor the Collateral Agent shall be deemed to have knowledge of any fact or matter unless such fact or matter is actually known to a Responsible Officer of the Trustee or Collateral Agent, as applicable.

(l) In no event shall the Trustee or Collateral Agent be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee or Collateral Agent, as applicable, has been advised of the likelihood of such loss or damage.

(m) The permissive rights of the Trustee or Collateral Agent under this Indenture and the Notes Documents shall not be construed as duties.

SECTION 7.3 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as Trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

SECTION 7.4 Trustee's and Collateral Agent's Disclaimer.

Neither the Trustee nor the Collateral Agent shall be responsible for and neither of them makes any representation as to the validity or adequacy of this Indenture, the Notes or the other Notes Documents, neither of them shall be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer's or upon the Issuer's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes, any statement or recital on any Officer's Certificate delivered to the Trustee under Article IV or Section 8.4 or 9.6 hereof, or any other document in connection with the sale of the Notes or pursuant to this Indenture or the other Notes Documents other than its certificate of authentication.

SECTION 7.5 Notice of Defaults.

If a Default or Event of Default occurs and is continuing and if it is actually known to an officer of the Trustee directly responsible for the administration of this Indenture, the Trustee shall send to Holders a notice of the Default or Event of Default within 90 days after it becomes known to the Trustee. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as the Board of Directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.6 [Reserved].

SECTION 7.7 Compensation and Indemnity.

The Issuer shall pay to the Trustee and the Collateral Agent from time to time compensation for its acceptance of this Indenture, the Notes Documents and services hereunder and thereunder as agreed upon in writing. The Trustee's and the Collateral Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee and the Collateral Agent promptly upon request for all reasonable disbursements, advances and expenses incurred or made by each of them in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's and the Collateral Agent's agents and counsel.

The Issuer and the Guarantors, jointly and severally, shall indemnify each of the Trustee and the Collateral Agent (which for purposes of this Section 7.7 shall include its respective affiliates and its and their officers, directors, employees and agents) against any and all claims, damage, losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, the Collateral Documents, the Intercreditor Agreements and any other Notes Documents, including the costs and expenses of enforcing this Indenture, the Collateral Documents and the Intercreditor Agreements against the Issuer or the Guarantors (including this Section 7.7) and defending itself against any claim (whether asserted by the Issuer or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder except to the extent any such loss, claim, damage, liability or expense may be attributable to its gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. The Trustee and the Collateral Agent, as applicable, shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee or the Collateral Agent to so notify the Issuer shall not relieve the Issuer and the Guarantors of their obligations hereunder. The Issuer shall defend the claim and the Trustee shall cooperate in the defense. The Trustee and Collateral Agent may have separate counsel and the Issuer shall pay the reasonable fees and expenses of such counsel. The Issuer need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Issuer and the Guarantors under this Section 7.7 shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee or Collateral Agent, as applicable.

To secure the Issuer's payment obligations in this Section 7.7, the Trustee and the Collateral Agent shall have a Lien prior to the Notes on all money or property held or collected by the Trustee or the Collateral Agent, as applicable, except that held in trust to pay principal or interest, if any, on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee or the Collateral Agent.

Pursuant to Section 11.1, the obligations of the Issuer hereunder are jointly and severally guaranteed by the Guarantors.

Without prejudice to any other rights available to the Trustee and Collateral Agent under applicable law, when the Trustee and Collateral Agent incur fees, expenses or render services after the occurrence of a Default specified in Section 6.1(8), the fees and expenses (including the reasonable fees and expenses of its counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.8 Replacement of Trustee or Collateral Agent.

A resignation or removal of the Trustee or Collateral Agent and appointment of a successor Trustee or Collateral Agent shall become effective only upon the successor Trustee's or Collateral Agent's acceptance of appointment as provided in this Section 7.8.

The Trustee or the Collateral Agent may resign in writing at any time and be discharged from the trust hereby created by giving 30 days' prior notice to the Issuer. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee or Collateral Agent by so notifying the Trustee or Collateral Agent, as applicable, and the Issuer in writing. The Issuer may remove the Trustee or Collateral Agent if:

(a) in the case of the Trustee, the Trustee fails to comply with Section 7.10 hereof;

(b) the Trustee or the Collateral Agent, as applicable, is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or the Collateral Agent, as applicable, or its property; or

(d) the Trustee or the Collateral Agent, as applicable, becomes incapable of acting.

If the Trustee or the Collateral Agent resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee or successor Collateral Agent, as applicable. Within one year after the successor Trustee or successor Collateral Agent takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee or successor Collateral Agent to replace the successor Trustee or successor Collateral Agent, as applicable, appointed by the Issuer.

If a successor Trustee or successor Collateral Agent, as applicable, does not take office within 30 days after the retiring Trustee or retiring Collateral Agent, as applicable, resigns or is removed, the retiring Trustee or retiring Collateral Agent, as applicable, the Issuer or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee or successor Collateral Agent, as applicable.

If the Trustee or Collateral Agent, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee or Collateral Agent, as applicable, and the appointment of a successor Trustee or successor Collateral Agent, as applicable.

A successor Trustee or successor Collateral Agent, as applicable, shall deliver a written acceptance of its appointment to the retiring Trustee or retiring Collateral Agent, as applicable, and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee or retiring Collateral Agent, as applicable, shall become effective, and the successor Trustee or successor Collateral Agent, as applicable, shall have all the rights, powers and the duties of the Trustee or Collateral Agent, as applicable, under this Indenture and, if applicable, the Collateral Documents. The successor Trustee or successor Collateral Agent, as applicable, shall send a notice of its succession to the Holders. The retiring Trustee or retiring Collateral Agent, as applicable, shall promptly transfer all property held by it as Trustee or Collateral Agent, as applicable, to the successor Trustee or successor Collateral Agent, as applicable, *provided* that all sums owing to the Trustee or Collateral Agent hereunder have been paid and subject to the Lien provided for in Section 7.7 hereof. Notwithstanding replacement of the Trustee or Collateral Agent pursuant to this Section 7.8, the Issuer's and the Guarantors' obligations under Section 7.7 shall continue for the benefit of the retiring Trustee and retiring Collateral Agent.

SECTION 7.9 Successor by Merger, Etc.

If the Trustee, Collateral Agent or any Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee, Collateral Agent or any Agent, as applicable.

SECTION 7.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power and that is subject to supervision or examination by federal or state authorities. The Trustee together with its affiliates shall at all times have a combined capital surplus of at least $150,000,000 as set forth in its most recent annual report of condition.

SECTION 7.11 [Reserved].

SECTION 7.12 Trustee's Application for Instructions from the Issuer.

Any application by the Trustee or Collateral Agent for written instructions from the Issuer may, at the option of the Trustee or Collateral Agent, set forth in writing any action proposed to be taken or omitted by the Trustee or Collateral Agent under this Indenture, the Collateral Documents or the Intercreditor Agreements and the date on and/or after which such action shall be taken or such omission shall be effective. Neither the Trustee nor the Collateral Agent shall be liable for any action taken by, or omission of, the Trustee and/or Collateral Agent in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than twenty Business Days after the date any officer of the Issuer actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee or the Collateral Agent, as applicable, shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 7.13 Collateral Documents; Intercreditor Agreements.

By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and the Collateral Agent, as the case may be, to execute and deliver the Collateral Documents and the Intercreditor Agreements in which the Trustee or the Collateral Agent, as applicable is named as a party, including any Collateral Document or Second Lien Intercreditor Agreement executed after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Agent are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, the Collateral Documents, the Intercreditor Agreements or any other Notes Documents, the Trustee and the Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

ARTICLE VIII

DEFEASANCE; DISCHARGE OF THE INDENTURE

SECTION 8.1 Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at its option and at any time, elect to have either Section 8.2 or 8.3 applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2 Legal Defeasance.

Upon the Issuer's exercise under Section 8.1 of the option applicable to this Section 8.2, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from their respective obligations with respect to all outstanding Notes and Guarantees and all of the Liens on the Collateral automatically terminated and released on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all of its other obligations under such Notes, this Indenture and the Collateral Documents, including the obligations of the Guarantors (and the Trustee, on demand of and at the expense of the Issuer, shall execute such instruments reasonably requested by the Issuer acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, premium, if any, and interest, if any, on such Notes when such payments are due from the trust referred to in Section 8.4(1); (b) the Issuer's obligations with respect to such Notes under Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.10 and 4.2 hereof; (c) the rights, powers, trusts, benefits and immunities of the Trustee, including without limitation thereunder, under Section 7.7, 8.5 and 8.7 and the Issuer's obligations in connection therewith; (d) the Issuer's rights pursuant to Section 3.7; and (e) the provisions of this Section 8.2. Subject to compliance with this Article VIII, the Issuer may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3 hereof.

SECTION 8.3 Covenant Defeasance.

Upon the Issuer's exercise under Section 8.1 of the option applicable to this Section 8.3, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from their respective obligations under the covenants contained in Sections 4.3, 4.4, 4.5, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.14, 4.15 (but only with respect to Subsidiaries), 4.16, 4.17, 4.18, 4.20, 4.21 and 5.1 with respect to all outstanding Notes and Guarantees and all of the Liens on the Collateral automatically terminated and released on and after the date the conditions set forth below are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer, the Guarantors or any of their Subsidiaries may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.1 of the option applicable to this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4, Sections 6.1(3), (4), (5), (6), (7) and (8) (other than with respect to the Issuer) shall not constitute Events of Default.

Notwithstanding any discharge or release of any obligations pursuant to Section 8.2 or 8.3, the Issuer's obligations in Sections 2.5, 2.6, 2.7, 2.8, 7.7, 8.6 and 8.7 shall survive until the Notes are no longer outstanding pursuant to the last paragraph of Section 2.8. After the Notes are no longer outstanding, the Issuer's obligations in Sections 7.7, 8.6 and 8.7 shall survive.

SECTION 8.4 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.2 or 8.3 to the outstanding Notes:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, non-callable U.S. Government Securities, or a combination of cash in U.S. dollars and non-callable U.S. Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, or interest and premium, if any, on the outstanding Notes on the stated maturity or on the applicable redemption date, as the case may be, and the Issuer must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Issuer has delivered to the Trustee an opinion of counsel confirming that, subject to customary assumptions and exclusions, (a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of this Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion of counsel will confirm that, the beneficial owners of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Issuer has delivered to the Trustee an opinion of counsel confirming that, subject to customary assumptions and exclusions, the beneficial owners of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Event of Default has occurred and is continuing on the date of such deposit (other than an Event of Default resulting from the borrowing of funds to be applied to such deposit and any similar and substantially simultaneous deposit relating to other Indebtedness, Disqualified Capital Stock or preferred stock being defeased, discharged, repurchased, redeemed, repaid or otherwise acquired or retired and, in each case, the grant of any Lien securing such borrowings);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this Indenture) to which the Issuer or any Guarantor are a party or by which the Issuer or any Guarantor is bound (other than that resulting from borrowing funds to be applied to make such deposit and any similar and substantially simultaneous deposit relating to other Indebtedness, Disqualified Capital Stock or preferred stock being defeased, discharged, repurchased, redeemed, repaid or otherwise acquired or retired and, in each case, the grant of any Lien securing such borrowing); and

(6) the Issuer must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Notwithstanding the foregoing, the requirements of clause (2) above with respect to a Legal Defeasance need not be complied with if all Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable within one year on the maturity date under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

SECTION 8.5 Deposited Money and U.S. Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.6 hereof, all money and non-callable U.S. Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "*Trustee*") pursuant to Section 8.4 in respect of the outstanding Notes shall be held in trust, shall not be invested, and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or any Subsidiary acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. Government Securities deposited pursuant to Section 8.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article VIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the written request of the Issuer and be relieved of all liability with respect to any money or non-callable U.S. Government Securities held by it as provided in Section 8.4 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6 Repayment to Issuer.

Subject to any applicable abandoned property laws, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal and premium, if any, or interest has become due and payable shall be paid to the Issuer on its written request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in the *New York Times* and *The Wall Street Journal* (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Issuer.

SECTION 8.7 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable U.S. Government Securities in accordance with Section 8.2, 8.3 or 8.8 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations of the Issuer under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2, 8.3 or 8.8 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2, 8.3 or 8.8 hereof, as the case may be; *provided*, *however*, that, if the Issuer makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

SECTION 8.8 Discharge.

The Issuer and the Guarantors may terminate the obligations under this Indenture (except for certain surviving rights of the Trustee and the Issuer's obligations with respect thereto) and the Notes, Guarantees and Liens on the Collateral when either:

(1) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer, have been delivered to the Trustee for cancellation; or

(2) (a) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the giving of a notice of redemption or otherwise or are to become due and payable by reason of the giving of a notice of redemption or otherwise within one year and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. Government Securities, or a combination thereof, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(b) the Issuer has paid or caused to be paid all sums payable by it under this Indenture; and

(c) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, in the case of clause (2) of this Section 8.8, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

After such delivery or irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Issuer's obligations under the Notes and this Indenture except for those surviving obligations specified above.

ARTICLE IX

AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 9.1 Without Consent of Holders of the Notes.

Notwithstanding Section 9.2, without the consent of any Holder, the Issuer, the Guarantors, if any, and the Trustee and, if applicable, the Collateral Agent at any time and from time to time, may amend, restate, modify or supplement any Notes Documents for any of the following purposes:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of Certificated Notes;

(3) to comply with Section 5.1;

(4) to provide for the assumption by a Successor Issuer or a successor of a Guarantor, as applicable, of the Issuer's or such Guarantor's obligations under any Notes Documents;

(5) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any such Holder in any material respect;

(6) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Collateral Agent for its benefit and the benefit of the Trustee, the Holders and the holders of any other Term Loan/Notes Secured Obligations, as additional security for the payment and performance of all or any portion of the Term Loan/Notes Secured Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to this Indenture, any of the Intercreditor Agreements, any Second Lien Intercreditor Agreement, the Collateral Documents or otherwise;

(7) to add a Guarantee or co-obligor of the Notes;

(8) to release a Guarantor upon its sale or designation as an Unrestricted Subsidiary or other release from its Guarantee in accordance with the applicable provisions of this Indenture;

(9) to conform the text of this Indenture, Notes, Guarantees or any other Notes Document to any provision of the "Description of Notes" in the Offering Memorandum.

(10) make such provisions as necessary (as determined in good faith by the Issuer) for the issuance of Additional Notes;

(11) to make any amendment to the provisions of this Indenture relating to the transfer and legending of the Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided*, *however*, that such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(12) evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee or Collateral Agent pursuant to the requirements thereof or to provide for the accession by the Trustee or Collateral Agent to any Notes Document or evidence and provide for the acceptance and appointment under any Intercreditor Agreement, Second Lien Intercreditor Agreement or Collateral Document of a successor party thereto pursuant to the requirements thereof;

(13) provide for the release of Collateral from the Lien, or the subordination of such Lien, pursuant to this Indenture, the Collateral Documents, the Intercreditor Agreements and the Second Lien Intercreditor Agreement when permitted or required by the Collateral Documents, this Indenture, the Intercreditor Agreements or the Second Lien Intercreditor Agreement;

(14) (i) secure any ABL Secured Obligations, Qualifying Secured Debt, Qualifying Other Debt, Future Term Loan/Notes Indebtedness or Term Loan/Notes Secured Obligations to the extent permitted under this Indenture, the Collateral Documents, the Intercreditor Agreements and, if applicable, the Second Lien Intercreditor Agreement, (ii) include any ABL Secured Obligations, Qualifying Secured Debt, Qualifying Other Debt, Future Term Loan/Notes Indebtedness, or Term Loan/Notes Secured Obligations in any Intercreditor Agreement and, if applicable the Second Lien Intercreditor Agreement, (iii) join any party to any Intercreditor Agreement or the Second Lien Intercreditor Agreement to the extent permitted or required by the terms thereof or by the terms of this Indenture, any ABL Loan Document, any Term Loan/Notes Document or any document in respect of Qualifying Secured Debt or Qualifying Other Debt, (iv) to effect any refinancing, extension, renewal or replacement of all or part of the Notes with Term Loan/Notes Secured Obligations, Qualifying Secured Debt or Qualifying Other Debt, (v) to effect the issuance, entry into, refinancing, extension, renewal or replacement of any ABL Secured Obligations, Term Loan/Notes Secured Obligations, Qualifying Secured Debt or Qualifying Other Debt not expressly prohibited by this Indenture or (vi) to supplement any schedules to any Collateral Document to the extent permitted or required by the terms thereof or by the terms of this Indenture or any other Term Loan/Notes Document; or

(15) comply with the rules of any applicable securities depositary.

The Collateral Agent will be required to consent to any amendment, restatement, supplement or modification to any Intercreditor Agreement, the Second Lien Intercreditor Agreement, and any security document entered into in connection therewith or entered into after the Issue Date, with respect to which such Intercreditor Agreement, Second Lien Intercreditor Agreement or security document, as applicable, requires the consent of the Collateral Agent, upon receipt by the Collateral Agent of an Officer's Certificate and an opinion of counsel that all conditions precedent in this Indenture to the execution of such amendment, restatement, supplement or modification by the Collateral Agent have been satisfied (except for any condition precedent that can only be satisfied upon the Collateral Agent actually executing the same).

In addition, in the event that the Issuer, any other Notes Party or any of their respective Subsidiaries incurs any Qualifying Secured Debt, Qualifying Other Debt, Future Term Loan/Notes Indebtedness or Term Loan/Notes Secured Obligations, and in order to implement or facilitate such debt incurrence, the Issuer requests that the Collateral Agent execute a new intercreditor agreement (including the Second Lien Intercreditor Agreement) or security documents in connection therewith, the Collateral Agent, upon the request of the Issuer, shall execute such intercreditor agreement and security documents, as applicable, upon receipt by the Collateral Agent of an Officer's Certificate and an opinion of counsel that all conditions precedent in this Indenture to the execution of such intercreditor agreement or security documents by the Collateral Agent have been satisfied (except for any condition precedent that can only be satisfied upon the Collateral Agent actually executing such agreement or documents).

SECTION 9.2 With Consent of Holders of Notes.

Except as provided in this Section 9.2, the Notes Documents may be amended or supplemented with the consent of the Holders of a majority in principal amount of the Notes then outstanding issued hereunder (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing default or compliance with any provision of the Indenture or the Notes may be waived (except a default in respect of the payment of principal or interest on the Notes) with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

Without the consent of each holder affected, an amendment or waiver of this Indenture or the Notes Documents may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than provisions relating to Sections 3.9, 4.10 and 4.14 except as set forth in clause (10) below);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the Notes (except a rescission of acceleration of the Notes by the holders of a majority in aggregate principal amount of the Notes with respect to a nonpayment default and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults (except to increase the percentage required for such a waiver) or the contractual rights of Holders to receive payments of principal of, or interest or premium, if any, on the Notes (other than provisions relating to notice requirements or provisions relating to Sections 4.10 and 4.14 except as set forth in clause (10) below) or amend the contractual right of any Holder to institute suit for the enforcement of any payment on such Holder's Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Sections 3.9, 4.10 and 4.14 except as set forth in clause (10) below);

(8) contractually subordinate in right of payment the Notes to other Indebtedness of the Issuer that would adversely affect the Holders of the Notes;

(9) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Guarantee or this Indenture, except with the terms of this Indenture;

(10) amend, change or modify in any material respect the obligation of the Issuer to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer in respect of an Asset Sale that has been consummated after a requirement to make an Asset Sale Offer has arisen; or

(11) make any change in the preceding amendment and waiver provisions.

Without the consent of Holders of at least two-thirds in aggregate principal amount of the Notes then outstanding, no amendment or waiver may release all or substantially all of the Collateral from the Lien of this Indenture and the Collateral Documents with respect to the Notes (other than in accordance with the terms of the Collateral Documents as in effect on the Issue Date or as otherwise provided under Section 10.4).

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) may on behalf of the Holders of all the Notes waive any past default under this Indenture and its consequences, except a default:

(1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to an Offer to Purchase which has been made by the Issuer), or

(2) in respect of a covenant or provision hereof which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

SECTION 9.3 [Reserved].

SECTION 9.4 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. When an amendment, supplement or waiver becomes effective in accordance with its terms, it thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for determining which Holders consent to such amendment, supplement or waiver. If the Issuer fixes a record date, the record date shall be fixed at (i) the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished for the Trustee prior to such solicitation pursuant to Section 2.5 or (ii) such other date as the Issuer shall designate.

SECTION 9.5 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.6 Trustee and Collateral Agent to Sign Amendments, Etc.

The Trustee, and as applicable, the Collateral Agent, shall sign any amended or supplemental indenture authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Collateral Agent, as applicable. The Issuer and the Guarantors may not sign an amendment or supplemental indenture until their respective Boards of Directors approve it. In signing or refusing to sign any amendment or supplemental indenture the Trustee and the Collateral Agent shall be entitled to receive and (subject to Section 7.1 hereof) shall be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel stating that the execution of such amendment or supplemental indenture is authorized or permitted by this Indenture, that all conditions precedent thereto have been met or waived, that such amendment or supplemental indenture is not inconsistent herewith or therewith, and that it will be valid and binding upon the Issuer in accordance with its terms. Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee and/or Collateral Agent to execute any amendment or supplement adding a new Guarantor under this Indenture.

ARTICLE X

COLLATERAL

SECTION 10.1 Collateral Documents.

The Trustee and the Issuer hereby acknowledge and agree that the Collateral Agent holds the Collateral in trust for the benefit of the Term Loan/Notes Secured Parties and pursuant to the terms of the Collateral Documents, the Intercreditor Agreements and the Second Lien Intercreditor Agreement. Each Holder, by accepting a Note, (i) designates and appoints the Collateral Agent as its agent under this Indenture, the Collateral Documents, the Intercreditor Agreements and any Second Lien Intercreditor Agreement, (ii) consents and agrees to the terms of the Collateral Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral), the Intercreditor Agreements and the Second Lien Intercreditor Agreement, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their terms and this Indenture, the Intercreditor Agreements and, if applicable, the Second Lien Intercreditor, (iii) consents to the priority of Liens and payments provided for in the Intercreditor Agreements and the Second Lien Intercreditor Agreement, (iv) agrees that it will be bound by and will take no actions contrary to the provisions of the Collateral Documents, Intercreditor Agreements or the Second Lien Intercreditor Agreement, (v) authorizes and directs the Trustee (in the case of each Intercreditor Agreement and the Second Lien Intercreditor Agreement) and the Collateral Agent to enter into the Collateral Documents, the Intercreditor Agreements and the Second Lien Intercreditor Agreement on behalf of such Holder and to bind such Holder thereby and to perform its respective obligations and exercise its rights thereunder in accordance therewith, including, without limitation, to collect and receive any and all amounts payable in respect of the Collateral in respect of the obligations of the Issuer and the Guarantors hereunder and thereunder, and (vi) authorizes the release or subordination of any Lien granted under any Collateral Document pursuant to Section 10.4 below and the terms of the Collateral Documents, the Intercreditor Agreements and, if applicable, the Second Lien Intercreditor Agreement, and directs the Trustee (and directs the Trustee to direct the Collateral Agent) to execute and deliver or authorize the filing of any documents or instruments necessary or requested to effectuate or evidence such release or subordination. The Issuer and the Guarantors shall take any and all actions and make all filings (including the filing of UCC financing statements, continuation statements and amendments thereto) required under the Collateral Documents to create and maintain, as security for the Notes Obligations and the other Term Loan/Notes Secured Obligations, a valid and enforceable perfected Lien and security interest in and on all of the Collateral (subject to the terms of the Intercreditor Agreements, the Second Lien Intercreditor Agreement and the Collateral Documents), in favor of the Collateral Agent for the benefit of the Notes Secured Parties and the other Term Loan/Notes Secured Parties. In the event of any conflict between the terms of the Intercreditor Agreements, the Second Lien Intercreditor Agreement and this Indenture or any of the other Notes Documents, the provisions of the Intercreditor Agreements and the Second Lien Intercreditor Agreement shall govern and control; except with respect to the individual rights of the Trustee and the Collateral Agent.

SECTION 10.2 Release or Subordination of Liens on the Collateral.

(a) Subject to Section 10.4(c), the Liens securing the Notes Obligations will be automatically released, and, if requested by the Issuer (at any time that the Trustee is the Applicable Authorized Representative or otherwise), the Trustee (subject to its receipt of an Officer's Certificate as provided below) shall instruct the Collateral Agent to execute and deliver or otherwise authorize the filing of such documents or instruments as the Issuer shall reasonably request to effectuate or evidence such release (and in the case of clause (v) below, such subdivision), the same at the Issuer's sole cost and expense, under one or more of the following circumstances:

(1) in whole, if the Issuer exercises its Legal Defeasance option or its Covenant Defeasance option pursuant to Sections 8.2 or 8.3 of its obligations under this Indenture are discharged in accordance with the terms of this Indenture (including Section 8.8);

(2) in whole or in part as provided in the Intercreditor Agreements or in any Second Lien Intercreditor Agreement;

(3) in whole or in part, with the consent of the requisite Holders of the Notes in accordance with the provisions under Section 9.2;

(4) as to any asset (including Capital Stock) constituting Collateral that is sold or otherwise disposed of or transferred by the Issuer or any of the Guarantors to any Person that is not the Issuer or a Guarantor in a transaction not prohibited by this Indenture (to the extent of the interest sold or disposed of or transferred);

(5) as to any asset (including Capital Stock) constituting Collateral, upon the release of all Liens on such Collateral securing all other then outstanding Series of Term Loan/Notes Secured Obligations (other than in connection with a repayment in full of another Series of Term Loan/Notes Secured Obligations);

(6) as to any asset constituting Collateral that becomes an Excluded Asset pursuant to a transaction or circumstance not prohibited by this Indenture;

(7) in the case of a Guarantor that is released from its Guarantee (including by designation as an Unrestricted Subsidiary) pursuant to the terms of this Indenture, the property and assets of such Guarantor;

(8) in the case of any lease or other agreement or contract that is Collateral, upon termination of such lease, agreement or contract; and

(9) with respect to Collateral that is Capital Stock, upon the dissolution or liquidation of the issuer of that Capital Stock in a transaction that is not prohibited by this Indenture.

(b) Subject to Section 10.4(c), upon receipt by the Collateral Agent of a written notice from the Issuer requesting the subordination of such Lien, the Liens securing the Notes and the Guarantees may be subordinated to the holder of any Lien on such property that is permitted under clause (f), (g), (h) or (t) of the definition of Permitted Encumbrances to the same extent as the Liens of the Term Loan/Notes Controlling Collateral Agent are subordinated to the holder of any such Permitted Encumbrance to the same extent as the Liens of the Term Loan/Notes Controlling Collateral Agent are subordinated to the holder of any such Permitted Encumbrances.

(c) The Collateral Agent shall, without recourse, representation or warranty, execute documents reasonably requested by the Issuer to evidence the release, subordination or subdivision of the Collateral pursuant to clauses (a) and (b) above, at the expense of the Issuer and the Guarantors, as the case may be, upon receipt of an Officer's Certificate of the Issuer certifying that such release or subordination of Collateral is in accordance with the terms of this Indenture and that all conditions precedent relating to the release of Collateral have been satisfied.

(d) The documents and instruments requested to effectuate or evidence any release, subordination or subdivision referred to in clauses (a), (b) and (c) above may take the form of amendments and restatements of, or other amendments or modifications to, one or more of the Collateral Documents solely to give effect to the foregoing, which amendments, restatements or other modifications shall not require the consent of any Holder pursuant to clause (12) of Section 9.1.

SECTION 10.3 Collateral Agent.

(a) The Collateral Agent agrees to act as Collateral Agent on the express conditions contained in this Section 10.3. The provisions of this Section 10.3 are solely for the benefit of the Collateral Agent (and where provided, the Trustee) and none of the Holders, the Issuer nor any of the Guarantors shall have any rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Collateral Documents, the Intercreditor Agreements and any Second Lien Intercreditor Agreement, the duties of the Collateral Agent shall be ministerial and administrative in nature, and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the other Notes Documents to which the Collateral Agent is a party, nor shall the Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder, the Issuer or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture or the other Notes Documents. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) None of the Collateral Agent or any of its respective related persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction) or under or in connection with any Notes Document or the transactions contemplated thereby. Beyond the exercise of reasonable care in the custody and preservation thereof, the Collateral Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any sub-agent or bailee or any income therefrom or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent will be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if such Collateral is accorded treatment substantially equal to that which it accords its own property, and will not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of any act or omission of any sub-agent or bailee selected by the Collateral Agent in good faith, except to the extent that such liability arises from the Collateral Agent's gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction.

(c) Subject to the provisions of the Collateral Documents and the Pari Passu Intercreditor Agreement, the Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture and the other Notes Documents unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all loss, liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Subject to the provisions of the Collateral Documents and the Pari Passu Intercreditor Agreement, the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture and the Notes Documents in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(d) Wilmington Trust, National Association shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion. None of the Trustee, the Collateral Agent nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Collateral Agent and Trustee shall be accountable only for amounts that they actually receive as a result of the exercise of such powers.

(e) The Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Issuer or any Guarantor or is cared for, protected, or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the property constituting Collateral intended to be subject to the Lien and security interest of the Collateral Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Collateral Agent pursuant to this Indenture or any Notes Document other than pursuant to the instructions of the Trustee or the Holders of a majority in aggregate principal amount of the Notes or as instructed pursuant to the Collateral Documents and the Pari Passu Intercreditor Agreement, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, the Collateral Agent shall have no other duty or liability whatsoever to the Trustee or any Holder as to any of the foregoing.

(f) Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreements or the Collateral Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this paragraph (f) if it no longer reasonably deems any indemnity, security or undertaking from the Issuers or the Holders to be sufficient.

(g) For the avoidance of doubt, the Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreements or the Notes Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee or as instructed pursuant to the Collateral Documents and the Pari Passu Intercreditor Agreement, as applicable. After the occurrence of an Event of Default, the Trustee may direct the Collateral Agent in connection with any action required or permitted by this Indenture or the Notes Documents. Subject to the provisions of the Collateral Documents and the Pari Passu Intercreditor Agreement, if the Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, the Collateral Agent shall be entitled to refrain acting unless and until the Collateral Agent shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes (accompanied by, if requested, indemnity or security satisfactory to the Collateral Agent), and the Collateral Agent shall not incur liability to any Person by reason of so refraining.

(h) Notwithstanding anything to the contrary in this Indenture or any other Notes Document, in no event shall the Collateral Agent or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the other Notes Documents (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), nor shall the Collateral Agent or the Trustee be responsible for, and neither the Collateral Agent nor the Trustee makes any representation regarding, (i) the validity, effectiveness, enforceability or priority of any of the Notes Documents or the security interests or Liens intended to be created thereby, (ii) the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, the Issuer's or Guarantors' rights therein, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein, or (iii) any failure or delay in performance or any breach by the Issuer or any other Guarantor under this Indenture or the Notes Documents or for any failure of any obligor to perform its Obligations under this Indenture or the Notes Documents.

ARTICLE XI

NOTE GUARANTEES

SECTION 11.1 Guarantees.

(a) Subject to the other provisions of this Article XI, each Guarantor hereby jointly and severally, guarantees the Notes and obligations of the Issuer hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and Collateral Agent, that: (i) the principal of and premium, if any, and interest on the Notes shall be paid in full when due, whether at Stated Maturity, by acceleration, call for redemption or otherwise (including, without limitation, the amount that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), together with interest on the overdue principal, if any, and interest on any overdue interest, if any, to the extent lawful, and all other obligations of the Issuer to the Holders, the Trustee or the Collateral Agent hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof (including enforcement of this Guarantee); and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise. Each of the Guarantees shall be a guarantee of payment and not of collection.

(b) Subject to the other provisions of this Article XI, each Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder or any amendment with respect to any provisions hereof or thereof (subject to Article IX), the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) Each Guarantor hereby waives the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer or any other Person, protest, notice and all demands whatsoever and covenants that the Guarantee of such Guarantor shall not be discharged as to any Note except by complete performance of the obligations contained in such Note and such Guarantee or as provided for in this Indenture. Each of the Guarantors hereby agrees that, in the event of a default in payment of principal or premium, if any, or interest on such Note, whether at its Stated Maturity, by acceleration, call for redemption, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce such Guarantor's Guarantee without first proceeding against the Issuer or any other Guarantor. Each Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor shall pay to the Trustee for itself, the Collateral Agent and the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders.

(d) If any Holder, the Trustee or Collateral Agent is required by any court or otherwise to return to the Issuer or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or any Guarantor, any amount paid by any of them to the Trustee, the Collateral Agent or such Holder, the Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. This paragraph (d) shall remain effective notwithstanding any contrary action which may be taken by the Trustee, the Collateral Agent or any Holder in reliance upon such amount required to be returned. This paragraph (d) shall survive the termination of this Indenture.

(e) Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI for the purposes of the Guarantee of such Guarantor, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article VI hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Guarantee of such Guarantor.

SECTION 11.2 Execution and Delivery of Guarantee.

To evidence its Guarantee set forth in Section 11.1, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor agrees that its Guarantee set forth in Section 11.1 shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of such Guarantee. The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Guarantors.

SECTION 11.3 Severability.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 11.4 Limitation of Guarantors' Liability.

Each Guarantor and by its acceptance hereof each Holder confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Federal Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and Guarantors hereby irrevocably agree that the obligations of such Guarantor under its Guarantee shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee, result in the obligations of such Guarantor under its Guarantee constituting a fraudulent transfer or conveyance.

SECTION 11.5 [Reserved].

SECTION 11.6 Releases of a Guarantor.

Any Guarantor shall be released and relieved of any obligations under this Guarantee, in the event that:

(a) upon the sale, disposition or other transfer (including through merger or consolidation) of (a) the Capital Stock of such Guarantor, following which the applicable Guarantor is no longer a Restricted Subsidiary, or (b) all or substantially all the assets of the applicable Guarantor, in each case, if such sale, disposition or other transfer is made in compliance with the applicable provisions of this Indenture;

(b) in the event the Issuer designates such Guarantor as an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;

(c) in the case of any Restricted Subsidiary which after the Issue Date is required to guarantee the Notes pursuant to Section 4.17 upon the release or discharge of the guarantee by such Restricted Subsidiary of the Indebtedness of the Issuer or any Restricted Subsidiary or the repayment of the Indebtedness or Disqualified Capital Stock, in each case, which resulted in the obligation to guarantee the Notes;

(d) if the Issuer exercises its Legal Defeasance option or its Covenant Defeasance option pursuant to Sections 8.2 or 8.3 or if its obligations under this Indenture are discharged in accordance with the terms of this Indenture (including Section 8.8); or

(e) upon the release or discharge of the guarantee by, or direct obligation of, such Guarantor of the Obligations under each other then outstanding series of Term Loan/Notes Secured Obligations of that Guarantor, except by reason of payment under or the termination or repayment of such other series of Term Loan/Notes Secured Obligations.

Upon delivery to the Trustee of an Officer's Certificate and an Opinion of Counsel to the effect that such release was made by the Issuer in accordance with the provisions of this Indenture, including without limitation Section 4.10, the Trustee shall execute any documents reasonably requested by the Issuer and at the Issuer's expense in order to evidence the release of any Guarantor from its obligations under its Guarantee.

Any Guarantor not released from its obligations under this Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article XI.

SECTION 11.7 [Reserved].

SECTION 11.8 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that its guarantee and waivers pursuant to its Guarantee are knowingly made in contemplation of such benefits.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 [Reserved].

SECTION 12.2 Notices.

Any notice or communication by the Issuer, any Guarantor, the Trustee or Collateral Agent shall be sufficiently given if written and (a) delivered in person or (b) mailed by first class mail (certified or registered, return receipt requested) or (c) sent by facsimile transmission or (d) sent by overnight air courier guaranteeing next-day delivery or (e) sent by electronic transmission, in each case addressed as follows:

If to the Issuer:

Burlington Coat Factory Warehouse Corporation
1830 Route 130 North
Burlington, New Jersey 08016
Facsimile: (609) 239-9675
Attention: General Counsel

With a copy to:

Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Ave., Suite 3400
Los Angeles, California 90071
Facsimile: (213) 621-5000
Attention: Gregg Noel and Michelle Gasaway
Email: gregg.noel@skadden.com and michelle.gasaway@skadden.com

If to the Trustee or Collateral Agent:

Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Fax: (612) 217-5651
Attention: Burlington Coat Notes Administrator

The Issuer or the Trustee or the Collateral Agent, by notice to the other, may designate additional or different addresses and/or facsimile numbers for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; three Business Days after being deposited in the mail, postage prepaid, if mailed by first class mail (certified or registered, return receipt requested); upon acknowledgment of receipt, if transmitted by facsimile; the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next-day delivery; and at the time delivered if sent by electronic transmission.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, upon receipt requested, or sent by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar or, with respect to Global Notes, to the extent permitted or required by the applicable procedures of DTC, sent electronically. Failure to deliver, mail, transmit or send a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is delivered, mailed, transmitted or sent in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee, Collateral Agent and each Agent at the same time.

SECTION 12.3 No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, incorporator or stockholder of the Issuer, any of its Subsidiaries or any of its direct or indirect parent entities, as such, will have any liability for any obligations of the Issuer or any Guarantor under the Notes, or this Indenture or any of the Notes Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws, and it is the view of the Commission that such waiver is against public policy.

SECTION 12.4 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer to the Trustee or the Collateral Agent to take any action under this Indenture (other than the initial issuance of the Notes), the Issuer shall furnish to the Trustee and the Collateral Agent, as applicable, upon request:

(a) an Officer's Certificate (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants have been satisfied, if any, *provided* for in this Indenture relating to the proposed action; and

(b) an Opinion of Counsel (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied, if any, *provided* for in this Indenture relating to the proposed action.

SECTION 12.5 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

SECTION 12.6 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.7 [Reserved].

SECTION 12.8 Governing Law; Jurisdiction; JURY TRIAL WAIVER.

THE NOTES AND THE GUARANTEES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The parties to this Indenture each hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Guarantees, the other Notes Documents or this Indenture, and all such parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court and hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE GUARANTEES, THE NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

SECTION 12.9 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.10 Successors.

All agreements of the Issuer and the Guarantors in this Indenture and the Notes and the Guarantees, as applicable, shall bind their respective successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

SECTION 12.11 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 12.12 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile, pdf or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, pdf or other electronic methods shall be deemed to be their original signatures for all purposes.

SECTION 12.13 Table of Contents, Headings, Etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 12.14 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person, or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee, the Collateral Agent and the Issuer, if made in the manner provided in this Section 12.14.

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

(c) The ownership of Notes shall be proved by the Holder list maintained under Section 2.5 hereunder.

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

(e) If the Issuer shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, by or pursuant to a board resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 12.15 USA PATRIOT Act.

The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*USA PATRIOT Act*"), the Trustee and Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee or Collateral Agent. The parties to this Indenture agree that they will provide the Trustee and Collateral Agent with such information as each may request in order for the Trustee and Collateral Agent to satisfy the requirements of the USA PATRIOT Act.

SECTION 12.16 FORCE MAJEURE.

In no event shall the Trustee or the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics or pandemics, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, it being understood that the Trustee and the Collateral Agent shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of April 16, 2020

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

EACH OF THE GUARANTORS LISTED ON ANNEX A HERETO,
as Guarantors

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

ANNEX A

Guarantors	**Jurisdictions of Organization**
Burlington Coat Factory Holdings, LLC	Delaware
Burlington Coat Factory Investments Holdings, Inc.	Delaware
Burlington Coat Factory of Texas, L.P.	Florida
Burlington Coat Factory of Kentucky, Inc.	Kentucky
Burlington Coat Factory Direct Corporation	New Jersey
Burlington Coat Factory Warehouse of Edgewater Park, Inc.	New Jersey
Burlington Coat Factory Warehouse of New Jersey, Inc.	New Jersey
Burlington Coat Factory Of Puerto Rico, LLC	Puerto Rico
Cohoes Fashions of Cranston, Inc.	Rhode Island
Burlington Coat Factory Warehouse Of Baytown Inc	Texas
Burlington Coat Factory of Pocono Crossing, LLC	Virginia
Burlington Coat Factory of Texas, Inc.	Florida
Burlington Coat Factory Realty of Edgewater Park, Inc.	New Jersey
Burlington Coat Factory Realty of Pinebrook, Inc.	New Jersey
Burlington Coat Factory Warehouse of Edgewater Park Urban Renewal Corp.	New Jersey
BCF Florence Urban Renewal, L.L.C.	New Jersey
BCF Florence Urban Renewal II, LLC	New Jersey
Burlington Merchandising Corporation	Delaware
Burlington Distribution Corp.	Delaware

EXHIBIT A

FORM OF NOTE

(Face of 6.250% Senior Secured Note)

[Global Note Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[Restricted Notes Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE THAT IS ONE YEAR (IN THE CASE OF THE 144A NOTES) OR 40 DAYS (IN THE CASE OF THE REGULATION S NOTES) AFTER THE LATER OF THE ORIGINAL ISSUE DATE OF THE NOTES AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF THIS NOTE) ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT OR (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE REGISTRAR'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

[Regulation S Global Note legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD OR DELIVERED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON, UNLESS SUCH NOTES ARE REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS THEREOF IS AVAILABLE. THIS LEGEND SHALL BE DEEMED AUTOMATICALLY REMOVED AFTER THE EXPIRATION OF FORTY DAYS FROM THE LATER OF (i) THE DATE ON WHICH THESE NOTES WERE FIRST OFFERED AND (ii) THE DATE OF ISSUE OF THESE NOTES.

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
6.250% Senior Secured Notes due 2025

No. CUSIP NO.
ISIN NO.

Burlington Coat Factory Warehouse Corporation

promises to pay to [Cede & Co.] or registered assigns, the principal sum of ($) on April 15, 2025 (as such amount may be increased or decreased pursuant to the Schedule of Exchange herein).

Interest Payment Dates: April 15 and October 15, beginning October 15, 2020

Record Dates: April 1 and October 1

Reference is made to further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefits under the Indenture referred to on the reverse hereof or be valid or obligatory for any purpose.

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: _____
Name:
Title:

This is one of the Senior Secured Notes referred
to in the within-mentioned Indenture:

Dated: _____

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

(Back of 6.250% Senior Secured Note)
6.250% Senior Secured Notes due 2025

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) Interest. Burlington Coat Factory Warehouse Corporation, a Florida corporation ("Burlington" or the "Issuer") promises to pay interest on the principal amount of this 6.250% Senior Secured Note due 2025 (a "6.250% Senior Secured Note" or the "Notes") at a fixed rate. Burlington will pay interest in United States dollars semiannually in arrears on April 15 and October 15, commencing on October 15, 2020 or if any such day is not a Business Day, on the next succeeding Business Day (each an "Interest Payment Date"). Interest on the 6.250% Senior Secured Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from April 16, 2020; *provided* that if there is no existing Default or Event of Default in the payment of interest, and if this 6.250% Senior Secured Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date (but after April 16, 2020), interest shall accrue from such next succeeding Interest Payment Date, except in the case of the original issuance of 6.250% Senior Secured Notes, in which case interest shall accrue from the date of authentication. Burlington shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal of the then applicable interest rate on the 6.250% Senior Secured Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months. The interest rate on the Notes will in no event be higher than the maximum rate permitted by New York law as the same may be modified by United States law of general application.

(2) Method of Payment. Burlington will pay interest on the 6.250% Senior Secured Notes on the applicable Interest Payment Date to the Persons who are registered Holders of 6.250% Senior Secured Notes at the close of business on the April 1 and October 1 preceding the Interest Payment Date, even if such 6.250% Senior Secured Notes are cancelled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The 6.250% Senior Secured Notes shall be payable as to principal, premium, if any, and interest at the office or agency of Burlington maintained for such purpose within the United States, or, at the option of Burlington, payment of interest may be made by (i) check mailed to the Holders at their addresses set forth in the register of Holders or (ii) wire transfer to an account located in the United States maintained by the payee; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of, premium, if any, and interest on, all Global Notes and all other 6.250% Senior Secured Notes the Holders of which shall have provided written wire transfer instructions to Burlington and the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. If any Interest Payment Date is not a Business Day, payment shall be made on the next succeeding Business Day, and no interest shall accrue for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

Any payments of principal of this 6.250% Senior Secured Note prior to Stated Maturity shall be binding upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not noted hereon. The amount due and payable at the maturity of this Note shall be payable only upon presentation and surrender of this Note at an office of the Trustee or the Trustee's agent appointed for such purposes.

(3) Paying Agent and Registrar. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, shall act as Paying Agent and Registrar. Burlington may change any Paying Agent or Registrar without notice to any Holder. Burlington or any of its Subsidiaries may act as Paying Agent or Registrar.

(4) Indenture. Burlington issued the 6.250% Senior Secured Notes under an Indenture, dated as of April 16, 2020 (the "Indenture"), among Burlington Coat Factory Warehouse Corporation, the Guarantors, the Trustee and the Collateral Agent. To the extent the provisions of this 6.250% Senior Secured Note are inconsistent with the provisions of the Indenture, the Indenture shall govern. The 6.250% Senior Secured Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. The 6.250% Senior Secured Notes issued on the Issue Date are senior obligations of Burlington in aggregate principal amount of $300,000,000, plus amounts, if any, sufficient to pay premium, if any, and interest on outstanding 6.250% Senior Secured Notes as set forth in Paragraph 2 hereof. The Indenture permits the issuance of Additional Notes in an unlimited amount subject to compliance with certain covenants.

The payment of principal and interest on the 6.250% Senior Secured Notes is guaranteed on a senior basis by the Guarantors on the terms set forth in the Indenture.

(5) Optional Redemption.

(a) At any time prior to April 15, 2022, the Issuer may redeem the Notes, in whole or in part, at its option, upon notice of redemption as described in Section 3.3 of the Indenture at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding, the applicable redemption date (subject to the right of the Holders on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the applicable redemption date).

(b) On or after April 15, 2022, the Issuer may redeem the Notes, in whole or in part, at its option, upon notice of redemption as described in Section 3.3 of the Indenture at the following Redemption Prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but excluding, the redemption date (subject to the right of Holders of record on the relevant regular record date to receive interest due on an interest payment date falling on or prior to the applicable redemption date), if redeemed during the 12-month period beginning April 15 of the years indicated:

Year	Redemption Price
2022	103.125%
2023	101.563%
2024 and thereafter	100.000%

(c) In addition, at any time prior to April 15, 2022, the Issuer may, at its option, upon notice as described in Section 3.3 of the Indenture, on one or more occasions redeem in the aggregate up to 35% of the principal amount of the outstanding Notes (including Additional Notes) issued under the Indenture with an amount equal to or less than the net cash proceeds received by the Issuer from one or more Equity Offerings at a Redemption Price of 106.250% of the principal amount of Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date; *provided*, *however*, that at least 65% of the aggregate principal amount of Notes originally issued under the Indenture must remain outstanding immediately after the occurrence of each such redemption (excluding in such calculation Notes held by Holdings or its Subsidiaries) (except to the extent otherwise repurchased or redeemed or to be repurchased or redeemed and for which a notice of repurchase or redemption has been issued at or about such time in accordance with Article III of the Indenture) and that any such redemption occurs within 90 days following the date of the closing of such Equity Offering.

(d) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuer, or any third party making a Change of Control Offer in lieu of the Issuer as described above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Issuer or such third party will have the right, upon not less than 15 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to but excluding the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date falling on or prior to the applicable redemption date).

(6) Mandatory Redemption. The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes. The Issuer may be required to make an Offer to Purchase pursuant to Sections 3.9, 4.10 and 4.14 of the Indenture. The Issuer may at any time and from time to time purchase Notes in the open market or otherwise.

(7) Repurchase at Option of Holder.

(a) If a Change of Control occurs, the Issuer will make an offer to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased, to, but excluding, the date of purchase. Within 30 days following any Change of Control, or, at the Issuer's option prior to the date of consummation of any Change of Control but after public announcement of the Change of Control, the Issuer will mail or send (or in the case of holders of book-entry interests, transmit electronically in accordance with the applicable procedures of DTC) a notice to each Holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed or transmitted, pursuant to the procedures required by the Indenture and described in such notice.

(b) Upon the occurrence of certain Asset Sales, the Issuer may be required to offer to purchase Notes.

(c) Holders of the 6.250% Senior Secured Notes that are the subject of an Offer to Purchase will receive notice of an Offer to Purchase pursuant to an Asset Sale or a Change of Control from the Issuer prior to any related purchase date and may elect to have such 6.250% Senior Secured Notes purchased by completing the form titled "Option of Holder to Elect Purchase" appearing below.

(8) Notice of Redemption. Notice of any redemption will be mailed (or, in the case of book-entry interests, transmitted electronically) at least 15 days but not more than 60 days before the redemption date to each registered holder of the Notes to be redeemed (with a copy to the Trustee), except that redemption notices may be given more than 60 days prior to a redemption if the notice is issued in connection with a legal defeasance or covenant defeasance of the Notes or a satisfaction and discharge of the Indenture as described under Article VIII thereof.

(9) [Reserved]

(10) Denominations, Transfer, Exchange. The 6.250% Senior Secured Notes are in registered form without coupons in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of the 6.250% Senior Secured Notes may be registered and the 6.250% Senior Secured Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and Burlington may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. Burlington need not exchange or register the transfer of any 6.250% Senior Secured Note or portion of a 6.250% Senior Secured Note selected for redemption or tendered to repurchase in connection with a Change of Control Offer or an Asset Sale Offer, except for the unredeemed portion of any 6.250% Senior Secured Note being redeemed in part. The Registrar shall not be required to issue, to register the transfer of or to exchange Notes during a period beginning at the opening of fifteen (15) days before the day of any selection of Notes for redemption under Section 3.2 of the Indenture and ending at the close of business on the day of selection.

(11) Persons Deemed Owners. The registered holder of a 6.250% Senior Secured Note may be treated as its owner for all purposes.

(12) Amendment, Supplement and Waiver. Except as provided in Section 9.2 of the Indenture, the Notes Documents may be amended or supplemented with the consent of the Holders of a majority in principal amount of the Notes then outstanding issued thereunder (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing default or compliance with any provision of the Indenture or the Notes may be waived (except a default in respect of the payment of principal or interest on the Notes) with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Without the consent of any Holder (and, upon request from the Issuer, the Trustee shall request that the Collateral Agent enter into any such amendment, supplement or other modification to the applicable Intercreditor Agreement or Collateral Documents), the Issuer and the Trustee (together with any other party whose consent is required pursuant to the Intercreditor Agreements or the Collateral Documents) may amend, supplement or otherwise modify any Notes Document as provided in the Indenture.

(13) Defaults and Remedies. If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Issuer) shall occur and be continuing, then and in every such case the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable by a notice in writing to the Issuer and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration," and the same shall become immediately due and payable. Upon such declaration of acceleration, the aggregate principal of and accrued and unpaid interest on the outstanding Notes shall immediately become due and payable. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Issuer occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(14) Trustee and Collateral Agent Dealings with Burlington. Each of the Trustee and Collateral Agent, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for Burlington, the Guarantors or their respective Affiliates, and may otherwise deal with Burlington, the Guarantors or their respective Affiliates, as if it were not the Trustee or the Collateral Agent, as the case may be.

(15) No Recourse Against Others. No director, officer, employee, incorporator or stockholder of the Issuer, any of its Subsidiaries or any of its direct or indirect parent entities, as such, will have any liability for any obligations of the Issuer or any Guarantor under the Notes, or the Indenture or any of the Notes Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws, and it is the view of the Commission that such waiver is against public policy

(16) Authentication. This 6.250% Senior Secured Notes shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(17) Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(18) CUSIP Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the 6.250% Senior Secured Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to the Holders. No representation is made as to the accuracy of such numbers either as printed on the 6.250% Senior Secured Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

(19) Security. The Notes shall be secured by Liens on the Collateral, in each case subject to Permitted Encumbrances, on the terms and conditions set forth in the Indenture, the Collateral Documents, the Intercreditor Agreements and, if applicable, the Second Lien Intercreditor Agreement. The Collateral Agent holds a Lien in the Collateral for the benefit of the Notes Secured Parties, in each case pursuant to the Collateral Documents.

Burlington shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Burlington Coat Factory Warehouse Corporation
1830 Route 130 North
Burlington, New Jersey 08016
Facsimile: (609) 239-9675
Attention: General Counsel

ASSIGNMENT FORM

To assign this 6.250% Senior Secured Note, fill in the form below: (I) or (we) assign and transfer this 6.250% Senior Secured Note to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint

to transfer this 6.250% Senior Secured Note on the books of Burlington. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this 6.250% Senior Secured Note)

Signature guarantee:

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this 6.250% Senior Secured Note purchased by Burlington pursuant to Section 4.10 or 4.14 of the Indenture, check the box below:

[ ] Section 4.10 [ ] Section 4.14

If you want to elect to have only part of the 6.250% Senior Secured Note purchased by Burlington pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased: $

Date: _____ Your Signature: _____

(Sign exactly as your name appears on the 6.250% Senior Secured Note)

Tax Identification No.:

Signature guarantee:

CERTIFICATE TO BE DELIVERED UPON
EXCHANGE OF TRANSFER RESTRICTED NOTES

Burlington Coat Factory Warehouse Corporation
1830 Route 130 North
Burlington, New Jersey 08016
Facsimile: (609) 239-9675
Attention: General Counsel

Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Fax: (612) 217-5651
Attention: Burlington Coat Notes Administrator

Re: CUSIP #

Reference is hereby made to that certain Indenture dated April 16, 2020 (the "*Indenture*") among Burlington Coat Factory Warehouse Corporation and Wilmington Trust, National Association, as trustee (the "*Trustee*") and collateral agent. Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

This certificate relates to $_____ principal amount of Notes held in (check applicable space) ____ book-entry or _____ definitive form by the undersigned.

The undersigned _____ (transferor) (check one box below):

☐ hereby requests the Registrar to deliver in exchange for its beneficial interest in the Global Note held by the Depositary a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above), in accordance with Section 2.6 of the Indenture;

☐ hereby requests the Trustee to exchange a Note or Notes to _____ (transferee).

In connection with any transfer of any of the Notes evidenced by this certificate, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW:

(1) ☐ to Burlington or any of its subsidiaries; or

(2) ☐ inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933, as amended) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A under the Securities Act of 1933, as amended, in each case pursuant to and in compliance with Rule 144A thereunder; or

(3) ☐ outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act of 1933, as amended, in compliance with Rule 904 thereunder.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.

Signature

Signature Guarantee: _____

(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended ("Rule 144A"), and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

[Name of Transferee]

Dated: _____

NOTICE: To be executed by an executive officer

SCHEDULE OF EXCHANGES OF 6.250% Senior Secured Notes

The following exchanges of a part of this Global Note for other 6.250% Senior Secured Notes have been made:

Date of Exchange	Amount of Decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note Following Such Decrease (or Increase)	Signature of Authorized Officer of Trustee or 6.250% Senior Secured Note Custodian

EXHIBIT B

[FORM OF CERTIFICATE TO BE DELIVERED
IN CONNECTION WITH TRANSFERS PURSUANT TO RULE 144A]

Burlington Coat Factory Warehouse Corporation
1830 Route 130 North
Burlington, New Jersey 08016
Facsimile: (609) 239-9675
Attention: General Counsel

Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Fax: (612) 217-5651
Attention: Burlington Coat Notes Administrator

Re: Burlington Coat Factory Warehouse Corporation
6.250% Senior Secured Notes due 2025 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of $_____ aggregate principal amount at maturity of the Notes, we hereby certify that such transfer is being effected pursuant to and in accordance with Rule 144A ("Rule 144A") under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we hereby further certify that the Notes are being transferred to a person that we reasonably believe is purchasing the Notes for its own account, or for one or more accounts with respect to which such person exercises sole investment discretion, and such person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Notes are being transferred in compliance with any applicable blue sky securities laws of any state of the United States.

You and Burlington are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

_____

[Name of Transferor]

By: _____

Authorized Signature

EXHIBIT C

[FORM OF CERTIFICATE TO BE DELIVERED
IN CONNECTION WITH TRANSFERS
PURSUANT TO REGULATION S]

Burlington Coat Factory Warehouse Corporation
1830 Route 130 North
Burlington, New Jersey 08016
Facsimile: (609) 239-9675
Attention: General Counsel

Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Fax: (612) 217-5651
Attention: Burlington Coat Notes Administrator

Re: Burlington Coat Factory Warehouse Corporation
6.250% Senior Secured Notes due 2025 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of $_____ aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(1) the offer of the Notes was not made to a person in the United States;

(2) either (a) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (b) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(3) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(b) or Rule 904(b) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(b) or Rule 904(b), as the case may be.

Burlington and you are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

_____

[Name of Transferor]

By: _____

Authorized Signature

Exhibit 10.1

SECURITY AGREEMENT

SECURITY AGREEMENT (this "Agreement"), dated as of April 16, 2020, by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the entities listed on Schedule I hereto and each of the other entities that may become a party hereto as provided herein (each of the foregoing together with the Company, a "Grantor" and collectively, the "Grantors"), and Wilmington Trust, National Association, in its capacity as collateral agent for the Secured Parties (in such capacity and together with any successors in such capacity, the "Collateral Agent"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

WITNESSETH:

WHEREAS, reference is made to that certain Notes Indenture, dated as of April 16, 2020 (as amended, modified, supplemented or restated and in effect from time to time, the "Indenture") by and among the Company, each Guarantor, Wilmington Trust, National Association, in its capacity as trustee (together with its successors in such capacity, the "Trustee") and the Collateral Agent, pursuant to which the Company is issuing $300,000,000 aggregate principal amount of its 6.250% Senior Secured Notes due 2025 (together with any additional notes issued under the Indenture, the "Senior Secured Notes");

WHEREAS, it is a condition to the issuance of the Senior Secured Notes that each Grantor executes and delivers the applicable Collateral Documents, including this Agreement; and

WHEREAS, this Agreement is made by the Grantors in favor of the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance in full when due of the Secured Obligations;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors and the Collateral Agent, on its own behalf and on behalf of the other Secured Parties (and each of their respective successors or permitted assigns), hereby agree as follows:

ARTICLE 1

Definitions

Section 1.01 Generally. All references herein to the UCC shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the UCC differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided, further, that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of the Security Interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

Section 1.02 Definition of Certain Terms Used Herein. Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Indenture. In addition, as used herein, the following terms shall have the following meanings:

"ABL Collateral Agent" shall mean Bank of America, N.A., in its capacity as Collateral Agent under the ABL Credit Agreement, and its successors and permitted assigns.

"ABL Administrative Agent" shall mean Bank of America, N.A., in its capacity as Administrative Agent under the ABL Credit Agreement, and its successors and permitted assigns.

"ABL Intercreditor Agreement" shall mean that certain Amended and Restated Intercreditor Agreement, dated as of April 16, 2020, among the Company, the other Grantors, the ABL Administrative Agent, the ABL Collateral Agent, the Term Loan Administrative Agent, the Term Loan Collateral Agent, the Collateral Agent and each additional agent from time to time party thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"ABL Priority Collateral" shall have the meaning assigned to such term in the ABL Intercreditor Agreement.

"Accessions" shall have the meaning given that term in the UCC.

"Account Debtor" shall have the meaning given that term in the UCC.

"Account(s)" shall mean "accounts", as defined in the UCC, and shall also mean a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, or (iii) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Additional Grantor Joinder Agreement" shall have the meaning assigned to such term in Section 8.15.

"Additional Pari Passu Documents" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Pari Passu Obligations" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Pari Passu Secured Party" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Senior Class Debt Representative" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Blue Sky Laws" shall have the meaning assigned to such term in Section 6.01 of this Agreement.

"Chattel Paper" shall have the meaning given that term in the UCC.

"Collateral" shall mean all personal property of each Grantor, including, without limitation: all (A) Accounts, (B) Chattel Paper, (C) Commercial Tort Claims, (D) Deposit Accounts, (E) Documents, (F) Equipment, (G) Fixtures, (H) General Intangibles (including Payment Intangibles), (I) Goods, (J) Instruments, (K) Inventory, (L) Investment Property, (M) Letter-of-Credit Rights, (N) Software, (O) Supporting Obligations, (P) money, policies and certificates of insurance, deposits, cash, or other property, (Q) all books, records, and information relating to any of the foregoing ((A) through (P)) and/or to the operation of any Grantor's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded and maintained, (R) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((A) through (Q)) or otherwise, (S) [reserved], (T) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((A) through (S)), including the right of stoppage in transit, and (U) any of the foregoing, whether now owned or now due, or in which any Grantor has an interest, or hereafter acquired, arising, or to become due, or in which any Grantor obtains an interest, and all products, Proceeds, substitutions, and Accessions of or to any of the foregoing; provided, however, that the Collateral shall not include (a) any rights or property acquired under a lease, contract, property rights agreement or license, or any intent to use trademark applications filed pursuant to Section 1(b) of the Lanham Act, if and to the extent that the grant of a security interest in which shall constitute or result in (i) the abandonment, cancellation, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) a breach or termination pursuant to the terms of, or a default under, any lease, contract, property rights agreement or license (other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity); provided that the Proceeds from any such lease, contract, property rights agreement or license shall not be excluded from the definition of Collateral to the extent that the assignment of such Proceeds is not prohibited, and provided, further, that any rights under any intent to use trademark applications filed pursuant to Section 1(b) of the Lanham Act shall be excluded from Collateral only to the extent and until a statement of use or amendment to allege use is filed in connection with therewith and accepted by the United States Patent and Trademark Office and only if inclusion of intent to use applications prior to such time would result in the cancellation or invalidation of the alleged trademark, (b) any governmental permit or franchise that prohibits Liens on or collateral assignments of such permit or franchise (other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), or (c) any Security, Investment Property or other equity interest representing more than 65% of the outstanding voting stock of (i) any Foreign Subsidiary or (ii) any Subsidiary in which substantially all of its assets consist of the Capital Stock of one or more Foreign Subsidiaries).

"Collateral Agent" shall have the meaning assigned to such term in the preamble of this Agreement.

"Collateral Agent's Rights and Remedies" shall have the meaning assigned to such term in Section 8.08.

"Commercial Tort Claim" shall have the meaning given that term in the UCC and shall include, without limitation, the Commercial Tort Claims from time to time set forth on Schedule 4.10 hereto (as such schedule may be supplemented from time to time in accordance with Section 4.10).

"Company" shall have the meaning assigned to such term in the preamble of this Agreement.

"Control" shall have the meaning given that term in the UCC.

"Deposit Account" shall have the meaning given that term in the UCC and shall also include all demand, time, savings, passbook, or similar accounts maintained with a bank or other financial institution.

"Documents" shall have the meaning given that term in the UCC.

"Equipment" shall mean "equipment", as defined in the UCC, and shall also mean all furniture, store fixtures, motor vehicles, rolling stock, machinery, office equipment, plant equipment, tools, dies, molds, and other goods, property, and assets which are used and/or were purchased for use in the operation or furtherance of a Grantor's business, and any and all Accessions or additions thereto, and substitutions therefor.

"Event of Default" shall mean, collectively, any "Event of Default" as defined in the Indenture or as defined in any Additional Pari Passu Document.

"Financing Statement" shall have the meaning given that term in the UCC.

"Fixtures" shall have the meaning given that term in the UCC.

"General Intangibles" shall have the meaning given that term in the UCC, and shall also include, without limitation, all: Payment Intangibles; rights to payment for credit extended; deposits; amounts due to any Grantor; credit memoranda in favor of any Grantor; warranty claims; tax refunds and abatements; insurance refunds and premium rebates; all means and vehicles of investment or hedging, including, without limitation, options, warrants, and futures contracts; records; customer lists; telephone numbers; goodwill; causes of action; judgments; rights to collect payments under any settlement or other agreement; literary rights; rights to performance; royalties; license and/or franchise fees; rights of admission; licenses; franchises; license agreements, including all rights of any Grantor to enforce same; permits, certificates of convenience and necessity, and similar rights granted by any governmental authority; developmental ideas and concepts; proprietary processes; blueprints, drawings, designs, diagrams, plans, reports, and charts; catalogs; technical data; computer records, rights of access to computer record service bureaus, and service bureau computer contracts; tapes, disks, semi-conductors chips and printouts; user technical reference, and other manuals and materials; IP Collateral (as defined in the Intellectual Property Security Agreement); proposals; cost estimates, and reproductions on paper, or otherwise, of any and all concepts or ideas, and any matter related to, or connected with, the design, development, manufacture, sale, marketing, leasing, or use of any or all property produced, sold, or leased, by or credit extended or services performed, by any Grantor, whether intended for an individual customer or the general business of any Grantor, or used or useful in connection with research by any Grantor.

"Goods" shall have the meaning given that term in the UCC.

"Grantors" shall have the meaning assigned to such term in the preamble of this Agreement.

"Indemnitee" shall have the meaning assigned to such term in Section 8.06 of this Agreement.

"Indenture" shall have the meaning assigned to such term in the preliminary statements of this Agreement.

"Instruments" shall have the meaning given that term in the UCC.

"Intellectual Property Security Agreement" shall mean the Intellectual Property Security Agreement, dated as of April 16, 2020, by and among the Company, the other Grantors and the Collateral Agent, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"Intercreditor Agreements" shall mean the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement.

"Inventory" shall have the meaning given that term in the UCC, and shall also include, without limitation, all: (a) Goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) Goods of said description in transit; (c) Goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Investment Property" shall have the meaning given that term in the UCC.

"Joinder Agreement" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Letter-of-Credit Right" shall have the meaning given that term in the UCC and shall also mean any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded, or is at the time entitled to demand, payment or performance.

"Notes Obligations" shall mean all Obligations of each Grantor under the Indenture, the Notes and the Guarantees, including all principal, interest and premium thereunder and shall include any interest accruing subsequent to the commencement of an insolvency or liquidation proceeding at the rate provided for in the Notes Documents, whether or not such interest is an allowed claim under any such proceeding or under applicable state, federal or foreign law.

"Pari Passu Intercreditor Agreement" shall mean that certain intercreditor agreement, dated as of April 16, 2020, by and among the Company, the other Grantors, the Collateral Agent, the Term Loan Collateral Agent and the Trustee, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"Payment Intangible" shall have the meaning given that term in the UCC and shall also mean any General Intangible under which the Account Debtor's primary obligation is a monetary obligation.

"Permitted Disposition" shall mean "Permitted Disposition" as defined in the Indenture that is not prohibited by any Additional Pari Passu Document.

"Permitted Encumbrances" shall mean "Permitted Encumbrances" as defined in the Indenture that is not prohibited by any Additional Pari Passu Document.

"Proceeds" shall mean "proceeds", as defined in the UCC, and shall also include each type of property described in the definition of Collateral.

"Secured Obligations" shall mean, collectively, all Notes Obligations and all Additional Pari Passu Obligations.

"Secured Parties" shall mean, collectively, the Trustee, the Collateral Agent and the Holders and each Additional Pari Passu Secured Party.

"Securities Act" shall have the meaning assigned to such term in Section 6.01 of this Agreement.

"Security" shall have the meaning given that term in the UCC.

"Security Interest" shall have the meaning assigned to such term in Section 2.01 of this Agreement.

"Software" shall have the meaning given that term in the UCC.

"Supporting Obligation" shall have the meaning given that term in the UCC and shall also refer to a Letter-of-Credit Right or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

"Term Loan Administrative Agent" shall mean JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent under the Term Loan Agreement, and its successors and permitted assigns.

Section 1.03 Rules of Construction. The rules of constructions specified in Section 1.4 of the Indenture shall be applicable to this Agreement.

ARTICLE 2

Security Interest

Section 2.01 Security Interest. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby grants to the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, a security interest in, and collaterally assigns to the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, all of such Grantor's right, title and interest in, to and under the Collateral (the "Security Interest") wherever located, and whether now existing or hereafter arising or acquired from time to time. Without limiting the foregoing, each Grantor hereby designates the Collateral Agent as such Grantor's true and lawful attorney, exercisable by the Collateral Agent whether or not an Event of Default exists, with full power of substitution, at the Collateral Agent's option, to file one or more Financing Statements, amendments to Financing Statements, continuation statements, or to sign other documents for the purpose of perfecting, confirming, continuing, or protecting the Security Interest granted by each Grantor, without the signature of any Grantor (each Grantor hereby appointing the Collateral Agent as such Person's attorney to sign such Person's name to any such instrument or document, whether or not an Event of Default exists), and naming any Grantor or the Grantors, as debtors, and the Collateral Agent, as secured party. Any such financing statement may indicate the Collateral as "all assets of the Grantor whether now existing or hereafter acquired", "all personal property of the debtor whether now existing or hereafter acquired" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC.

Notwithstanding the grant of authority to the Collateral Agent under this Section 2.01, and in accordance with Sections 3.02 and 7.01 below, each Grantor agrees to prepare and file or cause to be filed, at its own expense, any Financing Statements, amendments to Financing Statements, continuation statements or any other documents or instruments in each governmental, municipal or other office as is necessary to perfect or maintain the perfection of the Collateral Agent's Security Interest in the Collateral and to deliver to the Collateral Agent a file stamped copy of each such Financing Statement, amendment thereto, continuation statement or other document or instrument in connection with this Agreement or any other Collateral Document.

Without limiting the provisions of the first paragraph above and in furtherance of the provisions of the second paragraph above, the Collateral Agent hereby designates each Grantor as the Collateral Agent's true and lawful attorney, with full power of substitution, at each Grantor's option, to file one or more Financing Statements, amendments to Financing Statements, continuation statements, or to sign other documents solely for the purpose of perfecting, confirming, continuing, or protecting the Security Interest granted by each Grantor, but not releasing or deleting any Collateral, without the signature of the Collateral Agent, and naming any Grantor or the Grantors, as debtors, and the Collateral Agent, as secured party. Any such financing statement may indicate the Collateral as "all assets of the Grantor whether now existing or hereafter acquired", "all personal property of the debtor whether now existing or hereafter acquired" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC.

Section 2.02 No Assumption of Liability. The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

ARTICLE 3

Representations and Warranties

The Grantors jointly and severally represent and warrant to the Collateral Agent and the other Secured Parties that:

Section 3.01 Title and Authority. Each Grantor has good and valid rights in, and title to, the Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person, other than any consent or approval which has been obtained.

Section 3.02 Filings. Financing Statements or other appropriate filings, recordings or registrations containing a description of the Collateral have been or will be timely filed in each governmental, municipal or other office as is necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States or Canada (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or re-registration is necessary in any such jurisdiction, except as provided under Applicable Law with respect to the filing of continuation statements or as a result of any change in a Grantor's name or jurisdiction of incorporation or formation or under any other circumstances under which, pursuant to the UCC, filings previously made have become misleading or ineffective in whole or in part.

Section 3.03 Validity and Priority of Security Interest. The Security Interest constitutes (a) a legal and valid security interest in all of the Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the making of the filings described in Section 3.02 above within the time periods prescribed by Applicable Law, a perfected security interest in all of the Collateral (to the extent perfection in the Collateral can be accomplished by such filing) and (c) subject to the obtaining of Control by the Collateral Agent (or, to the extent only one Person can have Control thereof under Applicable Law, the ABL Collateral Agent or the Term Loan Collateral Agent, as applicable, as agent and/or bailee for the Collateral Agent pursuant to the applicable Intercreditor Agreement), a perfected security interest in all of the Collateral (to the extent perfection in the Collateral can be accomplished by Control and perfection of the Security Interest in such Collateral is required by the terms hereof or of the Indenture). The Security Interest is and shall be (i) pari passu with the Liens securing the Term Loan Obligations and any Additional Pari Passu Obligations and (ii) prior to any other Lien on any of the Collateral, subject only to (a) with respect to the ABL Priority Collateral only, Permitted Encumbrances under the ABL Credit Agreement including the senior lien of the ABL Collateral Agent on ABL Priority Collateral, and (b) other Permitted Encumbrances having priority by operation of Applicable Law.

Section 3.04 Absence of Other Liens. The Collateral is owned by the Grantors free and clear of any Lien, except for (i) Permitted Encumbrances or (ii) Liens for which termination statements have been delivered to the Collateral Agent. The Grantors have not (a) filed or consented to the filing of (i) any Financing Statement or analogous document under the UCC or any other Applicable Law covering any Collateral, (ii) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (iii) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, or (b) entered into any agreement in which any Grantor grants Control over any Collateral, which Financing Statement, control agreement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Encumbrances.

ARTICLE 4

Covenants

Section 4.01 Change of Name; Location of Collateral; Records; Place of Business.

(a) Each Grantor will furnish to the Collateral Agent prompt (and in any event, within 30 days of such change, or such earlier date required by the ABL Credit Agreement) written notice of any change in: (i) any Grantor's name; (ii) the location of any Grantor's chief executive office or its principal place of business; (iii) any Grantor's organizational structure or jurisdiction of incorporation or formation; or (iv) any Grantor's Federal Taxpayer Identification Number or organizational identification number, if any, assigned to it by its jurisdiction of organization. Each Grantor agrees to file or cause to be filed no later than 30 days (or such earlier date required by the ABL Credit Agreement) after the effective date of any change referred to in the preceding sentence all filings, publications and registrations under the UCC or other Applicable Law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (which shall be (i) pari passu with the Liens securing the Term Loan Obligations and any Additional Pari Passu Obligations and (ii) prior to any other Lien on any of the Collateral, subject only to (a) with respect to the ABL Priority Collateral only, Permitted Encumbrances under the ABL Credit Agreement, and (b) other Permitted Encumbrances having priority by operation of Applicable Law) for its own benefit and the benefit of the other Secured Parties. The Collateral Agent shall have no duty to inquire about any of the changes described in this clause (a); the parties acknowledging and agreeing that each Grantor is solely responsible to take all action described in the immediately preceding sentence.

(b) Each Grantor agrees (i) to maintain, at its own cost and expense, records with respect to the Collateral owned by it which are complete and accurate in all material respects and which are consistent with its current practices or in accordance with such prudent and standard practices used in industries that are the same as, or similar to, those in which such Grantor is engaged, but in any event to include accounting records which are complete in all material respects indicating all payments and proceeds received with respect to any part of the Collateral, and (ii) at such time or times as the Collateral Agent may reasonably request (it being understood that the Collateral Agent has no duty to make such request), promptly to prepare and deliver to the Collateral Agent a duly certified schedule or schedules in form and detail reasonably satisfactory to the Collateral Agent showing the identity, amount and location of any and all Collateral.

Section 4.02 Protection of Security. Each Grantor shall, at its own cost and expense, take any and all actions reasonably necessary to defend title to the Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the Collateral and the priority thereof against any Lien (other than Permitted Encumbrances).

Section 4.03 Further Assurances. Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further documents, Financing Statements, amendments to Financing Statements, continuation statements, agreements and instruments and take all such further actions as may be reasonably necessary or required or as the Collateral Agent may from time to time reasonably request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby or the validity or priority of such Security Interest, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any Financing Statements, amendments to Financing Statements, continuation statements or other documents in connection herewith or therewith. Without limiting the foregoing, each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further documents, Financing Statements, amendments to Financing Statements, continuation statements, agreements and instruments and take all such further actions as may be reasonably necessary or required or as the Collateral Agent may from time to time reasonably request to perfect or maintain the perfection of the Collateral Agent's Security Interest in all Accounts, Inventory, Deposit Accounts, Investment Property, and the proceeds therefrom (including causing the Collateral Agent, subject to the Pari Passu Intercreditor Agreement, to have Control of any such Collateral to the extent required under the Indenture or any Additional Pari Passu Document and to the extent perfection in such Collateral can be accomplished by Control). If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument with an individual face value in excess of $1,000,000 (or with respect to all such promissory notes or other Instruments, an aggregate face value in excess of $5,000,000), such note or Instrument shall be duly endorsed and, subject to the Pari Passu Intercreditor Agreement, be promptly pledged and delivered to the Collateral Agent.

Section 4.04 Taxes; Encumbrances. At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral (other than Permitted Encumbrances), and may take any other action which the Collateral Agent may reasonably deem necessary or desirable to repair, maintain or preserve any of the Collateral to the extent any Grantor fails to do so as required by the Indenture, any Additional Pari Passu Document or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization within thirty (30) days after receipt of an invoice therefor setting forth such expenses in reasonable detail; provided, however, that the Collateral Agent shall not have any obligation to undertake any of the foregoing and shall have no liability on account of any action so undertaken except where there is a specific finding in a judicial proceeding in a court of competent jurisdiction (in which the Collateral Agent has had an opportunity to be heard), from which finding no further appeal is available, that the Collateral Agent had acted with willful misconduct or in a grossly negligent manner; provided, further, that the making of any such payments or the taking of any such action by the Collateral Agent shall not be deemed to constitute a waiver of any Default or Event of Default arising from the Grantor's failure to have made such payments or taken such action. Nothing in this Section 4.04 shall be interpreted as excusing any Grantor from the performance of any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Collateral Documents.

Section 4.05 Assignment of Security Interest. Subject to the Intercreditor Agreements, if at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person to secure payment and performance of an Account, such security interest shall be automatically pledged and assigned to the Collateral Agent hereunder. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of, and transferees from, the Account Debtor or other Person granting the security interest.

Section 4.06 Continuing Obligations of the Grantors. Each Grantor shall remain liable to observe and perform in all material respects all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance.

Section 4.07 Use and Disposition of Collateral. Subject to the Intercreditor Agreements, none of the Grantors shall make or permit to be made any collateral assignment, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral or shall grant Control (for purposes of security) of any Collateral to any Person, except for Permitted Encumbrances and Permitted Dispositions. Subject to the Intercreditor Agreements, except for Permitted Dispositions expressly permitted in the Indenture and any Additional Pari Passu Document, none of the Grantors shall make or permit to be made any transfer of the Collateral.

Section 4.08 [Reserved].

Section 4.09 Insurance.

(a) Each Grantor shall (i) maintain such insurance, as may be required by Applicable Law; and (ii) furnish to the Collateral Agent, upon written request, full information as to the insurance carried.

(b) Subject to the Intercreditor Agreements, each Grantor hereby irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact), exercisable only after the occurrence and during the continuance of Event of Default under Section 6.1(1), (2) or (8) of the Indenture, for the purpose of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Collateral Agent may, but is under no obligation to, without waiving or releasing any obligation or liability of the Grantors hereunder or any Default or Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.09, including reasonable attorneys' fees, court costs, out-of-pocket expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 4.10 Commercial Tort Claims. As of date hereof, except as set forth on Schedule 4.10, none of the Collateral consists of a Commercial Tort Claim. If any Grantor shall at any time acquire a Commercial Tort Claim having a value in excess of $1,000,000 (or with respect to all such Commercial Tort Claims, having an aggregate value in excess of $5,000,000), such Grantor shall promptly notify the Collateral Agent in writing of the details thereof and shall update Schedule 4.10 to reflect such Commercial Tort Claim and the Grantors shall take such actions as may be reasonably necessary or required or as the Collateral Agent shall reasonably request in order to grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a perfected security interest therein and in the Proceeds thereof.

Section 4.11 Legend. Subject to the Intercreditor Agreements, at the request of the Collateral Agent (it being understood that the Collateral Agent has no duty to make such request), each Grantor shall legend its Accounts and its books, records and documents evidencing or pertaining thereto with an appropriate reference to the fact that such Accounts have been assigned to the Collateral Agent, for the benefit of the Secured Parties, and that the Collateral Agent has a security interest therein.

ARTICLE 5

[reserved]

ARTICLE 6

Remedies

Section 6.01 Remedies upon Event of Default. Subject to the Intercreditor Agreements, after the occurrence and during the continuance of an Event of Default, it is agreed that the Collateral Agent shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC or other Applicable Law. In each case subject to the Intercreditor Agreements, the rights and remedies of the Collateral Agent after the occurrence and during the continuation of an Event of Default shall include, without limitation, the right (but not the obligation) to take any or all of the following actions at the same or different times:

(a) With respect to any Collateral consisting of Accounts, General Intangibles (including Payment Intangibles), Letter-of-Credit Rights, Instruments, Chattel Paper, Documents, and Investment Property, the Collateral Agent may collect the Collateral with or without the taking of possession of any of the Collateral.

(b) With respect to any Collateral consisting of Accounts, the Collateral Agent may: (i) demand, collect and receive any amounts relating thereto, as the Collateral Agent may determine; (ii) commence and prosecute any actions in any court for the purposes of collecting any such Accounts and enforcing any other rights in respect thereof; (iii) defend, settle or compromise any action brought and, in connection therewith, give such discharges or releases as the Collateral Agent may reasonably deem appropriate; (iv) receive, open and dispose of mail addressed to any Grantor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to such Accounts or securing or relating to such Accounts, on behalf of and in the name of such Grantor; and (v) sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any such Accounts or the goods or services which have given rise thereto, as fully and completely as though the Collateral Agent was the absolute owner thereof for all purposes.

(c) With respect to any Collateral consisting of Investment Property, the Collateral Agent may: (i) exercise all rights of any Grantor with respect thereto, including without limitation, the right to exercise all voting and corporate rights at any meeting of the shareholders of the issuer of any Investment Property and to exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Investment Property as if the Collateral Agent was the absolute owner thereof, including the right to exchange, at its discretion, any and all of any Investment Property upon the merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof, all without liability; (ii) transfer such Collateral at any time to itself, or to its nominee, and receive the income thereon and hold the same as Collateral hereunder or apply it to the Secured Obligations; and (iii) demand, sue for, collect or make any compromise or settlement it deems desirable. The Grantors recognize that (a) the Collateral Agent may be unable to effect a public sale of all or a part of the Investment Property by reason of certain prohibitions contained in the Securities Act of 1933, 15 U.S.C, §77, (as amended and in effect, the "Securities Act") or the Securities laws of various states (the "Blue Sky Laws"), but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Investment Property for their own account, for investment and not with a view to the distribution or resale thereof, (b) that private sales so made may be at prices and upon other terms less favorable to the seller than if the Investment Property were sold at public sales, (c) that neither the Collateral Agent nor any other Secured Party has any obligation to delay sale of any of the Investment Property for the period of time necessary to permit the Investment Property to be registered for public sale under the Securities Act or the Blue Sky Laws, and (d) that private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner. Notwithstanding anything herein to the contrary, no Grantor shall be required to register, or cause the registration of, any Investment Property under the Securities Act or any Blue Sky Laws.

(d) With respect to any Collateral consisting of Inventory, Goods, and Equipment, the Collateral Agent may conduct one or more going out of business sales, in the Collateral Agent's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Grantor. The Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither any Grantor nor any Person claiming under or in right of any Grantor shall have any interest therein. Each purchaser at any such going out of business sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(e) With or without legal process and with or without prior notice or demand for performance, the Collateral Agent may enter upon, occupy, and use any premises owned or occupied by each Grantor, and may exclude the Grantors from such premises or portion thereof as may have been so entered upon, occupied, or used by the Collateral Agent to the extent the Collateral Agent deems such exclusion reasonably necessary to preserve and protect the Collateral. The Collateral Agent shall not be required to remove any of the Collateral from any such premises upon the Collateral Agent's taking possession thereof, and may render any Collateral unusable to the Grantors. In no event shall the Collateral Agent be liable to any Grantor for use or occupancy by the Collateral Agent of any premises pursuant to this Section 6.01, nor for any charge (such as wages for the Grantors' employees and utilities) incurred in connection with the Collateral Agent's exercise of the Collateral Agent's Rights and Remedies (as defined herein) hereunder.

(f) The Collateral Agent may require any Grantor to assemble the Collateral and make it available to the Collateral Agent at the Grantor's sole risk and expense at a place or places which are reasonably convenient to both the Collateral Agent and such Grantor.

(g) Each Grantor agrees that the Collateral Agent shall have the right, subject to Applicable Law, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor.

(h) Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event the Collateral Agent shall provide the Grantors such notice as may be practicable under the circumstances), the Collateral Agent shall give the Grantors at least ten (10) days' prior written notice, by authenticated record, of the date, time and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Each Grantor agrees that such written notice shall satisfy all requirements for notice to that Grantor which are imposed under the UCC or other Applicable Law with respect to the exercise of the Collateral Agent's Rights and Remedies upon default. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale or other disposition of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement

(i) Any public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice of such sale. At any sale or other disposition, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. If any of the Collateral is sold, leased, or otherwise disposed of by the Collateral Agent on credit, the Secured Obligations shall not be deemed to have been reduced as a result thereof unless and until payment in full is received thereon by the Collateral Agent.

(j) At any public (or, to the extent permitted by Applicable Law, private) sale made pursuant to this Section 6.01, the Collateral Agent or any other Secured Party may bid for or purchase, free (to the extent permitted by Applicable Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor, the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to the Collateral Agent or such other Secured Party from any Grantor on account of the Secured Obligations as a credit against the purchase price, and the Collateral Agent or such other Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor.

(k) For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. The Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full.

(l) As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose upon the Collateral and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver.

(m) To the extent permitted by Applicable Law, each Grantor hereby waives all rights of redemption, stay, valuation and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall exercise rights and remedies and sell the Collateral under the Collateral Documents only in accordance with the Pari Passu Intercreditor Agreement and the Indenture.

Section 6.02 Application of Proceeds.

(a) Subject to the Intercreditor Agreements, after the occurrence and during the continuance of an Event of Default and acceleration of the Secured Obligations pursuant to the terms hereof and of the Indenture or any Additional Pari Passu Document, the Collateral Agent shall apply the proceeds of any collection or sale of the Collateral, as well as any Collateral consisting of cash, or any Collateral granted under any other of the Collateral Documents, in the following order or priority:

First: to the Collateral Agent and the Trustee, each of their agents and attorneys for amounts due under Section 7.7 of the Indenture and any corresponding provisions of any Additional Pari Passu Document, including payment of all reasonable compensation, expense and liabilities incurred, and all advances that may have been made, by the Collateral Agent and the Trustee and the fees, costs and expenses of collection;

Second: to the payment in full of the Secured Obligations (the amounts so applied to be distributed to the Trustee or the Additional Senior Class Debt Representative pro rata in accordance with the respective amounts of the Secured Obligations for further distribution in accordance with the Indenture and the Additional Pari Passu Document owed to them on the date of any such distribution; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

(b) Subject to the Intercreditor Agreements, if, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder for distribution in accordance with this Section 6.02.

(c) In making the determinations and allocations required by this Section 6.02, the Collateral Agent may conclusively rely upon information supplied by the Trustee or Additional Senior Class Debt Representative as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, and the Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on such information, provided that nothing in this sentence shall prevent any Grantor from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Collateral Agent pursuant to this Section 6.02 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Collateral Agent shall have no duty to inquire as to the application by any Additional Senior Class Debt Representative of any amounts distributed to it.

(d) Subject to the Intercreditor Agreements, the Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement, the Indenture and each Additional Pari Passu Document. Upon any sale or other disposition of the Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale or other disposition shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold or otherwise disposed of and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

ARTICLE 7

Perfection of Security Interest

Section 7.01 Perfection by Filing. This Agreement constitutes an authenticated record, and each Grantor hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral, in such filing offices as the Collateral Agent shall reasonably deem necessary, and the Grantors shall pay the Collateral Agent's reasonable costs and out-of-pocket expenses incurred in connection therewith. Each Grantor hereby further agrees that a carbon, photographic, or other reproduction of this Agreement shall be sufficient as a Financing Statement and may be filed as a Financing Statement in any and all jurisdictions. Notwithstanding the foregoing authorization, each Grantor hereby agrees to prepare and file or caused to be filed, at its own expense, any financing or continuation statements, and amendments thereto, or any other documents or instruments, relative to all or any part of the Collateral, in such filing offices as are necessary or required in order to perfect or maintain the perfection of the Collateral Agent's Security Interest in the Collateral, and to deliver to the Collateral Agent a filed stamped copy of each such financing or continuation statement, or amendment thereto, or other such document or instrument. Neither the Trustee nor the Collateral Agent shall be under any obligation to file any such financing or continuation statements, and amendments thereto, or any other document or instrument in connection with this Agreement or any other Collateral Document.

Section 7.02 Other Perfection, Etc. The Grantors shall at any time and from time to time take such steps as may be reasonably necessary or required or as the Collateral Agent may reasonably request for the Collateral Agent, subject to the Intercreditor Agreements, (a) to obtain Control of any Investment Property in accordance with the provisions of the Pledge Agreement, and (b) otherwise to insure the continued perfection of the Collateral Agent's Security Interest in any of the Collateral with the priority described in Section 3.03 and of the preservation of the Collateral Agent's rights therein.

Section 7.03 Savings Clause. Nothing contained in this Article 7 shall be construed to narrow the scope of the Collateral Agent's Security Interest in any of the Collateral or the perfection or priority thereof or to impair or otherwise limit any of the Collateral Agent's Rights and Remedies hereunder except (and then only to the extent) as mandated by the UCC.

ARTICLE 8

Miscellaneous

Section 8.01 Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 12.2 of the Indenture and all notices to any Additional Senior Class Debt Representative shall be given to it at the address set forth in the Joinder Agreement.

Section 8.02 Grant of Non-Exclusive License. Without limiting the provision of Section 6.01 hereof or any other rights of the Collateral Agent as the holder of a Lien on any IP Collateral (as defined in the Intellectual Property Security Agreement), each Grantor hereby grants to the Collateral Agent a royalty free, non-exclusive, irrevocable license, to use, apply, and affix any trademark, trade name, logo, or similar indicia of source or origin in which any Grantor now or hereafter has rights, such license to be effective upon the Collateral Agent's exercise of the Collateral Agent's Rights and Remedies hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or any sale or other disposition of Inventory.

Section 8.03 Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest and all obligations of the Grantors hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Indenture, any Additional Pari Passu Document, any other Collateral Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any Additional Pari Passu Document, any other Collateral Document, or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from the Guaranty or any other guarantee, securing or guaranteeing all or any of the Secured Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than circumstances under which all Secured Obligations (other than contingent indemnification obligations as to which no claims have been asserted) shall have been paid in full).

Section 8.04 Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantors herein and in any other Collateral Document and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Collateral Document shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the execution and delivery of this Agreement and the other Collateral Documents and the issuance of the Senior Secured Notes or any other Secured Obligations, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Collateral Agent or any Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Indenture or any Additional Pari Passu Agreement, and shall continue in full force and effect unless terminated in accordance with Section 8.14 hereof and the Indenture.

Section 8.05 Binding Effect; Several Agreement; Assignments. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party, and all covenants, promises and agreements by or on behalf of the Grantors that are contained in this Agreement shall bind and inure to the benefit of each Grantor and its respective successors and permitted assigns. This Agreement shall be binding upon each Grantor and the Collateral Agent and their respective successors and permitted assigns, and shall inure to the benefit of each Grantor, the Collateral Agent and the other Secured Parties and their respective successors and permitted assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such attempted assignment or transfer shall be void) except as expressly permitted by this Agreement or the Indenture. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

Section 8.06 Collateral Agent's Fees and Expenses; Indemnification.

(a) Without limiting or duplicating any of their obligations under the Indenture, any Additional Pari Passu Document or the other Collateral Documents, the Grantors jointly and severally agree (i) to pay, in accordance with Section 7.7 of the Indenture and any corresponding provision in any Additional Pari Passu Document, all fees and expenses incurred by the Collateral Agent and (ii) to indemnify, in accordance with Section 7.7 of the Indenture and any corresponding provision in any Additional Pari Passu Document in connection with or in anyway related to (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Collateral, (iii) the exercise, enforcement or protection of any of the Collateral Agent's Rights and Remedies hereunder, (iv) the failure of any Grantor to perform or observe any of the provisions hereof or (v) the transactions contemplated hereby, in each case subject to the limitations contained in the Indenture and any Additional Pari Passu Document (to which the Collateral Agent is a party) or the other Collateral Documents.

(b) Any such amounts payable as provided hereunder shall be additional Secured Obligations secured hereby and by the other Collateral Documents and shall survive the termination of this Agreement or the earlier resignation or removal of the Collateral Agent.

Section 8.07 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 8.08 Waivers; Amendment.

(a) The rights, remedies, powers, privileges, and discretions of the Collateral Agent hereunder (herein, the "Collateral Agent's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Collateral Agent in exercising or enforcing any of the Collateral Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Collateral Agent of any Event of Default or of any Default under any other agreement shall operate as a waiver of any other Event of Default or other Default hereunder or under any other agreement. No single or partial exercise of any of the Collateral Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Collateral Agent and any Person, at any time, shall preclude the other or further exercise of the Collateral Agent's Rights and Remedies. No waiver by the Collateral Agent of any of the Collateral Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Collateral Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Collateral Agent may determine. The Collateral Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Secured Obligations. No waiver of any provisions of this Agreement or any other Collateral Document or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Collateral Agent and the Grantor or Grantors with respect to whom such waiver, amendment or modification is to apply, subject to any consent required in accordance with Sections 9.1 and 9.2 of the Indenture and corresponding provisions of each Additional Pari Passu Document.

Section 8.09 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER COLLATERAL DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.09.

Section 8.10 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 8.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy e-mail or other electronic methods shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.12 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 8.13 Jurisdiction; Consent to Service of Process.

(a) Each of the Grantors agrees that any suit for the enforcement of this Agreement or any other Collateral Document may be brought in the courts of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein, as the Collateral Agent may elect in its sole discretion, and consents to the non-exclusive jurisdiction of such courts. Each party to this Agreement hereby waives any objection which it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against a Grantor or its properties in the courts of any jurisdiction.

(b) Each of the Grantors agrees that any action commenced by any Grantor asserting any claim or counterclaim arising under or in connection with this Agreement or any other Collateral Document shall be brought solely in a court of the State of New York sitting in the Borough of Manhattan or any federal court sitting therein, as the Collateral Agent may elect in its sole discretion, and consents to the exclusive jurisdiction of such courts with respect to any such action.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.01. Nothing in this Agreement or any other Collateral Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 8.14 Termination; Release of Collateral.

(a) The Liens securing the Senior Secured Notes will be released, in whole or in part, as provided in Section 10.4 of the Indenture and the Liens securing Additional Pari Passu Obligations of any series will be released, in whole or in part, as provided in the Additional Pari Passu Documents governing such obligations. Upon at least two (2) Business Days' prior written request by the Grantors accompanied by the Officer's Certificate required by the Indenture, the Collateral Agent shall, without recourse, representation or warranty of any kind and at the Grantors sole cost and expense, execute such documents as the Grantors may reasonably request to evidence the release of the Liens upon any Collateral described in this Section 8.14; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in its reasonable opinion, would, under Applicable Law, expose the Collateral Agent to liability or create any obligation or entail any adverse consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens (other than those expressly being released) upon (or obligations of any Grantor in respect of) all interests retained by any Grantor, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Except for those provisions which expressly survive the termination thereof, this Agreement and the Security Interest granted herein shall terminate when all of the Secured Obligations (other than contingent indemnity obligations with respect to then unasserted claims) have been paid in full in cash, at which time, upon receipt of the Officer's Certificate and Opinion of Counsel required by the Indenture, the Collateral Agent shall, without recourse, representation or warranty of any kind, execute and deliver to the Grantors, at the Grantors' expense, all UCC termination statements and similar documents that the Grantors shall reasonably request to evidence such termination; provided, however, that the Indenture, any Additional Pari Passu Document, this Agreement, and the Security Interest granted herein shall be reinstated if at any time payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by any Secured Party upon the bankruptcy or reorganization of any Grantor or any other Grantor. Any execution and delivery of termination statements or other documents pursuant to this Section 8.14 shall be without recourse to, or warranty by, the Collateral Agent or any other Secured Party.

Section 8.15 Additional Grantors. If, after the date hereof, pursuant to the terms and conditions of the Indenture and/or any Additional Pari Passu Document, any Grantor shall be required to cause any Subsidiary or other Person to become a party hereto, such Grantor shall cause such Person to execute and deliver to the Collateral Agent an Additional Grantor Joinder Agreement in the form of Exhibit A (the "Additional Grantor Joinder Agreement"), and such Person shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto and shall be deemed to have collaterally assigned and granted to the Collateral Agent, for the benefit of the Secured Parties, the security interest described in such Additional Grantor Joinder Agreement and Article 2 hereof.

Section 8.16 Additional Pari Passu Obligations. On or after the date hereof, the Company may from time to time designate additional obligations as Additional Pari Passu Obligations pursuant to Section 5.13 of the Pari Passu Intercreditor Agreement. Upon such designation in accordance with Section 5.13 of the Pari Passu Intercreditor Agreement and delivery by such Additional Senior Class Debt Representative of a Joinder Agreement, such Additional Pari Passu Obligations will be governed by and will constitute Secured Obligations under this Agreement and the other Collateral Documents, except as may be otherwise specified in such Joinder Agreement.

Section 8.17 Intercreditor Agreement. This Agreement (other than Section 2.01 of this Agreement) and each other Collateral Document (other than Section 2.01 of this Agreement) are subject to the terms and conditions set forth in the Intercreditor Agreements in all respects and, in the event of any conflict between the terms of either Intercreditor Agreement and this Agreement (other than Section 2.01 of this Agreement), the terms of such Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, the priority of the Lien and Security Interest granted to the Collateral Agent pursuant to this Agreement and any other Collateral Document and the exercise of any right or remedy in respect of the Collateral by the Collateral Agent hereunder or under any other Collateral Document are subject to the provisions of the Intercreditor Agreements. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies with respect to the Collateral of the Collateral Agent (and the Secured Parties) shall be subject to the terms of the Intercreditor Agreements. Prior to Discharge of ABL Secured Obligations (as defined in the ABL Intercreditor Agreement), the delivery of any ABL Priority Collateral to the ABL Collateral Agent pursuant to the ABL Credit Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such ABL Priority Collateral to the extent that such delivery is consistent with the terms of the ABL Intercreditor Agreement, and the ABL Collateral Agent shall hold such ABL Priority Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the ABL Priority Collateral. Prior to the Discharge of Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement) that are Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement), the delivery of any Collateral to the Term Loan Collateral Agent pursuant to the Term Loan Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such Collateral to the extent that such delivery is consistent with the terms of the Pari Passu Intercreditor Agreement, and the Term Loan Collateral Agent shall hold such Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the Collateral.

Section 8.18 Incorporation by Reference; Concerning the Collateral Agent. Wilmington Trust, National Association is entering into this Agreement solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In connection with its execution and acting hereunder, the Collateral Agent is entitled to all of the rights, privileges, protections, immunities, benefits and indemnities provided to it under the Indenture and any corresponding provision of any Additional Pari Passu Document, as if such rights, privileges, protections, immunities, benefits and indemnities were set forth herein. Whether or not expressly stated therein, in executing, delivering and performing its obligations under any other Collateral Document, the Collateral Agent shall be entitled to the rights, privileges, protections, immunities, benefits and indemnities granted to it under the Indenture and any corresponding provision of any Additional Pari Passu Document. The Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or the other Collateral Documents unless it shall first receive such advice or concurrence of the Holders of a majority in aggregate principal amount of the Notes (and, if applicable, a majority of the Secured Parties) or the Applicable Authorized Representative in accordance with the Pari Passu Intercreditor Agreement, and, if it so requests, it shall first be indemnified to its satisfaction by the Holders (and, if applicable, the Secured Parties) against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal as of the day and year first above written.

GRANTORS:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY HOLDINGS, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY INVESTMENTS HOLDINGS, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF TEXAS, L.P.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF KENTUCKY, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY DIRECT CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF NEW JERSEY, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF PUERTO RICO, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

COHOES FASHIONS OF CRANSTON, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF BAYTOWN INC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF POCONO CROSSING, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF TEXAS, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY REALTY OF EDGEWATER PARK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY REALTY OF PINEBROOK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK URBAN RENEWAL CORP.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BCF FLORENCE URBAN RENEWAL, L.L.C.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BCF FLORENCE URBAN RENEWAL II, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON MERCHANDISING CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON DISTRIBUTION CORP.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

COLLATERAL AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as Collateral Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

SCHEDULE I

GRANTORS' NAMES

Burlington Coat Factory Holdings, LLC
Burlington Coat Factory Investments Holdings, Inc.
Burlington Distribution Corp. (f/k/a Burlington Distribution of California, Inc.)
Burlington Merchandising Corporation
Burlington Coat Factory Warehouse Corporation
Burlington Coat Factory of Texas, Inc.
Burlington Coat Factory of Texas, L.P.
Burlington Coat Factory of Kentucky, Inc.
BCF Florence Urban Renewal, L.L.C.
BCF Florence Urban Renewal II, LLC
Burlington Coat Factory Direct Corporation
Burlington Coat Factory Realty of Edgewater Park, Inc.
Burlington Coat Factory Realty of Pinebrook, Inc.
Burlington Coat Factory Warehouse of Edgewater Park Urban Renewal Corp.
Burlington Coat Factory Warehouse of Edgewater Park, Inc.
Burlington Coat Factory Warehouse of New Jersey, Inc.
Burlington Coat Factory of Puerto Rico, LLC
Cohoes Fashions of Cranston, Inc.
Burlington Coat Factory Warehouse of Baytown Inc
Burlington Coat Factory of Pocono Crossing, LLC

EXHIBIT A

ADDITIONAL GRANTOR JOINDER AGREEMENT

This **Additional Grantor Joinder Agreement**, dated as of _____, ____ (this "Joinder Agreement"), is delivered pursuant to (a) Section 8.15 of the Security Agreement, dated as of April 16, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement") by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the Guarantors from time to time party hereto and each of the other entities that may become a party thereto as provided therein (each of the foregoing, a "Grantor" and collectively, the "Grantors"), and Wilmington Trust, National Association, in its capacity as collateral agent for the Secured Parties, (in such capacity and together with any successors in such capacity, the "Collateral Agent") for its own benefit and the benefit of the other Secured Parties, (b) Section 16 of the Intellectual Property Security Agreement, dated as of April 16, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "IP Security Agreement") among the Company, the Grantors from time to time party thereto and each of the other entities that may become a party thereto as provided therein and the Collateral Agent and (c) Section 15 of the Pledge Agreement, dated as of April 16, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Pledge Agreement") among the Company, the Guarantors from time to time party thereto and each of the other entities that may become a party thereto as provided therein (each of the foregoing, a "Pledgor" and collectively, the "Pledgors") and the Collateral Agent. Capitalized terms used herein but not defined herein are used herein with the meaning given them in the Security Agreement, the IP Security Agreement and the Pledge Agreement, as the case may be.

By executing and delivering this Joinder Agreement, the undersigned hereby becomes a party to the Security Agreement, the IP Security Agreement and the Pledge Agreement as a Grantor or Pledgor, as applicable, with the same force and effect as if originally named as a Grantor or Pledgor, as applicable, therein, and expressly assumes all obligations and liabilities of a Grantor or Pledgor, as applicable, thereunder and, without limiting the generality of the foregoing, as security for the payment or performance, as the case may be, in full of the respective Secured Obligations of the undersigned, each Grantor hereby grants to the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, a security interest in, and collaterally assigns to the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, all of such Grantor's right, title and interest in, to and under the Collateral and the Pledged Collateral (as defined in the Pledge Agreement) wherever located, and whether now existing or hereafter arising or acquired from time to time. From and after the date hereof, the undersigned shall for all purposes be a party to the Security Agreement, the IP Security Agreement and the Pledge Agreement and shall have the same rights, benefits and obligations as a Grantor or Pledgor, as applicable, party thereto.

Without limiting the foregoing, the undersigned designates the Collateral Agent as such Grantor's true and lawful attorney, exercisable by the Collateral Agent whether or not an Event of Default exists, with full power of substitution, at the Collateral Agent's option, to file one or more Financing Statements, amendments to Financing Statements, continuation statements, or to sign other documents for the purpose of perfecting, confirming, continuing, or protecting the Security Interest granted by each Grantor, without the signature of any Grantor (each Grantor hereby appointing the Collateral Agent as such Person's attorney to sign such Person's name to any such instrument or document, whether or not an Event of Default exists), and naming any Grantor or the Grantors, as debtors, and the Collateral Agent, as secured party. Any such financing statement may indicate the Collateral as "all assets of the Grantor whether now existing or hereafter acquired", "all personal property of the debtor whether now existing or hereafter acquired" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC.

Notwithstanding the foregoing grant of authority to the Collateral Agent, each Grantor or Pledgor, as applicable, hereby agrees to prepare and file or cause to be filed, at its own expense, any Financing Statements, amendments to Financing Statements, continuation statements or any other documents or instruments in connection herewith in each applicable filing office as is necessary to perfect or maintain the perfection of the Collateral Agent's security interest in the Collateral and the Pledged Collateral and to deliver to the Collateral Agent a file stamped copy of each such Financing Statement, amendment thereto, continuation statement or other document or instrument in connection with this Agreement or any other Collateral Document.

Without limiting the provisions of the immediately preceding paragraph and in furtherance of the provisions of the second paragraph of this Joinder Agreement, the Collateral Agent hereby designates each undersigned Grantor as the Collateral Agent's true and lawful attorney, with full power of substitution, at such Grantor's option, to file one or more Financing Statements, amendments to Financing Statements, continuation statements, or to sign other documents solely for the purpose of perfecting, confirming, continuing, or protecting the Security Interest granted by such Grantor, but not releasing or deleting any Collateral, without the signature of the Collateral Agent, and naming any Grantor or the Grantors, as debtors, and the Collateral Agent, as secured party. Any such financing statement may indicate the Collateral as "all assets of the Grantor whether now existing or hereafter acquired", "all personal property of the debtor whether now existing or hereafter acquired" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC.

The information set forth in Annex I is hereby added to the information set forth in Schedules I and 4.10 to the Security Agreement, the information in Annex II is hereby added to the information set forth in Exhibits A through D to the IP Security Agreement and the information set forth in Annex III is hereby added to the information set forth in Schedule I to the Pledge Agreement.

The undersigned hereby represents and warrants that each of the representations and warranties contained in the Security Agreement, the IP Security Agreement and the Pledge Agreement applicable to it is true and correct in all material respects on and as the date hereof as if made on and as of such date, except to the extent that 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, if a representation and warranty is qualified as to materiality, the materiality qualifier shall be disregarded with respect to such representation and warranty.

This Joinder Agreement shall be governed by, construed and enforced in accordance with, the internal law of the State of New York without reference to conflicts of law rules other than Section 5-1401 of the General Obligations Law of the State of New York except that matters concerning the validity and perfection of a security interest shall be governed by the conflict of law rules set forth in the UCC. The undersigned hereby consents to the application of New York civil law to the construction, interpretation and enforcement of this Joinder Agreement, and to the application of New York civil law to the procedural aspects of any suit, action or proceeding relating thereto, including, but not limited to, legal process, execution of judgments and other legal remedies.

This Joinder Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes. Transmission by facsimile, "PDF" or similar electronic format of an executed counterpart of this Joinder Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[This Space Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date of this Joinder Agreement
first above written.

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Collateral Agent

By: _____
Name:
Title:

ANNEX I

[New Grantor to complete as appropriate]

SCHEDULE I

GRANTORS' NAMES, LOCATION, ETC.

Name of Grantor	Type of Organization (e.g. corporation, limited liability company, limited partnership)	Jurisdiction of Organization/Formation	Organization Identification Number	Federal Taxpayer Identification Number

ANNEX II

[New Grantor to complete as appropriate]

EXHIBIT A

List of Copyrights

Copyright Registrations and Applications

EXHIBIT B

List of Patents

Patents and Patent Applications

EXHIBIT C

List of Trademarks

Trademark Registrations and Applications

U.S. Federal

Country	Trademark	Status	App/Reg. No.	App/Reg. Date

U.S. State

Country	Trademark	Status	Reg. No.	Reg. Date

Domain Name Registrations

Internet domain name registrations

EXHIBIT D

List of Licenses

Copyright Licenses

Vendor	*Type*	*Effective Date*

Patent Licenses

Trademark Licenses

ANNEX III

[New Grantor to complete as appropriate]

SCHEDULE I

None of the issuers has any authorized, issued or outstanding shares of its capital stock of any class or any commitments to issue any shares of its capital stock of any class or any securities convertible into or exchangeable for any shares of its capital stock of any class except as otherwise stated in the Schedule I.

Issuer	Record Owner	Class of Shares	Number of Shared held by Record Owner	Number of Issued and Outstanding Shares	Percentage of Shares held by Record Owner

Exhibit 10.2

INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement"), dated as of April 16, 2020, by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the entities listed on Schedule I hereto and each of the other entities that may become a party hereto as provided herein (each of the foregoing, together with the Company, a "Grantor" and collectively, the "Grantors"), and Wilmington Trust, National Association, in its capacity as collateral agent for the Secured Parties (in such capacity and together with any successors in such capacity, the "Collateral Agent"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

W I T N E S S E T H:

WHEREAS, reference is made to that certain Indenture, dated as of April 16, 2020 (as amended, modified, supplemented or restated and in effect from time to time, the "Indenture", which term shall also include and refer to any additional issuance of notes under the Indenture), by and between the Company, each Guarantor, Wilmington Trust, National Association, in its capacity as trustee (together with its successors in such capacity, the "Trustee") and the Collateral Agent for its own benefit and the benefit of the other Secured Parties, pursuant to which the Company is issuing $300,000,000 aggregate principal amount of its 6.250% Senior Secured Notes due 2025 (together with any additional notes issued under the Indenture, the "Senior Secured Notes"); and

WHEREAS, reference is also made to the Security Agreement dated as of even date herewith (as amended, modified, supplemented or restated and in effect from time to time, the "Security Agreement"), by, among others, the Grantors and the Collateral Agent for the Secured Parties, pursuant to which the Grantors and the other Grantors named therein have granted a security interest in the Collateral (as defined in the Security Agreement) to secure the Secured Obligations (as defined in the Security Agreement); and

WHEREAS, from time to time after the date hereof, the Company may, subject to the terms and conditions of the Indenture and the Collateral Documents, incur Additional Pari Passu Obligations that the Company desires to secure by the Collateral (including the IP Collateral (as defined below)) on a pari passu basis with the Senior Secured Notes as further provided in the Security Agreement; and

WHEREAS, this Agreement is made by the Grantors in favor of the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance in full when due of the Secured Obligations.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors and the Collateral Agent, on its own behalf and on behalf of the other Secured Parties (and each of their respective successors or assigns), hereby agree as follows:

SECTION 1. General

(a) Definitions. Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Indenture or the Security Agreement (as applicable). In addition, as used herein, the following terms shall have the following meanings:

"Copyrights" shall mean all copyrights and like protections in each work of authorship or derivative work thereof, whether registered or unregistered and whether published or unpublished, including, without limitation, the United States copyright registrations and copyright applications listed on **EXHIBIT A** annexed hereto and made a part hereof, together with all registrations and recordings thereof and all applications in connection therewith.

"Copyright Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right under any Copyright, including, without limitation, the agreements listed on **EXHIBIT A** annexed hereto and made a part hereof.

"Copyright Office" shall mean the United States Copyright Office or any other federal governmental agency which may hereafter perform its functions.

"Event of Default" shall have the meaning assigned to such term in the Security Agreement.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally consist of (i) in the case of the first, third, fourth, sixth, seventh, ninth and tenth Fiscal Months of each Fiscal Year, four calendar weeks, (ii) in the case of the second, fifth, eighth and eleventh Fiscal Months of each Fiscal Year, five calendar weeks and (iii) in the case of the twelfth Fiscal Month of each Fiscal Year, the period from the first day following the eleventh Fiscal Month of such Fiscal Year through the last day of such Fiscal Year, in accordance with the fiscal accounting calendar of Burlington Coat Factory Holdings, LLC and its Subsidiaries.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarter shall generally end on (i) in the case of the first three Fiscal Quarters of each Fiscal Year, on the date that is 13 weeks after the last day of the preceding Fiscal Quarter and (ii) in the case of the last Fiscal Quarter of each Fiscal Year, on the last day of such Fiscal Year, in accordance with the fiscal accounting calendar of Burlington Coat Factory Holdings, LLC and its Subsidiaries.

"Fiscal Year" means any period of twelve consecutive Fiscal Months ending on the Saturday closest to January 31 of any calendar year.

"Intellectual Property" shall mean each of the items specified in Sections 2(a), (b), (c), (d), (e), and (f).

"IP Collateral" shall have the meaning assigned to such term in Section 2 hereof.

"Licenses" shall mean, collectively, the Copyright Licenses, Patent Licenses, Trademark Licenses, and any other license providing for the grant by or to any Grantor of any right to use Intellectual Property as such term is defined herein.

"Material Adverse Effect" means any event, facts, or circumstances, which has a material adverse effect on (i) the business, assets or financial condition of the Grantors taken as a whole or (ii) the validity or enforceability of this Agreement, the Indenture, any Additional Pari Passu Document and the other Collateral Documents, taken as a whole, or the rights or remedies of the Secured Parties hereunder or thereunder, taken as a whole.

"Collateral Agent" shall have the meaning assigned to such term in the preamble of this Agreement.

"Patents" shall mean all patents and applications for patents, and the inventions and improvements therein disclosed, and any and all divisions, revisions, reissues and continuations, continuations-in-part, extensions, and reexaminations of said patents including, without limitation, the United States patents and patent applications listed on **EXHIBIT B** annexed hereto and made a part hereof.

"Patent Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right under any Patent, including, without limitation, the agreements listed on **EXHIBIT B** annexed hereto and made a part hereof.

"PTO" shall mean the United States Patent and Trademark Office or any other federal governmental agency which may hereafter perform its functions.

"Secured Obligations" shall have the meaning assigned to such term in the Security Agreement.

"Trademarks" shall mean all trademarks, trade names, corporate names, company names, Internet domain names, business names, fictitious business names, trade dress, trade styles, service marks, designs, logos and other source or business identifiers, whether registered or unregistered, including, without limitation, the United States trademark registrations and trademark applications listed on **EXHIBIT C** annexed hereto and made a part hereof, together with all registrations thereof, all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

"Trademark Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right under any Trademark, including, without limitation, the agreements listed on **EXHIBIT C** annexed hereto and made a part hereof.

(b) Rules of Interpretation. The rules of interpretation specified in Section 1.4 of the Indenture shall be applicable to this Agreement.

SECTION 2. Grant of Security Interest. In furtherance and as confirmation of the Security Interest granted by the Grantors to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) under the Security Agreement, and as further security for the payment or performance, as the case may be, in full of the Secured Obligations, each of the Grantors hereby ratifies such Security Interest and grants to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) a continuing security interest, in all of the present and future right, title and interest of such Grantor in, to and under the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the "IP Collateral"):

(a) All Copyrights.

(b) All Patents.

(c) All Trademarks.

(d) All renewals of any of the foregoing.

(e) All trade secrets, know-how and other proprietary information; works of authorship and other copyrightable works (including copyrights for computer programs), and all tangible and intangible property embodying the foregoing; inventions (whether or not patentable) and all improvements thereto; industrial design applications and registered industrial designs; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases, and other physical manifestations, embodiments or incorporations of any of the foregoing, and all other intellectual property and proprietary rights.

(f) All General Intangibles connected with the use of, or related to, any and all Intellectual Property (including, without limitation, all goodwill of each Grantor and its business, products and services appurtenant to, associated with, or symbolized by, any and all Intellectual Property and the use thereof).

(g) All Licenses and all income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations or dilutions thereof.

(h) The right to sue for past, present and future infringements, misappropriations and dilutions of any of the foregoing.

(i) All of the Grantors' rights corresponding to any of the foregoing throughout the world.

Notwithstanding the foregoing, no Trademark shall be included in the definition of IP Collateral to the extent that the grant of a security interest in such Trademark would result in, permit or provide grounds for the cancellation or invalidation of such Trademark.

SECTION 3. Protection of Intellectual Property By Grantors. Except as set forth below in this Section 3, each of the Grantors shall use commercially reasonable efforts to undertake the following with respect to each item of Intellectual Property material to the conduct of the business of such Grantor, in each case as deemed appropriate in such Grantor's reasonable business judgment:

(a) Pay all renewal fees and other fees and costs associated with maintaining and prosecuting issuances, registrations and applications relating to such Intellectual Property and take all other customary and reasonably necessary steps to maintain each registration of such Intellectual Property.

(b) Take all actions reasonably necessary to prevent any of such Intellectual Property from becoming forfeited, abandoned, dedicated to the public (other than at the expiration of any non-renewable statutory term), or invalidated.

(c) At the Grantors' sole cost and expense, pursue the prosecution of each application for registration in such Intellectual Property that is the subject of the security interest created herein and not abandon any such application.

(d) At the Grantors' sole cost and expense take any and all action that the Grantors reasonably deem appropriate under the circumstances to protect such Intellectual Property from infringement, misappropriation or dilution, including, without limitation, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, and no Material Adverse Effect would result therefrom, no Grantor shall have any obligation to take any of the actions described in Sections 3(a), (b), (c) and (d) above with respect to any Intellectual Property (i) that relates solely to any of the Grantor's products or services that have been discontinued, abandoned or terminated, (ii) that has been replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to take such actions with respect to such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the security interest created by this Agreement, or (iii) that otherwise is no longer material to the business of any Grantor.

SECTION 4. Grantors' Representations and Warranties. In addition to any representations and warranties contained in any other Collateral Documents, each Grantor represents and warrants that:

(a) **EXHIBIT A** is a true, correct and complete list of all United States and Canadian Copyright registrations and applications for the registration of Copyrights owned by such Grantor.

(b) **EXHIBIT B** is a true, correct and complete list of all United States and Canadian Patents and Patent applications owned by such Grantor.

(c) **EXHIBIT C** is a true, correct and complete list of all United States and Canadian Trademark registrations and applications owned by such Grantor.

(d) **EXHIBIT D** is a true, correct and complete list of all Licenses relating to Intellectual Property material to the operation of such Grantor's business (other than Licenses relating to commercially available, off-the-shelf software) to which such Grantor is a party as of the date hereof.

(e) Except as set forth in **EXHIBIT D**, none of the Intellectual Property owned by such Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

(f) All IP Collateral is, and shall remain, free and clear of all Liens, encumbrances, or security interests in favor of any Person, other than Permitted Encumbrances and Liens in favor of the Collateral Agent.

(g) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Grantor's rights in, any Intellectual Property or Licenses in any respect that could reasonably be expected to have a Material Adverse Effect on the business or the property of such Grantor.

(h) Within thirty (30) days after the end of each Fiscal Quarter of each Fiscal Year, such Grantor shall give the Collateral Agent written notice (with reasonable detail) of any of the following occurring with the preceding Fiscal Quarter:

(i) Such Grantor's filing applications for registration of, being issued a registration in or receiving an issuance of any Intellectual Property, or otherwise acquiring ownership of any registered Intellectual Property (other than the acquisition by such Grantor of the right to sell products containing the trademarks of others in the ordinary course of such Grantor's business).

(ii) The filing and acceptance of a statement of use or an amendment to allege use in connection with any of such Grantor's intent-to-use Trademark applications.

(iii) Such Grantor's entering into any new Licenses with respect to the Intellectual Property material to the operation of such Grantor's business.

(iv) Such Grantor's knowing that any application or registration relating to any Intellectual Property material to the operation of such Grantor's business could reasonably be expected to, other than as provided in Section 3 above, become forfeited, abandoned or dedicated to the public (other than at the end of any non-renewable statutory term), or of any adverse dispositive determination (including, without limitation, the institution of, or any such dispositive determination in, any proceeding in the PTO, the Copyright Office or any court or tribunal) regarding such Grantor's ownership of, the validity of, or enforceability of any Intellectual Property material to the operation of such Grantor's business or such Grantor's right to register the same or to own and maintain the same.

SECTION 5. Agreement Applies to Future Intellectual Property.

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in subsections (i), (ii), (iii) and (iv) of Section 4(h), above, all of which shall be deemed to be and treated as "Intellectual Property" or "Licenses," as applicable, within the meaning of this Agreement. Within thirty (30) days following the end of Fiscal Quarter of each Fiscal Year in which there occurred any acquisition, execution, registration or application by any Grantor of any additional registered Intellectual Property or Licenses material to the operation of such Grantor's business, Grantor shall deliver to the Collateral Agent an updated **EXHIBIT A**, **B**, **C** and/or **D** (as applicable) to this Agreement and hereby authorizes the Collateral Agent to file, at such Grantor's expense, such updated Exhibit as set forth in Section 5(b).

(b) Each of the Grantors shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as may be reasonably necessary or required or as the Collateral Agent may reasonably request in writing, including but not limited to notices of security interests substantially in the form of **EXHIBIT E** (Notice of Security Interest in Trademarks and Patents) or **EXHIBIT F** (Notice of Security Interest in Copyrights), as applicable, attached hereto, to evidence the Collateral Agent's security interest in any Intellectual Property in the United States or Canada (including, without limitation, filings with the PTO, the Copyright Office, the Canadian Intellectual Property Office, or any similar government office, as applicable), and each of the Grantors hereby appoints the Collateral Agent as its attorney-in-fact for the sole purpose of executing and filing all such writings for the foregoing purposes, all such acts of such attorney being hereby ratified and confirmed; *provided*, *however*, the Collateral Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby and the Collateral Agent shall have no duty to make such request.

(c) Notwithstanding the foregoing authorizations to the Collateral Agent under this Section 5, each Grantor hereby agrees to record or cause to be recorded, at its own expense, any updated Exhibits to this Agreement and any and all agreements, instruments, documents and papers in the appropriate filing offices in the United States or Canada as may be necessary or required to perfect or maintain the perfection of the Collateral Agent's security interest in the IP Collateral, and to deliver to the Collateral Agent a file stamped copy of each such updated Exhibit to this Agreement or agreement, instrument, document or paper recorded in connection herewith.

(d) In furtherance of Section 5(c), the Collateral Agent hereby designates each Grantor as the Collateral Agents' true and lawful attorney, with full power of substitution, at each Grantor's option, to file and record all agreements, instruments, documents and papers referred to in Section 5(c) above, or to sign other documents solely for the purpose of perfecting, confirming, continuing, or protecting the Security Interest granted by each Grantor, but not releasing or deleting any Collateral, without the signature of the Collateral Agent, and naming any Grantor or the Grantors, as debtors, and the Collateral Agent, as secured party.

SECTION 6. Grantors' Rights To Enforce IP Collateral. Prior to the occurrence or after the cure of an Event of Default, the Grantors shall have the exclusive right to sue for past, present and future infringement, misappropriation or dilution of or other conflict with the IP Collateral, including without limitation the right to seek injunctions and/or money damages in an effort by the Grantors to protect the Intellectual Property and Licenses against infringement, misappropriation or dilution by or other conflict with third parties, *provided*, *however*, that:

The Grantors first provide the Collateral Agent with written notice of the Grantors' institution of any legal proceedings for enforcement of any Intellectual Property or Licenses.

Any money damages awarded or received by the Grantors on account of such suit (or the threat of such suit) shall constitute IP Collateral.

Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent, by written notice to the Grantors, may (but shall not be obligated to) terminate or limit the Grantor's rights under this Section 6.

SECTION 7. Collateral Agent's Actions To Protect Intellectual Property. In the event of any Grantor's failure, within thirty (30) days of written notice from the Collateral Agent, to cure any failure by such Grantor to observe or perform any of such Grantor's covenants, agreements or other obligations hereunder that would reasonably be expected to materially impair the validity or priority of the security interest in the IP Collateral granted pursuant to this Agreement, the Collateral Agent, acting in its own name or in that of any Grantor, may (but shall not be obligated to) act in any Grantor's place and stead and/or in the Collateral Agent's own right in connection therewith.

SECTION 8. Rights Upon Event of Default. Subject to the Intercreditor Agreements, upon the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies hereunder, the Collateral Agent may (but shall not be obligated to) exercise all rights and remedies of a Secured Party as defined in the UCC, with respect to the Intellectual Property and the Licenses, in addition to which the Collateral Agent may (but shall not be obligated to) sell, license, assign, transfer, or otherwise dispose of the Intellectual Property or Licenses, subject to those restrictions to which such Grantor is subject under Applicable Law and by contract. Any person may conclusively rely upon an affidavit of the Collateral Agent that an Event of Default has occurred and that the Collateral Agent is authorized to exercise such rights and remedies.

SECTION 9. Notes Collateral Agent as Attorney-In-Fact.

(a) Each of the Grantors hereby irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as and for such Grantor's true and lawful agent and attorney-in-fact, exercisable upon the occurrence and during the continuance of any Event of Default, and in such capacity the Collateral Agent shall have the right (but not the obligation), with power of substitution for each Grantor and in each Grantor's name or otherwise, for the use and benefit of the Collateral Agent and the other Secured Parties:

(i) To supplement and amend from time to time **EXHIBITS A, B** and **C** of this Agreement to include any newly developed, applied for, registered, or acquired Intellectual Property of such Grantor and any intent-to-use Trademark applications for which a statement of use or an amendment to allege use has been filed and accepted by the PTO.

(ii) To exercise any of the rights and powers referenced herein.

(iii) To execute all such instruments, documents, and papers as the Collateral Agent reasonably determines to be appropriate in connection with the exercise of such rights and remedies, subject to those restrictions to which such Grantor is subject under Applicable Law and by contract.

(b) The power of attorney granted herein, being coupled with an interest, shall be irrevocable until this Agreement is terminated in writing by a duly authorized officer of the Collateral Agent.

(c) The Collateral Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a), but if the Collateral Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Grantors for any act or omission to act, except for any act or omission to act as to which there is a final and nonappealable judgment made by a court of competent jurisdiction, which determination includes a specific finding that the subject act or omission to act has resulted from the gross negligence or willful misconduct of the Collateral Agent.

SECTION 10. Collateral Agent's Rights. Any use by the Collateral Agent of the Intellectual Property, as authorized hereunder in connection with the exercise of the Collateral Agent's rights and remedies under this Agreement, the Indenture, any Additional Pari Passu Document and the Security Agreement shall be coextensive with the Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

SECTION 11. Intent. A notice of security interest, substantially in the form of **EXHIBIT E** and **EXHIBIT F**, as applicable, attached hereto, will be executed and delivered by the Grantors to the Collateral Agent contemporaneously with the execution and delivery of this Agreement for the purpose of recording the grant of the security interest of the Collateral Agent in the Intellectual Property with the PTO, the Copyright Office, or the Canadian Intellectual Property Office, as applicable. It is intended that the security interest granted pursuant to this Agreement or pursuant to any security agreement used for the purpose of recording with the PTO, the Copyright Office, or the Canadian Intellectual Property Office, as applicable, the grant of the security interest herein is coextensive with, and not in addition to or in limitation of, the Security Interest granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties, under the Security Agreement. All provisions of the Security Agreement shall apply to the IP Collateral. The Collateral Agent shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the IP Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Security Agreement, the terms of this Agreement shall control with respect to the IP Collateral and the Security Agreement shall control with respect to all other Collateral. In addition, for all purposes of this Agreement, the provisions of Sections 8.03, 8.04, 8.05, 8.08, 8.09, 8.10, 8.11, 8.12 and 8.13 of the Security Agreement are hereby incorporated by reference, *mutatis mutandis*, as if fully set forth herein (for the avoidance of doubt, each reference to "Collateral" in these Sections of the Security Agreement shall also be deemed to be a reference to the IP Collateral).

SECTION 12. Further Assurances. Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further documents, financing statements, amendments thereto, continuation statements, agreements and instruments in the appropriate filings office and take all such further actions as may be reasonably necessary or required or as the Collateral Agent may from time to time reasonably request in writing to better assure, preserve, protect and perfect in the United States or Canada (as applicable) the security interest in the IP Collateral granted pursuant to this Agreement and the rights and remedies created hereby or the validity or priority of such security interest, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the security interest and the filing of any financing statements, amendments thereto, continuation statements or other documents in connection herewith or therewith, and to deliver to the Collateral Agent a file stamped copy of each such financing statement, amendment thereto, continuation statement or other document filed in connection herewith.

SECTION 13. Termination; Release of IP Collateral. Except for those provisions which expressly survive the termination thereof, this Agreement and the security interest granted herein shall automatically terminate when (i) all Secured Obligations (other than contingent indemnification obligations as to which no claims have been asserted) shall have been paid in full in cash, at which time, upon receipt of the Officer's Certificate and Opinion of Counsel required by the Indenture, the Collateral Agent shall execute and deliver to the Grantors, at the Grantors' expense, all termination statements, releases and similar documents that the Grantors shall reasonably request in writing to evidence such termination; *provided*, *however*, that this Agreement and the security interest granted herein shall be reinstated if at any time payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by any Secured Party upon the bankruptcy or reorganization of any Grantor or any other Loan Party. Any execution and delivery of termination statements, releases or other documents pursuant to this Section 13 shall be without recourse to, or warranty by, the Collateral Agent or any other Secured Party. The security interest granted herein shall also be released as provided in the Security Agreement.

SECTION 14. Choice of Laws. It is intended that all rights and obligations under this Agreement, including matters of construction, validity, and performance, shall be governed by the laws of the State of New York.

SECTION 15. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 12.2 of the Indenture and all notices to any Additional Senior Class Debt Representative shall be given to it at the address set forth in the Joinder Agreement.

SECTION 16. Intercreditor Agreements. This Agreement and each other Collateral Document are subject to the terms and conditions set forth in the Intercreditor Agreements in all respects and, in the event of any conflict between the terms of either Intercreditor Agreement and this Agreement, the terms of such Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Collateral Agent pursuant to this Agreement and any other Collateral Document and the exercise of any right or remedy in respect of the Collateral by the Collateral Agent hereunder or under any other Collateral Document are subject to the provisions of the Intercreditor Agreements. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies with respect to the Collateral of the Collateral Agent (and the Secured Parties) shall be subject to the terms of the Intercreditor Agreements. Prior to the Discharge of ABL Obligations (as defined in the ABL Intercreditor Agreement), the delivery of any ABL Priority Collateral (as defined in the ABL Intercreditor Agreement) to the ABL Collateral Agent pursuant to the ABL Credit Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such ABL Priority Collateral to the extent that such delivery is consistent with the terms of the ABL Intercreditor Agreement, and the ABL Collateral Agent shall hold such ABL Priority Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the ABL Priority Collateral. Prior to the Discharge of Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement) that are Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement), the delivery of any Collateral to the Term Loan Collateral Agent pursuant to the Term Loan Credit Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such Collateral to the extent that such delivery is consistent with the terms of the Pari Passu Intercreditor Agreement, and the Term Loan Collateral Agent shall hold such Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the Collateral.

SECTION 17. Concerning the Collateral Agent. Wilmington Trust, National Association is entering into this Agreement solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any Additional Pari Passu Document, as if such rights, privileges, immunities and indemnities were set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GRANTORS:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: /s/ David Glick
Name:David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY HOLDINGS, LLC

By: /s/ David Glick
Name:David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY INVESTMENTS HOLDINGS, INC.

By: /s/ David Glick
Name:David Glick
Title: Senior Vice President, Investor Relations and Treasurer

EACH OF THE SUBSIDIARIES LISTED ON SCHEDULE I HERETO

By: /s/ David Glick
Name:David Glick
Title: Senior Vice President, Investor Relations and Treasurer

COLLATERAL AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as Collateral Agent

By: /s/ Barry D. Somrock
Name:Barry D. Somrock
Title: Vice President

[Signature Page to Intellectual Property Security Agreement]

EXHIBIT A

List of Copyrights

Copyright Registrations and Applications

EXHIBIT B

List of Patents

Patents and Patent Applications

EXHIBIT C

List of Trademarks

Trademark Registrations and Applications

EXHIBIT D

List of Licenses

Copyright Licenses

Patent Licenses

Trademark Licenses

EXHIBIT E

Form of Notice of Security Interest in Trademarks and Patents

NOTICE OF SECURITY INTEREST IN TRADEMARKS AND PATENTS

This NOTICE OF SECURITY INTEREST IN TRADEMARKS AND PATENTS, dated as of April 16, 2020 (this "Notice"), is made by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), each of the Persons listed on Schedule I to the Intellectual Property Security Agreement referred to below (each of the foregoing, a "Grantor" and collectively, the "Grantors"), and Wilmington Trust, National Association, in its capacity as collateral agent for the Secured Parties (in such capacity and together with any successors in such capacity, the "Collateral Agent"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

W I T N E S S E T H:

WHEREAS, Grantors are party to a Security Agreement and an Intellectual Property Security Agreement of even date herewith (the "Intellectual Property Security Agreement") made by the Grantors in favor of the Collateral Agent and the Secured Parties;

WHEREAS, pursuant to the Security Agreement and the Intellectual Property Security Agreement, Grantors have executed and delivered this Notice for the purpose of recording and confirming the grant of the security interest of the Collateral Agent in the Trademark Collateral and Patent Collateral (each as defined below) with the United States Patent and Trademark Office and the Canadian Intellectual Property Office;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein and in the Security Agreement and the Intellectual Property Security Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors and the Collateral Agent, on its own behalf and on behalf of the other Secured Parties (and each of their respective successors or assigns), hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, all capitalized terms defined in the Intellectual Property Security Agreement and used herein have the meaning given to them in the Intellectual Property Security Agreement.

SECTION 2. Grant of Security Interest. In furtherance and as confirmation of the Security Interest granted by the Grantors to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) under the Security Agreement and the Intellectual Property Security Agreement, and as further security for the payment or performance, as the case may be, in full of the Secured Obligations, each of the Grantors hereby ratifies such Security Interest and grants to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) a continuing security interest, in all of the present and future right, title and interest of such Grantor in, to and under the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, wherever located, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the "Trademark and Patent Collateral"):

All trademarks, trade names, corporate names, company names, Internet domain names, business names, fictitious business names, trade dress, trade styles, service marks, designs, logos and other source or business identifiers, whether registered or unregistered, together with all registrations thereof, all applications in connection therewith and all renewals thereof, and any goodwill of the business connected with, and symbolized by, any of the foregoing, including, without limitation, the trademark registrations and trademark applications set forth on Exhibit A attached hereto (collectively, "Trademarks");

All patents and applications for patents, and the inventions and improvements therein disclosed, and any and all divisions, revisions, reissues and continuations, continuations-in-part, extensions, and reexaminations of said patents, including, without limitation, the patents and patent applications set forth on Exhibit B attached hereto (collectively, "Patents");

All agreements, whether written or oral, providing for the grant by or to any Grantor of any right in respect of any Patent or Trademark material to the operation of such Grantor's business (collectively, "Licenses") and all income, royalties, damages and payments now and hereafter due and/or payable under and with respect to the Trademarks and Patents, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations or dilutions thereof;

The right to sue for past, present and future infringements, misappropriations and dilutions of any of the Trademarks and Patents; and

All of the Grantors' rights corresponding to any of the foregoing throughout the world.

Notwithstanding the foregoing, no Trademark shall be included in the Trademark and Patent Collateral to the extent that the grant of a security interest in such Trademark would result in, permit or provide grounds for the cancellation or invalidation of such Trademark.

SECTION 3. Intent. This Notice is being executed and delivered by the Grantors for the purpose of recording and confirming the grant of the security interest of the Collateral Agent in the Trademark and Patent Collateral with the United States Patent and Trademark Office and the Canadian Intellectual Property Office. It is intended that the security interest granted pursuant to this Notice is granted in conjunction with, and not in addition to or limitation of, the Security Interest granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties, under the Security Agreement and the Intellectual Property Security Agreement. All provisions of the Security Agreement and the Intellectual Property Security Agreement shall apply to the Trademark and Patent Collateral. The Collateral Agent shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the Trademark and Patent Collateral as in all other Collateral. In the event of a conflict between this Notice and the Intellectual Property Security Agreement, the terms of the Intellectual Property Security Agreement shall control.

SECTION 4. Recordation. Each Grantor authorizes and requests that the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this Notice.

SECTION 5. Termination; Release of Trademark and Patent Collateral. Upon termination of the Security Interest in the Trademark and Patent Collateral in accordance with Section 13 of the Intellectual Property Security Agreement, the Collateral Agent shall execute, acknowledge, and deliver to the Grantor, at such Grantor's expense, an instrument in writing in recordable form as such Grantor may reasonably request in writing to evidence the release of the collateral pledge, grant, Lien and security interest in the Trademark and Patent Collateral under this Notice. Any execution and delivery of termination statements, releases or other documents pursuant to this Section 5 shall be without recourse to, or warranty by, the Collateral Agent or any other Secured Party.

SECTION 6. Concerning the Collateral Agent. Wilmington Trust, National Association is entering into this Notice solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any Additional Pari Passu Document, as if such rights, privileges, immunities and indemnities were set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have caused this Notice to be executed by their duly authorized officers as of the date first above written.

GRANTORS:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: _____
Name:
Title:

[OTHER GRANTORS]:

[INSERT GRANTOR SIGNATURE BLOCKS]

By: _____
Name:
Title:

COLLATERAL AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as Collateral Agent

By: _____
Name:
Title:

EXHIBIT A

Trademarks

Trademark	App/Reg. No.	App/Reg. Date

EXHIBIT B

Patents and Patent Applications

EXHIBIT F

Form of Notice of Security Interest in Copyrights

NOTICE OF SECURITY INTEREST IN COPYRIGHTS

This NOTICE OF SECURITY INTEREST IN COPYRIGHTS, dated as of April 16, 2020 (this "Notice"), is made by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the grantors listed on the signature pages hereto (each of the foregoing, a "Grantor" and collectively, the "Grantors"), and Wilmington Trust, National Association, in its capacity as collateral agent pursuant to the Indenture (as hereinafter defined) (in such capacity and together with any successors in such capacity, the "Collateral Agent") for its own benefit and the benefit of the other Secured Parties (as defined herein), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

W I T N E S S E T H:

WHEREAS, Grantors are party to a Security Agreement and an Intellectual Property Security Agreement of even date herewith (the "Intellectual Property Security Agreement") made by the Grantors in favor of the Collateral Agent and the Secured Parties;

WHEREAS, pursuant to the Security Agreement and the Intellectual Property Security Agreement, Grantors have executed and delivered this Notice for the purpose of recording and confirming the grant of the security interest of the Collateral Agent in the Copyright Collateral (as defined below) with the United States Copyright Office and the Canadian Intellectual Property Office;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein and in the Security Agreement and the Intellectual Property Security Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors and the Collateral Agent, on its own behalf and on behalf of the other Secured Parties (and each of their respective successors or assigns), hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, all capitalized terms defined in the Intellectual Property Security Agreement and used herein have the meaning given to them in the Intellectual Property Security Agreement.

SECTION 2. Grant of Security Interest. In furtherance and as confirmation of the Security Interest granted by the Grantors to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) under the Security Agreement and the Intellectual Property Security Agreement, and as further security for the payment or performance, as the case may be, in full of the Secured Obligations, each of the Grantors hereby ratifies such Security Interest and grants to the Collateral Agent (for its own benefit and the benefit of the other Secured Parties) a continuing security interest, in all of the present and future right, title and interest of such Grantor in, to and under the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, wherever located, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the "Copyright Collateral"):

All copyrights and like protections in each work of authorship or derivative work thereof, whether registered or unregistered and whether published or unpublished, including without limitation the registrations and applications set forth on Exhibit A attached hereto, and all renewals thereof (collectively, "Copyrights");

All agreements, whether written or oral, providing for the grant by or to any Grantor of any right in respect of any Copyright material to the operation of such Grantor's business (collectively, "Licenses") and all income, royalties, damages and payments now and hereafter due and/or payable under and with respect to the Copyrights, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements thereof;

The right to sue for past, present and future infringements of any of the Copyrights; and

All of the Grantors' rights corresponding to any of the foregoing throughout the world.

SECTION 3. Intent. This Notice is being executed and delivered by the Grantors for the purpose of recording and confirming the grant of the security interest of the Collateral Agent in the Copyright Collateral with the United States Copyright Office and the Canadian Intellectual Property Office. It is intended that the security interest granted pursuant to this Notice is granted in conjunction with, and not in addition to or limitation of, the Security Interest granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties, under the Security Agreement and the Intellectual Property Security Agreement. All provisions of the Security Agreement and the Intellectual Property Security Agreement shall apply to the Copyright Collateral. The Collateral Agent shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the Copyright Collateral as in all other Collateral. In the event of a conflict between this Notice and the Intellectual Property Security Agreement, the terms of the Intellectual Property Security Agreement shall control.

SECTION 4. Recordation. Each Grantor authorizes and requests that the Register of Copyrights and any other applicable government officer record this Notice.

SECTION 5. Termination; Release of Copyright Collateral. Upon termination of the Security Interest in the Copyright Collateral in accordance with Section 13 of the Intellectual Property Security Agreement, the Collateral Agent shall execute, acknowledge, and deliver to the Grantor, at such Grantor's expense, an instrument in writing in recordable form as such Grantor may reasonably request in writing to evidence the release of the collateral pledge, grant, Lien and security interest in the Copyright Collateral under this Notice. Any execution and delivery of termination statements, releases or other documents pursuant to this Section 5 shall be without recourse to, or warranty by, the Collateral Agent or any other Secured Party.

SECTION 6. Concerning the Collateral Agent. Wilmington Trust, National Association is entering into this Notice solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In acting hereunder, the Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any Additional Pari Passu Document, as if such rights, privileges, immunities and indemnities were set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have caused this Notice to be executed by their duly authorized officers as of the date first above written.

GRANTORS:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: _____
Name:
Title:

[OTHER GRANTORS]:

[INSERT GRANTOR SIGNATURE BLOCKS]

By: _____
Name:
Title:

COLLATERAL AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as Collateral Agent

By: _____
Name:
Title:

EXHIBIT A

Copyright Registrations and Applications

SCHEDULE I

Grantors

Parent Grantors
Burlington Coat Factory Holdings, LLC
Burlington Coat Factory Investments Holdings, Inc.

Subsidiary Grantors
Burlington Coat Factory of Texas, L.P.
Burlington Coat Factory of Kentucky, Inc.
BURLINGTON COAT FACTORY DIRECT CORPORATION
BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK, INC.
Burlington Coat Factory Warehouse of New Jersey, Inc.
BURLINGTON COAT FACTORY OF PUERTO RICO, LLC
COHOES FASHION OF CRANSTON, INC.
BURLINGTON COAT FACTORY WAREHOUSE OF BAYTOWN INC
Burlington Coat Factory of Pocono Crossing, LLC
BURLINGTON COAT FACTORY OF TEXAS, INC.
BURLINGTON COAT FACTORY REALTY OF EDGEWATER PARK, INC.
BURLINGTON COAT FACTORY REALTY OF PINEBROOK, INC.
BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK URBAN RENEWAL CORP.
BCF Florence Urban Renewal, L.L.C.
BCF Florence Urban Renewal II, LLC
Burlington Merchandising Corporation
Burlington Distribution Corp.

Exhibit 10.3

PLEDGE AGREEMENT

PLEDGE AGREEMENT (this "Agreement"), dated as of April 16, 2020, by and among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the entities listed on Schedule I hereto and each of the other entities that may become a party hereto as provided herein (each of the foregoing, a "Pledgor" and collectively, the "Pledgors"), and Wilmington Trust, National Association, in its capacity as collateral agent pursuant to the Indenture (as hereinafter defined) (in such capacity and together with any successors in such capacity, the "Collateral Agent") for its own benefit and the benefit of the other Secured Parties (as defined herein), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

WITNESSETH:

WHEREAS, reference is made to that certain Indenture, dated as of April 16, 2020 (as amended, modified, supplemented or restated and in effect from time to time, the "Indenture", which term shall also include and refer to any additional issuance of notes under the Indenture), by and between the Company, each Guarantor, Wilmington Trust, National Association, in its capacity as trustee (together with its successors in such capacity, the "Trustee") and the Collateral Agent for its own benefit and the benefit of the other Secured Parties, pursuant to which the Company is issuing $300,000,000 aggregate principal amount of its 6.250% Senior Secured Notes due 2025 (together with any additional notes issued under the Indenture, the "Senior Secured Notes"); and

WHEREAS, reference is also made to the Security Agreement dated as of even date herewith (as amended, modified, supplemented or restated and in effect from time to time, the "Security Agreement"), by, among others, the Pledgors and the Collateral Agent for the Secured Parties, pursuant to which the Pledgors and the other Grantors named therein have granted a security interest in the Collateral (as defined in the Security Agreement) to secure the Secured Obligations (as defined in the Security Agreement); and

WHEREAS, from time to time after the date hereof, the Company may, subject to the terms and conditions of the Indenture and the Collateral Documents, incur Additional Pari Passu Obligations that the Company desires to secure by the Collateral (including the Pledged Collateral (as defined below)) on a pari passu basis with the Senior Secured Notes as further provided in the Security Agreement; and

WHEREAS, this Agreement is made by the Pledgors in favor of the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance in full when due of the Secured Obligations.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Pledgors and the Collateral Agent, on its own behalf and on behalf of the other Secured Parties (and each of their respective successors or permitted assigns), hereby agree as follows:

SECTION 1

Definitions

1.1. Generally. All references herein to the UCC shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the UCC differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of the security interest in any Pledged Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

1.2. Definitions of Certain Terms Used Herein. Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Indenture or Security Agreement (as applicable). In addition, as used herein, the following terms shall have the following meanings:

"ABL Collateral Agent" shall mean Bank of America, N.A., in its capacity as Collateral Agent under the ABL Credit Agreement, and its successors and permitted assigns.

"ABL Administrative Agent" shall mean Bank of America, N.A., in its capacity as Administrative Agent under the ABL Credit Agreement, and its successors and permitted assigns.

"ABL Intercreditor Agreement" shall mean that certain Amended and Restated Intercreditor Agreement, dated as of April 16, 2020, among the Company, the other Grantors, the ABL Administrative Agent, the ABL Collateral Agent, the Term Loan Administrative Agent, the Term Loan Collateral Agent, the Collateral Agent and each additional agent from time to time party thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"Additional Pari Passu Documents" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Pari Passu Obligations" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Pari Passu Secured Party" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Additional Senior Class Debt Representative" shall have the meaning assigned to such term in the Pari Passu Intercreditor Agreement.

"Agreement" shall have the meaning assigned to such term in the preamble of this Agreement.

"Blue Sky Laws" shall have the meaning assigned to such term in Section 7.7 of this Agreement.

"Collateral Agent" shall have the meaning assigned to such term in the preamble of this Agreement.

"Event of Default" shall mean, collectively, any "Event of Default" as defined in the Indenture or as defined in any Additional Pari Passu Document.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia, or any of its territories or possessions.

"Guarantors" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"Indenture" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"Intercreditor Agreements" shall mean the ABL Intercreditor Agreement and the Pari Passu Intercreditor Agreement.

"Issuer" shall have the meaning assigned to such term in Section 2.1 of this Agreement.

"Pari Passu Intercreditor Agreement" shall mean that certain intercreditor agreement, dated as of April 16, 2020, by and among the Company, the other Pledgors, the Collateral Agent, the Term Loan Collateral Agent and the Trustee, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"Permitted Disposition" shall mean "Permitted Disposition" as defined in the Indenture and any corresponding term in any Additional Pari Passu Document.

"Permitted Encumbrances" shall mean "Permitted Encumbrances" as defined in the Indenture and any corresponding term in any Additional Pari Passu Document.

"Pledged Collateral" shall have the meaning assigned to such term in Section 2.5 of this Agreement.

"Pledged Securities" shall have the meaning assigned to such terms in Section 2.1 of this Agreement.

"Pledgor" and "Pledgors" shall have the meaning assigned to such term in the preamble of this Agreement.

"Secured Obligations" shall have the meaning assigned to such term in the Security Agreement.

"Secured Parties" shall have the meaning assigned to such term in the Security Agreement.

"Securities Act" shall have the meaning assigned to such term in Section 7.7 of this Agreement.

"Security Agreement" shall have the meaning assigned to such term in the preamble of this Agreement.

"Term Loan Administrative Agent" shall mean JPMorgan Chase Bank, N.A., as Administrative Agent under the Term Loan Agreement, and its successors and permitted assigns.

"Term Loan Collateral Agent" shall mean JPMorgan Chase Bank, N.A., as Collateral Agent under the Term Loan Agreement, and its successors and permitted assigns.

"Voting Stock" means, with respect to any corporation, the outstanding stock of all classes (or equivalent interests) which ordinarily, in the absence of contingencies, entitles holders thereof to vote for the election of directors (or Persons performing similar functions) of such corporation, even though the right so to vote has been suspended by the happening of such contingency.

1.3. Rules of Interpretation. The rules of interpretation specified in Section 1.4 of the Indenture shall be applicable to this Agreement.

SECTION 2

Pledge

As security for the payment or performance, as the case may be, in full of the Secured Obligations, each Pledgor hereby pledges unto the Collateral Agent, its successors and permitted assigns, and hereby grants to the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, a security interest in such Pledgor's right, title and interest in, to and under the following, wherever located, and whether now existing or hereafter arising or acquired from time to time:

2.1. all shares of capital stock, limited liability company membership interests and other ownership interests owned by the Pledgor in each entity designated as an "Issuer" on Schedule II hereto (each an "Issuer" and collectively, the "Issuers"), and any shares of capital stock, limited liability company membership interests or other equity interests obtained in the future by the Pledgor, and the stock certificates or other security certificates (as defined in the UCC) representing all such shares, membership interests or equity interests; provided that, with respect to each (a) first-tier Foreign Subsidiary whose Capital Stock is now or hereafter pledged hereunder by the Pledgor, and (b) Subsidiary in which substantially all of its assets consist of the Capital Stock of one or more Foreign Subsidiaries, the Pledgor has pledged or will pledge stock representing 65% of the outstanding shares of Voting Stock of such Foreign Subsidiary or Subsidiary, as applicable, (or (i) such lesser percentage as is owned by Pledgor, or (ii) such greater percentage as is owned by Pledgor and is permitted by any change in 26 U.S.C. §1ff or other Applicable Law to be pledged by Pledgor without such pledge resulting in United States income tax liability with respect to such Foreign Subsidiary or Subsidiary, as applicable) (the "Pledged Securities");

2.2. all other Investment Property that may be delivered to, and held by, the Collateral Agent pursuant to the terms hereof or to the ABL Collateral Agent or Term Loan Collateral Agent, in each case as agent for, among others, the Collateral Agent and the Secured Parties, pursuant to the terms of the applicable Intercreditor Agreement;

2.3. subject to Section 6, all dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed or distributable, in respect of, or in exchange for, the Pledged Securities referred to in clauses 2.1 and 2.2 above;

2.4. subject to Section 6, all rights and privileges of the Pledgor with respect to the Pledged Securities and other Investment Property referred to in clauses 2.1, 2.2, and 2.3 above; and

2.5. all proceeds of any of the foregoing (the items referred to in clauses 2.1 through 2.5 being collectively referred to as the "Pledged Collateral").

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for its own benefit and the benefit of the other Secured Parties, until all of the Secured Obligations (other than contingent indemnification obligations as to which no claims have been asserted) shall have been paid in full in cash; subject, however, to the terms, covenants and conditions hereinafter set forth.

Upon delivery to the ABL Collateral Agent, the Term Loan Collateral Agent or the Collateral Agent pursuant to Section 3 of this Agreement, (a) all stock certificates or other securities now or hereafter included in the Pledged Securities shall be accompanied by stock powers duly executed in blank or other instruments of transfer reasonably satisfactory to the ABL Collateral Agent, the Term Loan Collateral Agent or the Collateral Agent, as applicable, and by such other instruments and documents as may be reasonably necessary or required or as the Collateral Agent may reasonably request to perfect or maintain the perfection of the Collateral Agent's security interest in the Pledged Securities, and (b) all other Investment Property consisting of securities and comprising part of the Pledged Collateral shall be accompanied by proper instruments of assignment duly executed by the Pledgors and such other instruments or documents as may be reasonably necessary or required or as the Collateral Agent may reasonably request to perfect or maintain the perfection of the Collateral Agent's security interest in the Investment Property. Each delivery of Pledged Securities shall be accompanied by a schedule describing the Pledged Securities theretofore and then being pledged hereunder, which schedule shall be attached hereto as Schedule II and made a part hereof, as the same may be supplemented, amended or otherwise modified from time to time in accordance with the terms of this Agreement. Each schedule so delivered shall supersede any prior schedules so delivered.

SECTION 3

Delivery of the Pledged Collateral

3.1. On or before the Issue Date, each Pledgor shall deliver or cause to be delivered to the Collateral Agent, as agent for, among others, the Collateral Agent and the Secured Parties, or the Term Loan Collateral Agent, as bailee of the Collateral Agent pursuant to the Pari Passu Intercreditor Agreement with copies to the Collateral Agent, any and all Pledged Securities, any and all Investment Property, and any and all certificates or other instruments or documents valued in excess of $1,000,000, if any, representing the Pledged Collateral.

3.2. After the Issue Date, promptly upon any Pledgor's obtaining physical possession of any certificates or other instruments or documents representing Pledged Securities owned by it, such Pledgor shall deliver or cause to be delivered such Pledged Collateral to the Collateral Agent or the Term Loan Collateral Agent, as bailee of the Collateral Agent pursuant to the Pari Passu Intercreditor Agreement.

3.3. Each Pledgor hereby irrevocably authorizes the Collateral Agent, at any time and from time to time prior to termination of this Agreement pursuant to Section 14.1, to sign (if required) and file in any appropriate filing office, wherever located, any Financing Statement that contains any information required by the UCC of the applicable jurisdiction for the sufficiency or filing office acceptance of any Financing Statement. Each Pledgor also authorizes the Collateral Agent to file a copy of this Agreement in lieu of a Financing Statement, and to take any and all actions required by any earlier versions of the UCC which are still in effect or by any other Applicable Law. Each Pledgor shall provide the Collateral Agent with any information the Collateral Agent shall reasonably request in connection with any of the foregoing. Notwithstanding the foregoing authorization to the Collateral Agent, each Pledgor hereby agrees to prepare and file or cause to be filed, at its own expense, any Financing Statement, amendment thereto, continuation statement or other document or instrument, relative to all or any part of the Pledged Collateral, in the appropriate filing office, wherever located, as is necessary or required to perfect or maintain the perfection of the Collateral Agent's security interest in the Pledged Collateral, and to deliver to the Collateral Agent a file stamped copy of each such Financing Statement, amendment thereto, continuation statement or other document or instrument in connection with this Agreement.

SECTION 4

Representations, Warranties and Covenants

Each Pledgor hereby represents, warrants and covenants, as to itself and the Pledged Collateral pledged by it hereunder, to and with the Collateral Agent that:

4.1. as of the date hereof, the Pledged Securities represent that percentage of the issued and outstanding shares of each class of the capital stock or other equity interest of the Issuer with respect thereto as set forth on Schedule II;

4.2. except for the security interest granted hereunder, and except as otherwise permitted in the Indenture, each Additional Pari Passu Document and the other Collateral Documents, the Pledgor (i) is and will at all times continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule II, as the same may be supplemented, amended or otherwise modified from time to time in accordance with the terms of this Agreement, (ii) holds the Pledged Collateral free and clear of all Liens, other than Permitted Encumbrances specified in clauses (a), (e), (i), (l), (r) and (ee) of the definition thereof in the Indenture, (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in, or other Lien on, the Pledged Collateral, other than pursuant hereto and other than Permitted Encumbrances or in connection with a Permitted Disposition, and (iv) other than as permitted in Section 6, will cause any and all distributions in cash or in kind made on the Pledged Collateral to be promptly deposited with the Collateral Agent and pledged or assigned hereunder;

4.3. except as not prohibited under the Indenture and each Additional Pari Passu Document, the Pledgor will not consent to or approve the issuance of (a) any additional shares of any class of capital stock of any Issuer of the Pledged Securities, or the issuance of any membership or other ownership interest in any such Person, (b) any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or nonoccurrence of any event or condition into, or exchangeable for, any such shares or interests, or (c) any warrants, options, rights, or other commitments entitling any person to purchase or otherwise acquire any such shares or interests;

4.4. the Pledgor (i) has the power and authority to pledge the Pledged Collateral in the manner hereby done or contemplated and (ii) will defend its title or interest thereto or therein against any and all Liens (other than Permitted Encumbrances and the Lien created by this Agreement or the other Collateral Documents), however arising, of all Persons whomsoever;

4.5. except for consents or approvals already obtained, no consent of any other Person (including stockholders or creditors of the Pledgor), and no consent or approval of any Governmental Authority or any securities exchange, was or is necessary to the validity of the pledge effected hereby or to the disposition of the Pledged Collateral upon an Event of Default in accordance with the terms of this Agreement and the Security Agreement;

4.6. by virtue of the execution and delivery by the Pledgor of this Agreement, the filing of Financing Statements pursuant to Section 3.3 above, and the delivery by the Pledgor to the Collateral Agent, as agent for, among others, the Collateral Agent and the Secured Parties, or the Term Loan Collateral Agent, as bailee of the Collateral Agent pursuant to the Pari Passu Intercreditor Agreement, of the stock certificates or other certificates or documents representing or evidencing the Pledged Collateral accompanied by stock powers or endorsements, as applicable, executed in blank in accordance with the terms of this Agreement, the Collateral Agent will obtain a valid and perfected Lien upon, and security interest in, the Pledged Collateral as security for the payment and performance of the Secured Obligations;

4.7. the pledge effected hereby is effective to vest in the Collateral Agent, on its own behalf and on behalf of the other Secured Parties, the rights of the Collateral Agent in the Pledged Collateral as set forth herein;

4.8. all of the Pledged Securities have been duly authorized and validly issued and, to the extent applicable, are fully paid and nonassessable;

4.9. all information set forth herein relating to the Pledged Collateral is accurate and complete in all material respects as of the date hereof; and

4.10. none of the Pledged Securities constitutes margin stock, as defined in Regulation U of the Board of Governors of the Federal Reserve System.

SECTION 5

Registration in Nominee Name; Copies of Notices

Subject to the terms of the Pari Passu Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent, on its own behalf and on behalf of the other Secured Parties, shall have the right (but not the obligation) to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of any Pledgor, endorsed or assigned in blank or in favor of the Collateral Agent. Each Pledgor will promptly give to the Collateral Agent copies of any written or electronic notices or other written or electronic communications received by it with respect to Pledged Securities registered in the name of such Pledgor.

SECTION 6

Voting Rights; Dividends and Interest, Etc.

6.1. Unless and until an Event of Default has occurred and is continuing, each Pledgor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of the Pledged Securities or any part thereof to the extent, and only to the extent, that such rights are exercised for any purpose not in violation of the terms and conditions of this Agreement, the Indenture, any Additional Pari Passu Document, the other Collateral Documents and Applicable Law; provided, however, that such Pledgor will not be entitled to exercise any such right if the result thereof could reasonably be expected to materially and adversely affect the rights inuring to a holder of the Pledged Securities or the rights and remedies of any of the Secured Parties under this Agreement, the Indenture, any Additional Pari Passu Document or any other Collateral Document or the ability of the Secured Parties to exercise the same.

6.2. Unless and until a Default or an Event of Default has occurred and is continuing, each Pledgor shall be entitled to receive and retain any and all cash dividends or other cash distributions paid on the Pledged Collateral to the extent, and only to the extent, that such cash dividends or other cash distributions are permitted by, and otherwise paid in accordance with, the terms and conditions of this Agreement, the Indenture, any Additional Pari Passu Document, the other Collateral Documents and Applicable Law. All noncash dividends, and all dividends paid or payable in cash or otherwise in connection with a partial or total liquidation or dissolution, return of capital, capital surplus or paid-in surplus, and all other distributions (other than dividends and distributions referred to in the preceding sentence) made on or in respect of the Pledged Collateral, whether paid or payable in cash or otherwise, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock or membership interests of the Issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, amalgamation, arrangement, consolidation, acquisition or other exchange of assets to which such Issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by such Pledgor, to the extent required to be paid to the Collateral Agent pursuant to the terms of the Indenture, any Additional Pari Passu Document, any Intercreditor Agreement or any other Collateral Documents, shall not be commingled by such Pledgor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and shall, subject to the Pari Passu Intercreditor Agreement, be promptly delivered to the Collateral Agent in the same form as so received (with any necessary endorsement).

6.3. After the occurrence and during the continuance of a Default or an Event of Default, all rights of any Pledgor to dividends or other cash distributions that such Pledgor is authorized to receive pursuant to Section 6.2 above shall cease, and all such rights shall, subject to the Pari Passu Intercreditor Agreement, thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority (but not the obligation) to receive and retain such dividends or other cash distributions. Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this Section 6.3 shall be applied in accordance with the provisions of Section 8. After all Defaults or Events of Default have been cured or waived in writing in accordance with the Indenture or the applicable Additional Pari Passu Document, without any further action by the Collateral Agent, each Pledgor will have the right to receive the dividends or other cash distributions that it would otherwise be entitled to receive pursuant to the terms of Section 6.2 above.

6.4. After the occurrence and during the continuance of an Event of Default and upon notice to the Pledgors, all rights of the Pledgors to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 6.1 shall cease, and all such rights shall, subject to the Pari Passu Intercreditor Agreement, thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority (but not the obligation) to exercise such voting and consensual rights and powers; provided that the Collateral Agent shall have the right (but not the obligation) from time to time following and during the continuance of an Event of Default to permit any Pledgor to exercise such rights. After all Defaults or Events of Default have been cured or waived in writing by the Collateral Agent in accordance with the Indenture or the applicable Additional Pari Passu Document, without any further action by the Collateral Agent, each Pledgor will have the right to exercise the voting and consensual rights and powers that it would otherwise be entitled to exercise pursuant to the terms of Section 6.1 above.

SECTION 7

Remedies upon Default

After the occurrence and during the continuance of an Event of Default, it is agreed that the Collateral Agent shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC or other Applicable Law. The rights and remedies of the Collateral Agent shall include, without limitation and subject to the Intercreditor Agreements, the right (but not the obligation) to take any or all of the following actions at the same or different times:

7.1. The Collateral Agent may sell or otherwise dispose of all or any part of the Pledged Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Pledgor.

7.2. If required by Applicable Law, the Collateral Agent shall give the Pledgors at least ten (10) days' prior written notice, by authenticated record, of the Collateral Agent's intention to make any sale of the Pledged Collateral. Such notice, (i) in the case of a public sale, shall state the date, time and place for such sale, (ii) in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Collateral, or portion thereof, will first be offered for sale at such board or exchange, and (iii) in the case of a private sale, shall state the date after which any private sale or other disposition of the Pledged Collateral shall be made. Each Pledgor agrees that such written notice shall satisfy all requirements for notice to the Pledgor which are imposed under the UCC with respect to the exercise of the Collateral Agent's rights and remedies upon default. The Collateral Agent shall not be obligated to make any sale or other disposition of any Pledged Collateral if it shall determine not to do so, regardless of the fact that notice of sale or other disposition of such Pledged Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned.

7.3. Any public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice of such sale.

7.4. At any public (or, to the extent permitted by Applicable Law, private) sale made pursuant to this Section 7, the Collateral Agent or any other Secured Party may bid for or purchase, free (to the extent permitted by Applicable Law) from any right of redemption, stay, valuation or appraisal on the part of any Pledgor, the Pledged Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to the Collateral Agent or such other Secured Party from any Pledgor on account of the Secured Obligations as a credit against the purchase price, and the Collateral Agent or such other Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to such Pledgor therefor.

7.5. For purposes hereof, a written agreement to purchase the Pledged Collateral or any portion thereof which is entered into in good faith shall be treated as a sale thereof. The Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Pledgor shall be entitled to the return of the Pledged Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and/or the Secured Obligations paid in full.

7.6. As an alternative to exercising the power of sale herein conferred upon it and subject to Applicable Law, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose upon the Pledged Collateral and to sell the Pledged Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver.

7.7. Each Pledgor recognizes that (a) the Collateral Agent may be unable to effect a public sale of all or a part of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act of 1933, 15 U.S.C. §77, (as amended and in effect, the "Securities Act") or the Securities laws of various states (the "Blue Sky Laws"), but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof, (b) that private sales so made may be at prices and upon other terms less favorable to the seller than if the Pledged Collateral were sold at public sales, (c) that neither the Collateral Agent nor any other Secured Party has any obligation to delay sale of any of the Pledged Collateral for the period of time necessary to permit the Pledged Collateral to be registered for public sale under the Securities Act or the Blue Sky Laws, and (d) that private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner.

7.8. To the extent permitted by Applicable Law, each Pledgor hereby waives all rights of redemption, stay, valuation and appraisal which each Pledgor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. In dealing with or disposing of the Pledged Collateral or any part thereof, neither the Collateral Agent nor any Secured Party shall be required to give priority or preference to any item of Pledged Collateral or otherwise to marshal assets or to take possession or sell any Pledged Collateral with judicial process.

SECTION 8

Application of Proceeds of Sale

Subject to the Intercreditor Agreements, after the occurrence and during the continuance of an Event of Default and acceleration of the Secured Obligations pursuant to the terms of the Indenture or any Additional Pari Passu Document, the Collateral Agent shall apply the proceeds of any collection or sale of the Pledged Collateral, as well as any Pledged Collateral consisting of cash, in accordance with Section 6.02 of the Security Agreement and for all purposes of this Agreement, the provisions of Section 6.02 of the Security Agreement are hereby incorporated by reference, *mutatis mutandis*, as if fully set forth herein (for the avoidance of doubt, each reference to "Collateral" in Section 6.02 of the Security Agreement shall also be deemed to be a reference to the Pledged Collateral).

Subject to the Intercreditor Agreements, the Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale or other disposition of the Pledged Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale or other disposition shall be a sufficient discharge to the purchaser or purchasers of the Pledged Collateral so sold or otherwise disposed of and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 9

Indemnification

Section 7.7 of the Indenture, any corresponding provision in any Additional Pari Passu Document and Section 8.06 of the Security Agreement are incorporated herein, *mutatis mutandis*, as if a part hereof.

SECTION 10

Further Assurances

Each Pledgor agrees to do such further acts and things, and to execute and deliver such additional conveyances, assignments, agreements, financing statements, amendments thereto, continuation statements and instruments, as may be reasonably necessary or required or as the Collateral Agent may at any time reasonably request to perfect or maintain the perfection of the Collateral Agent's security interest in the Pledged Collateral, in connection with the administration and enforcement of this Agreement, with respect to the Pledged Collateral or any part thereof or in order to better assure and confirm the rights and remedies of the Collateral Agent hereunder.

SECTION 11

Intent

This Agreement is being executed and delivered by the Pledgors for the purpose of confirming the grant of the security interest of the Collateral Agent in the Pledged Collateral. It is intended that the security interest granted pursuant to this Agreement is granted as a supplement to, and not in limitation of, the security interest granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties, under the Security Agreement. All provisions of the Security Agreement shall apply to the Pledged Collateral. The Collateral Agent shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the Pledged Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Security Agreement, the terms of this Agreement shall control with respect to the Pledged Collateral and the Security Agreement shall control with respect to all other Collateral. In addition, for all purposes of this Agreement, the provisions of Sections 8.01, 8.03, 8.04, 8.05, 8.08, 8.10, 8.11, 8.12 and 8.13 of the Security Agreement are hereby incorporated by reference, *mutatis mutandis*, as if fully set forth herein (for the avoidance of doubt, each reference to "Collateral" in these Sections of the Security Agreement shall also be deemed to be a reference to the Pledged Collateral).

Wilmington Trust, National Association is entering into this Agreement solely in its capacity as Collateral Agent under the Indenture and not in its individual or corporate capacity. In connection with its execution and acting hereunder, the Collateral Agent is entitled to all of the rights, privileges, protections, immunities, benefits and indemnities provided to it under the Indenture and any corresponding provisions of any Additional Pari Passu Document, as if such rights, privileges, protections, immunities, benefits and indemnities were set forth herein.

SECTION 12

GOVERNING LAW; WAIVER OF JURY TRIAL

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER COLLATERAL DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.

SECTION 13

Intercreditor Agreements

This Agreement and each other Collateral Document are subject to the terms and conditions set forth in the Intercreditor Agreements in all respects and, in the event of any conflict between the terms of either Intercreditor Agreement and this Agreement, the terms of such Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Collateral Agent pursuant to this Agreement and any other Collateral Document and the exercise of any right or remedy in respect of the Collateral by the Collateral Agent hereunder or under any other Collateral Document are subject to the provisions of the Intercreditor Agreements. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies with respect to the Collateral of the Collateral Agent (and the Secured Parties) shall be subject to the terms of the Intercreditor Agreements. Prior to Discharge of ABL Obligations (as defined in the ABL Intercreditor Agreement), the delivery of any ABL Priority Collateral (as defined in the ABL Intercreditor Agreement) to the ABL Collateral Agent pursuant to the ABL Credit Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such ABL Priority Collateral to the extent that such delivery is consistent with the terms of the ABL Intercreditor Agreement, and the ABL Collateral Agent shall hold such ABL Priority Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the ABL Priority Collateral. Prior to the Discharge of Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement) that are Credit Agreement Obligations (as defined in the Pari Passu Intercreditor Agreement), the delivery of any Collateral to the Term Loan Collateral Agent pursuant to the Term Loan Credit Agreement shall satisfy any delivery requirement under the Indenture, the Notes or hereunder or under any other Collateral Document with respect to such Collateral to the extent that such delivery is consistent with the terms of the Pari Passu Intercreditor Agreement, and the Term Loan Collateral Agent shall hold such Collateral as bailee for the Collateral Agent for the purpose of perfecting the Collateral Agent's security interest in the Collateral.

SECTION 14

Termination; Release of Collateral

14.1. The Liens securing the Senior Secured Notes will be released, in whole or in part, as provided in Section 10.4 of the Indenture and the Liens securing Additional Pari Passu Lien Obligations of any series will be released, in whole or in part, as provided in the Additional Pari Passu Documents governing such obligations. Upon at least two (2) Business Days' prior written request by the Pledgors accompanied by the Officer's Certificate required by the Indenture, the Collateral Agent shall, without recourse, representation or warranty of any kind and at the Pledgors' sole cost and expense, execute such documents as the Pledgors may reasonably request to evidence the release of the Liens upon any Collateral described in this Section 14.1; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in its reasonable opinion, would, under Applicable Law, expose the Collateral Agent to liability or create any obligation or entail any adverse consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens (other than those expressly being released) upon (or obligations of any Pledgor in respect of) all interests retained by any Pledgor, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The security interest granted herein shall also be released as provided in the Security Agreement.

14.2. Except for those provisions which expressly survive the termination thereof, this Agreement and the security interest granted herein shall terminate when all of the Secured Obligations (other than contingent indemnity obligations with respect to then unasserted claims) have been paid in full in cash, at which time, upon receipt of the Officer's Certificate and Opinion of Counsel required by the Indenture, the Collateral Agent shall, without recourse, representation or warranty of any kind, execute and deliver to the Pledgors, at the Pledgors' expense, all UCC termination statements and similar documents that the Pledgors shall reasonably request to evidence such termination; provided, however, that the Indenture, this Agreement, and the security interest granted herein shall be reinstated if at any time payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by any Secured Party upon the bankruptcy or reorganization of any Pledgor or any other Loan Party. Any execution and delivery of termination statements or other documents pursuant to this Section 14.2 shall be without recourse to, or warranty by, the Collateral Agent or any other Secured Party.

SECTION 15

Additional Pledgors

If, after the date hereof, pursuant to the terms and conditions of the Indenture and/or any Additional Pari Passu Document, any Pledgor shall be required to cause any Subsidiary or other Person to become a party hereto, such Pledgor shall cause such Person to execute and deliver to the Collateral Agent a joinder agreement in the form referred to in Section 8.15 of the Security Agreement, and such Person shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Pledgor party hereto and shall be deemed to have assigned, conveyed, mortgaged, pledged, granted, hypothecated and transferred to the Collateral Agent, for the benefit of the Secured Parties, the security interest described in such joinder agreement and Section 2 hereof.

[**SIGNATURE PAGE FOLLOWS**]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal as of the day and year first above written.

PLEDGOR:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY HOLDINGS, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY INVESTMENTS HOLDINGS, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF TEXAS, L.P.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF KENTUCKY, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY DIRECT CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF NEW JERSEY, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF PUERTO RICO, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

COHOES FASHIONS OF CRANSTON, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF BAYTOWN INC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF POCONO CROSSING, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY OF TEXAS, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY REALTY OF EDGEWATER PARK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY REALTY OF PINEBROOK, INC.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK URBAN RENEWAL CORP.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BCF FLORENCE URBAN RENEWAL, L.L.C.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BCF FLORENCE URBAN RENEWAL II, LLC

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON MERCHANDISING CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

BURLINGTON DISTRIBUTION CORP.

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

COLLATERAL AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as Collateral Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

SCHEDULE I

PLEDGORS' NAMES

Burlington Coat Factory Holdings, LLC
Burlington Coat Factory Investments Holdings, Inc.
Burlington Distribution Corp. (f/k/a Burlington Distribution of California, Inc.)
Burlington Merchandising Corporation
Burlington Coat Factory Warehouse Corporation
Burlington Coat Factory of Texas, Inc.
Burlington Coat Factory of Texas, L.P.
Burlington Coat Factory of Kentucky, Inc.
BCF Florence Urban Renewal, L.L.C.
BCF Florence Urban Renewal II, LLC
Burlington Coat Factory Direct Corporation
Burlington Coat Factory Realty of Edgewater Park, Inc.
Burlington Coat Factory Realty of Pinebrook, Inc.
Burlington Coat Factory Warehouse of Edgewater Park Urban Renewal Corp.
Burlington Coat Factory Warehouse of Edgewater Park, Inc.
Burlington Coat Factory Warehouse of New Jersey, Inc.
Burlington Coat Factory of Puerto Rico, LLC
Cohoes Fashions of Cranston, Inc.
Burlington Coat Factory Warehouse of Baytown Inc
Burlington Coat Factory of Pocono Crossing, LLC

Exhibit 10.4

AMENDED AND RESTATED
INTERCREDITOR AGREEMENT

by and among

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

JPMORGAN CHASE BANK, N.A.
(AS SUCCESSOR IN INTEREST TO BEAR STEARNS CORPORATE LENDING INC.),
as First Lien Term Agent,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as First Lien Notes Agent

Dated as of April 16, 2020

TABLE OF CONTENTS

AMENDED AND RESTATED
INTERCREDITOR AGREEMENT

THIS AMENDED AND RESTATED INTERCREDITOR AGREEMENT (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms hereof, this "**Agreement**") is entered into as of April 16, 2020, by and among (a) **BANK OF AMERICA, N.A.** (in its individual capacity, "**Bank of America**"), in its capacities as administrative agent and collateral agent (together with its successors and assigns in such capacities, the "**ABL Agent**") for the financial institutions party from time to time to the Original ABL Credit Agreement referred to below (such financial institutions, together with their successors, assigns and transferees, the "**ABL Credit Agreement Lenders**" and, together with affiliates thereof and certain other specified hedging parties, in their capacity as ABL Bank Products Affiliates or ABL Hedging Affiliates (in each case, as hereinafter defined), the "**ABL Lenders**"), (b) **JPMORGAN CHASE BANK, N.A. (AS SUCCESSOR IN INTEREST TO BEAR STEARNS CORPORATE LENDING INC.)** (in its individual capacity, "**JPMorgan**"), in its capacities as administrative agent and collateral agent (together with its successors and assigns in such capacities, the "**First Lien Term Agent**") for the financial institutions party from time to time to the Original First Lien Term Credit Agreement referred to below (such financial institutions, together with their successors, assigns and transferees, the "**First Lien Term Lenders**"), and (c) **WILMINGTON TRUST, NATIONAL ASSOCIATION** (in its individual capacity, "**Wilmington Trust**"), in its capacity as collateral agent under the Original First Lien Indenture referred to below (together with its successors and assigns in such capacity, the "**First Lien Notes Agent**") for the First Lien Notes Secured Parties (as defined below).

RECITALS

A. Pursuant to that certain Second Amended and Restated Credit Agreement dated as of September 2, 2011 by and among Burlington Coat Factory Warehouse Corporation, as lead borrower (the "**Lead Borrower**" and, together with certain other Subsidiaries of the Lead Borrower specified in the Original ABL Credit Agreement, collectively, the "**ABL Borrowers**"), the ABL Credit Agreement Lenders and the ABL Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time, the "**Original ABL Credit Agreement**"), the ABL Credit Agreement Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the ABL Borrowers.

B. Pursuant to certain guaranty agreements and security agreements dated as of April 13, 2006 (the "**ABL Guaranties**") by the ABL Guarantors (as hereinafter defined) in favor of the ABL Agent, the ABL Guarantors have agreed to guarantee the payment and performance of the ABL Borrowers' obligations under the ABL Documents (as hereinafter defined).

C. As a condition to the effectiveness of the Original ABL Credit Agreement and to secure the obligations of the ABL Borrowers and the ABL Guarantors (the ABL Borrowers, the ABL Guarantors and each other direct or indirect subsidiary or parent of the ABL Borrowers or any of their affiliates that is now or hereafter becomes a party to any ABL Document, collectively, the "**ABL Credit Parties**") under and in connection with the ABL Documents, the ABL Credit Parties have granted to the ABL Agent (for the benefit of the ABL Lenders, including the ABL Bank Products Affiliates and ABL Hedging Affiliates) Liens on the Collateral.

D. Pursuant to that certain Credit Agreement dated as of February 24, 2011, by and among the Lead Borrower (the "**First Lien Term Borrower**"), the First Lien Term Lenders and the First Lien Term Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time, the "**Original First Lien Term Credit Agreement**"), the First Lien Term Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the First Lien Term Borrower.

E. Pursuant to certain guaranty agreements and security agreements dated as of February 24, 2011 (the "**First Lien Term Guaranties**") by the First Lien Term Guarantors (as hereinafter defined) in favor of the First Lien Term Agent, the First Lien Term Guarantors have agreed to guarantee the payment and performance of the First Lien Term Borrower's obligations under the First Lien Term Documents (as hereinafter defined).

F. As a condition to the effectiveness of the Original First Lien Term Credit Agreement and to secure the obligations of the First Lien Term Borrower and the First Lien Term Guarantors (the First Lien Term Borrower, the First Lien Term Guarantors and each other direct or indirect subsidiary or parent of the First Lien Term Borrower or any of its affiliates that is now or hereafter becomes a party to any First Lien Term Document, collectively, the "**First Lien Term Credit Parties**") under and in connection with the First Lien Term Documents, the First Lien Term Credit Parties have granted to the First Lien Term Agent (for the benefit of the First Lien Term Lenders) Liens on the Collateral.

G. Pursuant to that certain Indenture, dated as of April 16, 2020, by and among the Lead Borrower, as Issuer (the "**First Lien Notes Issuer**"), the First Lien Notes Guarantors (as hereinafter defined), Wilmington Trust, in its capacity as trustee (together with its successors and assigns in such capacity, the "**First Lien Notes Trustee**"), and the First Lien Notes Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time, the "**Original First Lien Notes Indenture**"), the First Lien Notes Issuer has issued senior secured notes to the First Lien Notes Holders.

H. Pursuant to the First Lien Notes Documents (as hereinafter defined), the First Lien Notes Guarantors have provided guarantees and security for the First Lien Notes Obligations .

I. As a condition to the effectiveness of the Original First Lien Notes Indenture and to secure the obligations of the First Lien Notes Issuer and the First Lien Notes Guarantors (the First Lien Notes Issuer, the First Lien Notes Guarantors and each other direct or indirect subsidiary or parent of the First Lien Notes Issuer or any of its affiliates that is now or hereafter becomes a party to any First Lien Notes Documents, collectively, the "**First Lien Notes Credit Parties**") under and in connection with the First Lien Notes Documents, the First Lien Notes Credit Parties have granted to the First Lien Notes Agent (for the benefit of the First Lien Notes Secured Parties) Liens on the Collateral.

J. Each of the ABL Agent (on behalf of the ABL Lenders), the First Lien Term Agent (on behalf of the First Lien Term Lenders), and the First Lien Notes Agent (on behalf of the First Lien Notes Holders) and, by their acknowledgment hereof, the ABL Credit Parties, the First Lien Term Credit Parties and the First Lien Notes Credit Parties, desire to (1) amend and restate in its entirety the Existing Intercreditor Agreement (as hereinafter defined) pursuant to this Agreement and (2) agree to the relative priority of Liens on the Collateral and certain other rights, priorities and interests as provided herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 **UCC Definitions**. The following terms which are defined in the Uniform Commercial Code are used herein as so defined: Accounts, Chattel Paper, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Financial Assets, Fixtures, Instruments, Inventory, Investment Property, Letter-Of-Credit Rights, Money, Payment Intangibles, Promissory Notes, Records, Security, Securities Accounts, Security Entitlements, Supporting Obligations and Tangible Chattel Paper.

Section 1.2 **Other Definitions**. Subject to Section 1.1 above, unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Original ABL Credit Agreement, the Original First Lien Term Credit Agreement, and the Original First Lien Notes Indenture, in each case as in effect on the date hereof. In addition, as used in this Agreement, the following terms shall have the meanings set forth below:

"**ABL Agent**" shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the "Agent" or "Administrative Agent" under any ABL Credit Agreement.

"**ABL Bank Products Affiliate**" shall mean any ABL Credit Agreement Lender or any Affiliate of any ABL Credit Agreement Lender that has entered into a Bank Products Agreement with an ABL Credit Party with the obligations of such ABL Credit Party thereunder being secured by one or more ABL Collateral Documents.

"**ABL Borrowers**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**ABL Collateral Documents**" shall mean all "Security Documents" as defined in the Original ABL Credit Agreement, and all other security agreements, mortgages, deeds of trust and other collateral documents executed and delivered in connection with any ABL Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**ABL Credit Agreement**" shall mean the Original ABL Credit Agreement and any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the ABL Obligations, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

"**ABL Credit Agreement Lenders**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**ABL Credit Parties**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**ABL Documents**" shall mean the ABL Credit Agreement, the ABL Guaranties, the ABL Collateral Documents, any Bank Product Agreements between any ABL Credit Party and any ABL Bank Products Affiliate, any Hedge Agreements between any ABL Credit Party and any ABL Lender, those other ancillary agreements as to which the ABL Agent or any ABL Lender is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any ABL Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the ABL Agent, in connection with any of the foregoing or any ABL Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**ABL Guaranties**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**ABL Guarantors**" shall mean the collective reference to BCF Holdings and its Subsidiaries, other than the ABL Borrowers and any Foreign Subsidiary, and any other Person who becomes a guarantor under any of the ABL Guaranties.

"**ABL Hedging Affiliate**" shall mean any ABL Credit Agreement Lender or any Affiliate of any ABL Credit Agreement Lender that has entered into a Hedge Agreement with an ABL Credit Party with the obligations of such ABL Credit Party thereunder being secured by one or more ABL Collateral Documents by an ABL Credit Party.

"**ABL Lenders**" shall have the meaning assigned to that term in the introduction to this Agreement and shall include all ABL Bank Product Affiliates and ABL Hedging Affiliates and all successors, assigns, transferees and replacements thereof, as well as any Person designated as a "Lender" under any ABL Credit Agreement.

"**ABL Obligations**" shall mean all obligations of every nature of each ABL Credit Party from time to time owed to the ABL Agent, the ABL Lenders or any of them, under any ABL Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such ABL Credit Party, would have accrued on any ABL Obligation, whether or not a claim is allowed against such ABL Credit Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under letters of credit, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the ABL Documents, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof.

"**ABL Priority Collateral**" shall mean all Collateral consisting of the following:

(1) all Accounts;

(2) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper);

(3) (x) all Deposit Accounts and Money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) Securities, Security Entitlements and Securities Accounts, in each case, solely to the extent constituting cash or Cash Equivalents or representing a claim to Cash Equivalents and all cash, checks and other property held therein or credited thereto, but in any event and regardless of the foregoing clauses, excluding, in each case, the Asset Sales Proceeds Account;

(4) all Inventory;

(5) to the extent relating to, evidencing or governing any of the items referred to in the preceding clauses (1) through (4), all Documents, General Intangibles (other than any Intellectual Property), Instruments (including Promissory Notes) and commercial tort claims, provided that to the extent any of the foregoing also relates to Term Loan/Notes Priority Collateral, only that portion related to the items referred to in the preceding clauses (1) through (4) shall be included in the ABL Priority Collateral.

(6) to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (5), all Supporting Obligations and Letter of Credit Rights; provided that to the extent any of the foregoing also relates to Term Loan/Notes Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (5) shall be included in the ABL Priority Collateral;

(7) all books and Records relating to the items referred to in the preceding clauses (1) through (6) (including all books, databases, customer lists, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (6)); and

(8) all collateral security and guarantees with respect to any of the foregoing and all cash, Money, insurance proceeds, instruments, securities, financial assets and deposit accounts received as proceeds of any of the foregoing (such proceeds, "ABL Priority Proceeds"); provided, however, that no proceeds of ABL Priority Proceeds will constitute ABL Priority Collateral unless such proceeds of ABL Priority Proceeds would otherwise constitute ABL Priority Collateral.

"**ABL Recovery**" shall have the meaning set forth in Section 5.3(a).

"**ABL Secured Parties**" shall mean, collectively, the ABL Agent and the ABL Lenders.

"**Account(s)**" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card. The term "Account" does not include (a) rights to payment evidenced by chattel paper or an instrument, (b) commercial tort claims, (c) deposit accounts, (d) investment property, or (e) letter-of-credit rights or letters of credit. For the avoidance of doubt, for purposes of this Agreement, "Account" shall also include payment intangibles consisting of credit card receivables due and owing to the Credit Parties from any credit or debit card issuer or processor.

"**Affiliate**" shall mean, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

"**Agreement**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**Asset Sales Proceeds Account**" shall mean one or more Deposit Accounts or Securities Accounts, in each case with a Term Loan/Notes Agent, holding only the proceeds of any sale or disposition of any Term Loan/Notes Priority Collateral and the proceeds or investment thereof.

"**Bank of America"** shall have the meaning assigned to that term in the introduction to this Agreement.

"**Bank Products**" shall have the meaning provided in the ABL Credit Agreement as in effect on the date hereof.

"**BCF Holdings"** means Burlington Coat Factory Holdings, Inc.

"**Bank Products Agreement**" shall mean any agreement pursuant to which a bank or other financial institution agrees to provide Bank Products and Cash Management Services.

"**Borrower**" shall mean any of the ABL Borrowers, the First Lien Term Borrower, and the First Lien Notes Issuer.

"**Capital Stock**" shall mean, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise Control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing.

"**Cash Collateral**" shall mean any Collateral consisting of Money or Cash Equivalents, Deposit Accounts, Instruments, any Security Entitlement and any Financial Assets.

"**Cash Equivalents**" shall mean (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America) or any state or state agency thereof, in each case maturing within one (1) year from the date of acquisition thereof, (b) investments in commercial paper maturing within one (1) year from the date of acquisition thereof and having, at the date of acquisition, the highest or next highest credit rating obtainable from S&P or from Moody's, (c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one (1) year from the date of acquisition thereof which are issued or guaranteed by, or placed with, and demand deposit and money market deposit accounts issued or offered by, any Lender or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000, (d) master demand notes and fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer, and (e) shares of any money market or mutual fund that has substantially all of its assets invested in the types of investments referred to in clauses (a) through (d), above.

"**Cash Management Services**" shall have the meaning provided in the ABL Credit Agreement as in effect on the date hereof.

"**Collateral**" shall mean all Property now owned or hereafter acquired by any Borrower or any Guarantor in or upon which a Lien is granted or purported to be granted to the ABL Agent, the First Lien Term Agent, or the First Lien Notes Agent under any of the ABL Collateral Documents, the First Lien Term Collateral Documents, or the First Lien Notes Collateral Documents, together with all rents, issues, profits, products and Proceeds thereof.

"**Control**" shall mean the possession, directly or indirectly, of the power (a) to vote 50% or more of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"**Control Collateral**" shall mean any Collateral consisting of any Certificated Security (as defined in Section 8-102 of the Uniform Commercial Code), Investment Property, Deposit Account, Instruments and any other Collateral as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor.

"**Controlling Term Loan/Notes Agent**" means initially, the First Lien Term Agent until another Term Loan/Notes Agent becomes the Applicable Collateral Agent as such term is defined in the Term Loan/Notes Intercreditor Agreement as designated by such Applicable Collateral Agent in a notice to the ABL Agent pursuant to the terms of the Term Loan/Notes Intercreditor Agreement.

"**Controlling Term Loan/Notes Secured Parties**" shall mean the Term Loan/Notes Secured Parties represented by the Controlling Term Loan/Notes Agent.

"**Controlling Term Loan/Notes Documents**" shall mean the Term Loan/Notes Documents with respect to the Controlling Term Loan/Notes Secured Parties.

"**Copyright Licenses**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Copyrights**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Credit Documents**" shall mean the ABL Documents, the First Lien Term Documents, and the First Lien Notes Documents.

"**Credit Parties**" shall mean the ABL Credit Parties, the First Lien Term Credit Parties, and the First Lien Notes Credit Parties.

"**Debtor Relief Laws**" shall mean the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect affecting the rights of creditors generally.

"**DIP Financing**" shall have the meaning set forth in Section 6.1(a).

"**Discharge of ABL Obligations**" shall mean (a) the payment in full in cash of the ABL Obligations that are outstanding and unpaid at the time all Indebtedness thereunder is paid in full including, with respect to amounts available to be drawn under outstanding letters of credit issued thereunder (or indemnities or other undertakings issued pursuant thereto in respect of outstanding letters of credit) delivery or provision of Money or backstop letters of credit in respect thereof in compliance with the terms of any ABL Credit Agreement (which shall not exceed an amount equal to 101.5% of the aggregate undrawn amount of such letters of credit) and (b) the termination of all commitments to extend credit under the ABL Documents.

"**Discharge of Term Loan/Notes Obligations**" shall mean (a) the payment in full in cash of the Term Loan/Notes Obligations that are outstanding and unpaid at the time all Indebtedness thereunder is paid in full and (b) the termination of all commitments to extend credit under the Term Loan/Notes Documents.

"**Event of Default**" shall mean an Event of Default under any ABL Credit Agreement, any First Lien Term Credit Agreement, or any First Lien Notes Indenture.

"**Exercise Any Secured Creditor Remedies**" or "**Exercise of Secured Creditor Remedies**" shall mean, except as otherwise provided in the final sentence of this definition:

(a) the taking by any Secured Party of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale pursuant to Article 9 of the Uniform Commercial Code;

(b) the exercise by any Secured Party of any right or remedy provided to a secured creditor on account of a Lien under any of the Credit Documents, under applicable law, in an Insolvency Proceeding or otherwise, including the election to retain any of the Collateral in satisfaction of a Lien;

(c) the taking by any Secured Party of any action or the exercise of any right or remedy in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Collateral or the Proceeds thereof;

(d) the appointment on an application of a Secured Party of a receiver, receiver and manager or interim receiver of all or part of the Collateral;

(e) the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale conducted by a Secured Party or any other means permissible under applicable law;

(f) the exercise of any other right of a secured creditor under Part 6 of Article 9 of the Uniform Commercial Code;

(g) the exercise by any Secured Party of any voting rights relating to any Capital Stock included in the Collateral; and

(h) the delivery of any claim or demand relating to the Collateral to any Person (including any securities intermediary, depository bank or landlord) in possession or control of any Collateral in connection with the collection of the ABL Obligations or Term Loan/Notes Obligations after the occurrence of an Event of Default (except, with respect to the ABL Lenders, such action shall not be deemed an Exercise of Secured Creditor Remedies if the ABL Lenders have not terminated their commitments to the ABL Borrowers under the ABL Credit Agreement and/or are continuing to make loans and advances to or for the benefit of the ABL Borrowers).

For the avoidance of doubt, exercising any right or remedy provided to an ABL Lender upon the occurrence of a Cash Dominion Event, reducing advance rates and sub-limits, imposing reserves, filing a proof of claim in bankruptcy court or seeking adequate protection shall not be deemed to be an Exercise of Secured Creditor Remedies.

"**Existing Intercreditor Agreement**" shall mean that certain Intercreditor Agreement, dated as of April 13, 2006, by and between the ABL Agent and the First Lien Term Agent, as amended, amended and restated, restated, supplemented, modified or otherwise in effect from time to time immediately prior to the date hereof.

"**Financing Lease**" shall mean any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

"**First Lien Notes**" shall mean the 6.250% Senior Secured Notes due 2025, and all other notes issued pursuant to any First Lien Notes Indenture, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**First Lien Notes Agent**" shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the "Collateral Agent" under any First Lien Notes Indenture.

"**First Lien Notes Collateral Documents**" shall mean all "Collateral Documents" as defined in the Original First Lien Notes Indenture, and all other security agreements, mortgages, deeds of trust and other collateral documents executed and delivered in connection with any First Lien Notes Indenture, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**First Lien Notes Credit Parties**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**First Lien Notes Documents**" shall mean the First Lien Notes Indenture, the First Lien Notes, the First Lien Notes Collateral Documents, those other ancillary agreements as to which the First Lien Notes Agent, the First Lien Notes Trustee, or any First Lien Notes Holder is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any First Lien Notes Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the First Lien Notes Agent or the First Lien Notes Trustee, in connection with any of the foregoing or any First Lien Notes Indenture, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**First Lien Notes Guarantors**" shall mean the collective reference to BCF Holdings and its Subsidiaries, other than the First Lien Notes Issuer and any Foreign Subsidiary, and any other Person who becomes a guarantor under any of the First Lien Notes Documents.

"**First Lien Notes Holders**" shall mean the "Holders" under and as defined in the Original First Lien Notes Indenture, and shall include all successors, assigns, transferees and replacements thereof, as well as any Person designated as a "Holder" under any First Lien Notes Indenture.

"**First Lien Notes Indenture**" shall mean the Original First Lien Notes Indenture and any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the First Lien Notes Obligations, whether by the same or any other agent, trustee, holder, or group of holders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

"**First Lien Notes Issuer**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**First Lien Notes Obligations**" shall mean all obligations of every nature of each First Lien Notes Credit Party from time to time owed to the First Lien Notes Agent, the First Lien Notes Trustee, the First Lien Notes Holders or any of them, under any First Lien Notes Documents, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such First Lien Notes Credit Party, would have accrued on any First Lien Notes Obligation, whether or not a claim is allowed against such First Lien Notes Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the First Lien Notes Documents, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof.

"**First Lien Notes Secured Parties**" shall mean the First Lien Notes Agent, the First Lien Notes Trustee, and the First Lien Notes Holders.

"**First Lien Notes Trustee**" shall have the meaning assigned to that term in the recitals to this Agreement, and shall include any successor thereto as well as any Person designated as "Trustee" under any First Lien Notes Indenture.

"**First Lien Term Agent**" shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the "Agent" or "Administrative Agent" under any First Lien Term Credit Agreement.

"**First Lien Term Borrower**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**First Lien Term Collateral Documents**" shall mean all "Security Documents" as defined in the Original First Lien Term Credit Agreement, and all other security agreements, mortgages, deeds of trust and other collateral documents executed and delivered in connection with any First Lien Term Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**First Lien Term Credit Agreement**" shall mean the Original First Lien Term Credit Agreement and any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the First Lien Term Obligations, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

"**First Lien Term Credit Parties**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**First Lien Term Documents**" shall mean the First Lien Term Credit Agreement, the First Lien Term Guaranties, the First Lien Term Collateral Documents, those other ancillary agreements as to which the First Lien Term Agent or any First Lien Term Lender is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any First Lien Term Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the First Lien Term Agent, in connection with any of the foregoing or any First Lien Term Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**First Lien Term Guaranties**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**First Lien Term Guarantors**" shall mean the collective reference to BCF Holdings and its Subsidiaries, other than the First Lien Term Borrower and any Foreign Subsidiary, and any other Person who becomes a guarantor under any of the First Lien Term Guaranties.

"**First Lien Term Lenders**" shall have the meaning assigned to that term in the introduction to this Agreement and shall include all successors, assigns, transferees and replacements thereof, as well as any Person designated as a "Lender" under any First Lien Term Credit Agreement.

"**First Lien Term Obligations**" shall mean all obligations of every nature of each First Lien Term Credit Party from time to time owed to the First Lien Term Agent, the First Lien Term Lenders or any of them, under any First Lien Term Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such First Lien Term Credit Party, would have accrued on any First Lien Term Obligation, whether or not a claim is allowed against such First Lien Term Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the First Lien Term Documents, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof.

"**First Lien Term Secured Parties**" shall mean the First Lien Term Agent and the First Lien Term Lenders.

"**Foreign Subsidiary**" shall have the meaning provided in the Original ABL Credit Agreement, the Original First Lien Term Credit Agreement, and the Original First Lien Notes Indenture as in effect on the date hereof.

"**Future Term Loan/Notes Indebtedness**" shall mean any Indebtedness of the First Lien Notes Issuer and/or the First Lien Notes Guarantors that is secured by a Lien in favor of the First Lien Notes Agent pursuant to the First Lien Notes Collateral Documents and that was permitted to be incurred and so secured under each applicable Term Loan/Notes Document; provided that (i) the trustee, agent or other authorized representative for the holders of such Indebtedness (other than in the case of Additional Notes (as defined in the First Lien Notes Indenture)) and the First Lien Notes Issuer and the First Lien Notes Guarantors shall execute a joinder to the Term Loan/Notes Intercreditor Agreement and (ii) the First Lien Notes Issuer shall designate such Indebtedness as "Additional Pari Passu Obligations" under the Term Loan/Notes Intercreditor Agreement.

"**Future Term Loan/Notes Indebtedness Secured Parties**" means holders of any Future Term Loan/Notes Obligations and any trustee, authorized representative or agent of such Future Term Loan/Notes Obligations.

"**Future Term Loan/Notes Obligations**" shall mean all obligations of every nature of each First Lien Notes Credit Party from time to time owed to the Future Term Loan/Notes Indebtedness Secured Parties or any of them, under any documents governing Future Term Loan/Notes Indebtedness, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such First Lien Notes Credit Party, would have accrued on any Future Term Loan/Notes Obligations, whether or not a claim is allowed against such First Lien Notes Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the documents governing Future Term Loan/Notes Indebtedness, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof (other than, in each case, obligations with respect to Additional Notes (as defined in the First Lien Notes Indenture) which shall constitute First Lien Notes Obligations).

"**General Intangibles**" shall mean all "general intangibles" as such term is defined in the Uniform Commercial Code including, with respect to any Credit Party, all contracts, agreements and indentures in any form, and portions thereof, to which such Credit Party is a party or under which such Credit Party has any right, title or interest or to which such Credit Party or any property of such Credit Party is subject, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Guarantor**" shall mean any of the ABL Guarantors, the First Lien Term Guarantors, or the First Lien Notes Guarantors.

"**Indebtedness**" shall have the meaning provided in the ABL Credit Agreement, the First Lien Term Credit Agreement, and the First Lien Notes Indenture as in effect on the date hereof.

"**Initial Borrower"** shall have the meaning assigned to that term in the recitals to this Agreement.

"**Insolvency Proceeding**" shall mean (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors,
composition, marshalling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clauses (a) and (b) undertaken under United States Federal, State or foreign law, including the Bankruptcy Code.

"**JPMorgan**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**Lead Borrower**" shall have the meaning assigned to that term in the recitals to this Agreement.

"**Lien**" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any Financing Lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Lien Priority**" shall mean with respect to any Lien of the ABL Agent, the ABL Lenders, the First Lien Term Agent, the First Lien Term Lenders, the First Lien Notes Agent, the First Lien Notes Secured Parties, or the Future Term Loan/Notes Indebtedness Secured Parties in the Collateral, the order of priority of such Lien as specified in Section 2.1.

"**Original ABL Credit Agreement**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**Original First Lien Notes Indenture**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**Original First Lien Term Credit Agreement**" shall have the meaning assigned to that term in the introduction to this Agreement.

"**Party**" shall mean the ABL Agent, the First Lien Term Agent, or the First Lien Notes Agent, and "**Parties**" shall mean, collectively, the ABL Agent, the First Lien Term Agent, and the First Lien Notes Agent.

"**Patent License**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Patents**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Payment Collateral**" shall mean all Accounts, Instruments, Chattel Paper, Letter-Of-Credit Rights, Deposit Accounts (other than the Asset Sales Proceeds Account), Securities Accounts and Payment Intangibles, together with all Supporting Obligations, in each case composing a portion of the Collateral.

"Priority Collateral" shall mean the ABL Priority Collateral or the Term Loan/Notes Priority Collateral, as applicable.

"**Proceeds**" shall mean (a) all "proceeds," as defined in Article 9 of the Uniform Commercial Code, with respect to the Collateral, and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

"**Property**" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"**Secured Parties**" shall mean the ABL Secured Parties and the Term Loan/Notes Secured Parties.

"Subsidiary" shall mean with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity (a) of which Capital Stock representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"**Term Loan/Notes Agents**" shall mean, collectively, the First Lien Term Agent and the First Lien Notes Agent.

"**Term Loan/Notes Collateral Documents**" shall mean, collectively, the First Lien Term Collateral Documents and the First Lien Notes Collateral Documents.

"**Term Loan/Notes Credit Parties**" shall mean, collectively, the First Lien Term Credit Parties and the First Lien Notes Credit Parties.

"**Term Loan/Notes Documents**" shall mean, collectively, the First Lien Term Documents, the First Lien Notes Documents, and all other documents governing Term Loan/Notes Obligations.

"**Term Loan/Notes Guarantors**" shall mean, collectively, the First Lien Term Guarantors and the First Lien Notes Guarantors.

"**Term Loan/Notes Intercreditor Agreement**" shall mean that certain Pari Passu Intercreditor Agreement, dated as of April 16, 2020, by and between the First Lien Term Agent, the First Lien Notes Agent, the First Lien Notes Trustee, and the applicable Term Loan/Notes Credit Parties.

"**Term Loan/Notes Obligations**" shall mean, collectively, (a) the First Lien Term Obligations, (b) the First Lien Notes Obligations, and (c) all Future Term Loan/Notes Obligations.

"**Term Loan/Notes Priority Collateral**" shall mean:

(1) all Equipment, Fixtures, Real Estate, Intellectual Property and Investment Property (other than Cash Equivalents not credited to or deposited in the Asset Sales Proceeds Account),

(2) except to the extent relating to, evidencing or governing ABL Priority Collateral, all Instruments, Documents, General Intangibles and commercial tort claims,

(3) all other Collateral, other than the ABL Priority Collateral, and

(4) all collateral security and guarantees with respect to the foregoing and all cash, Money, insurance proceeds, instruments, securities, financial assets and deposit accounts received as proceeds of any Collateral, other than the ABL Priority Collateral (such proceeds, "**Term Loan/Notes Priority Proceeds**"); provided, however, no proceeds of Term Loan/Notes Priority Proceeds will constitute Term Loan/Notes Priority Collateral unless such proceeds of Term Loan/Notes Priority Proceeds would otherwise constitute Term Loan/Notes Priority Collateral or are credited to the Asset Sales Proceeds Account.

"**Term Loan/Notes Recovery**" shall have the meaning set forth in Section 5.3(b).

"**Term Loan/Notes Secured Parties**" shall mean, collectively, (a) the First Lien Term Secured Parties, (b) the First Lien Notes Secured Parties, and (c) the Future Term Loan/Notes Indebtedness Secured Parties.

"**Trademark License**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Trademarks**" shall have the meaning assigned to such term in the Intellectual Property Security Agreement as in effect on the Closing Date.

"**Uniform Commercial Code**" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided that to the extent that the Uniform Commercial Code is used to define any term in any security document and such term is defined differently in differing Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, Liens of any Party is governed by the Uniform Commercial Code or foreign personal property security laws as enacted and in effect in a jurisdiction other than the State of New York, the term "Uniform Commercial Code" will mean the Uniform Commercial Code or such foreign personal property security laws as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Section 1.3 Rules of Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term "including" is not limiting and shall be deemed to be followed by the phrase "without limitation," and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation, or in such other manner as may be approved by the requisite holders or representatives in respect of such obligation.

ARTICLE 2
LIEN PRIORITY

Section 2.1 Priority of Liens.

(a) Subject to the provisos in subclauses (b) and (c) of Section 4.1, notwithstanding (i) the date, time, method, manner, or order of grant, attachment, or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the ABL Agent or the ABL Lenders in respect of all or any portion of the Collateral or of any Liens granted to the First Lien Term Agent or the First Lien Term Lenders or of any Liens granted to the First Lien Notes Agent or the First Lien Notes Secured Parties or any Future Term Loan/Notes Indebtedness Secured Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the ABL Agent or the First Lien Term Agent or the First Lien Notes Agent (or ABL Lenders or First Lien Term Lenders or First Lien Notes Secured Parties or the Future Term Loan/Notes Indebtedness Secured Parties) in any Collateral, (iii) any provision of the Uniform Commercial Code, the Bankruptcy Code or any other applicable law, or of the ABL Documents or the Term Loan/Notes Documents, (iv) whether the ABL Agent, the First Lien Term Agent or the First Lien Notes Agent, in each case, either directly or through agents, holds possession of, or has control over, all or any part of the Collateral, (v) the fact that any such Liens in favor of the ABL Agent or the ABL Lenders or the First Lien Term Agent or the First Lien Term Lenders or the First Lien Notes Agent or the First Lien Notes Secured Parties or the Future Term Loan/Notes Indebtedness Secured Parties (or ABL Lenders or any Term Loan/Notes Secured Parties) securing any of the ABL Obligations or Term Loan/Notes Obligations, respectively, are (x) subordinated to any Lien securing any obligation of any Credit Party other than the Term Loan/Notes Obligations or the ABL Obligations, respectively, or (y) otherwise subordinated, voided, avoided, invalidated or lapsed, or (vi) any other circumstance of any kind or nature whatsoever, the ABL Agent, on behalf of itself and the ABL Lenders, the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself and the other First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, hereby agree that:

(1) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party or any Future Term Loan/Notes Indebtedness Secured Party that secures all or any portion of the Term Loan/Notes Obligations shall in all respects be junior and subordinate to all Liens granted to the ABL Agent and the ABL Lenders in the ABL Priority Collateral to secure all or any portion of the ABL Obligations;

(2) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Lender that secures all or any portion of the ABL Obligations shall in all respects be senior and prior to all Liens granted to any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party in the ABL Priority Collateral to secure all or any portion of the Term Loan/Notes Obligations;

(3) any Lien in respect of all or any portion of the Term Loan/Notes Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Lender that secures all or any portion of the ABL Obligations shall in all respects be junior and subordinate to all Liens granted to any Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties in the Term Loan/Notes Priority Collateral to secure all or any portion of the Term Loan/Notes Obligations; and

(4) any Lien in respect of all or any portion of the Term Loan/Notes Priority Collateral now or hereafter held by or on behalf of any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party that secures all or any portion of the Term Loan/Notes Obligations shall in all respects be senior and prior to all Liens granted to the ABL Agent or any ABL Lender in the Term Loan/Notes Priority Collateral to secure all or any portion of the ABL Obligations.

(b) Notwithstanding any failure by any ABL Secured Party or Term Loan/Notes Secured Party to perfect its security interests in the Collateral or any avoidance, invalidation, priming or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to the ABL Secured Parties or the Term Loan/Notes Secured Parties but, for the avoidance of doubt, subject to the provisos in subclauses (b) and (c) of Section 4.1, the priority and rights as between the ABL Secured Parties and the Term Loan/Notes Secured Parties with respect to the Collateral shall be as set forth herein.

(c) The First Lien Term Agent, for and on behalf of itself and the First Lien Term Lenders, acknowledges and agrees that, concurrently herewith, the ABL Agent, for the benefit of itself and the ABL Lenders, has been granted Liens upon all of the Collateral in which the First Lien Term Agent has been granted Liens and the First Lien Term Agent hereby consents thereto. The First Lien Notes Agent, for and on behalf of itself, the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, acknowledges and agrees that, concurrently herewith, the ABL Agent, for the benefit of itself and the ABL Lenders, has been granted Liens upon all of the Collateral in which the First Lien Notes Agent has been granted Liens and the First Lien Notes Agent hereby consents thereto. The ABL Agent, for and on behalf of itself and the ABL Lenders, acknowledges and agrees that, concurrently herewith, the First Lien Term Agent, for the benefit of itself and the First Lien Term Lenders, has been granted Liens upon all of the Collateral in which the ABL Agent has been granted Liens and the ABL Agent hereby consents thereto. The ABL Agent, for and on behalf of itself and the ABL Lenders, acknowledges and agrees that, concurrently herewith, the First Lien Notes Agent, for the benefit of itself, the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, has been granted Liens upon all of the Collateral in which the ABL Agent has been granted Liens and the ABL Agent hereby consents thereto. The subordination of Liens by each Term Loan/Notes Agent and the ABL Agent in favor of one another as set forth herein shall not be deemed to subordinate any Term Loan/Notes Agent's Liens or the ABL Agent's Liens to the Liens of any other Person.

Section 2.2 Waiver of Right to Contest Liens.

(a) Each of the First Lien Term Agent, for and on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, for and on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the ABL Agent and the ABL Lenders in respect of the Collateral or the provisions of this Agreement. Except to the extent expressly set forth in this Agreement, the First Lien Term Agent, for itself and on behalf of the First Lien Term Lenders, agrees that none of the First Lien Term Agent or the First Lien Term Lenders will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the ABL Agent or any ABL Lender under the ABL Documents with respect to the ABL Priority Collateral. Except to the extent expressly set forth in this Agreement, the First Lien Notes Agent, for itself and on behalf of the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that none of the First Lien Notes Agent, the First Lien Notes Secured Parties or the Future Term Loan/Notes Indebtedness Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the ABL Agent or any ABL Lender under the ABL Documents with respect to the ABL Priority Collateral. Except to the extent expressly set forth in this Agreement, the First Lien Term Agent, for itself and on behalf of the First Lien Term Lenders, hereby waives any and all rights it or the First Lien Term Lenders may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the ABL Agent or any ABL Lender seeks to enforce its Liens in any ABL Priority Collateral. Except to the extent expressly set forth in this Agreement, the First Lien Notes Agent, for itself and on behalf of the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, hereby waives any and all rights it, the First Lien Notes Secured Parties or the Future Term Loan/Notes Indebtedness Secured Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the ABL Agent or any ABL Lender seeks to enforce its Liens in any ABL Priority Collateral. The foregoing shall not be construed to prohibit any Term Loan/Notes Agent from enforcing the provisions of this Agreement as to the relative priority of the parties hereto.

(b) The ABL Agent, for and on behalf of itself and the ABL Lenders, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of any Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, or the Future Term Loan/Notes Indebtedness Secured Parties in respect of the Collateral or the provisions of this Agreement. Except to the extent expressly set forth in this Agreement, the ABL Agent, for itself and on behalf of the ABL Lenders, agrees that none of the ABL Agent or the ABL Lenders will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party under the applicable Term Loan/Notes Documents with respect to the Term Loan/Notes Priority Collateral. Except to the extent expressly set forth in this Agreement, the ABL Agent, for itself and on behalf of the ABL Lenders, hereby waives any and all rights it or the ABL Lenders may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party seeks to enforce its Liens in any Term Loan/Notes Priority Collateral. The foregoing shall not be construed to prohibit the ABL Agent from enforcing the provisions of this Agreement as to the relative priority of the parties hereto.

Section 2.3 Remedies Standstill.

(a) Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that, until the date upon which the Discharge of ABL Obligations shall have occurred, neither such Term Loan/Notes Agent nor any First Lien Term Lender or any First Lien Notes Secured Party or any Future Term Loan/Notes Indebtedness Secured Party will Exercise Any Secured Creditor Remedies with respect to any of the ABL Priority Collateral without the written consent of the ABL Agent, and will not take, receive or accept any Proceeds of ABL Priority Collateral, it being understood and agreed that the temporary deposit of Proceeds of ABL Priority Collateral in a Deposit Account controlled by the Controlling Term Loan/Notes Agent shall not constitute a breach of this Agreement so long as such Proceeds are promptly remitted to the ABL Agent. From and after the date upon which the Discharge of ABL Obligations shall have occurred (or prior thereto upon obtaining the written consent of the ABL Agent), any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party may Exercise Any Secured Creditor Remedies under the applicable Term Loan/Notes Documents or applicable law as to any ABL Priority Collateral; provided, however, that any Exercise of Secured Creditor Remedies with respect to any Collateral by any Term Loan/Notes Agent is at all times subject to the provisions of this Agreement and the Term Loan/Notes Intercreditor Agreement, including Section 4.1 hereof.

(b) The ABL Agent, on behalf of itself and the ABL Lenders, agrees that, until the date upon which the Discharge of Term Loan/Notes Obligations shall have occurred, neither the ABL Agent nor any ABL Lender will Exercise Any Secured Creditor Remedies with respect to the Term Loan/Notes Priority Collateral without the written consent of the Controlling Term Loan/Notes Agent, and will not take, receive or accept any Proceeds of the Term Loan/Notes Priority Collateral, it being understood and agreed that the temporary deposit of Proceeds of Term Loan/Notes Priority Collateral in a Deposit Account controlled by the ABL Agent shall not constitute a breach of this Agreement so long as such Proceeds are promptly remitted to the Controlling Term Loan/Notes Agent. From and after the date upon which the Discharge of Term Loan/Notes Obligations shall have occurred (or prior thereto upon obtaining the written consent of the Controlling Term Loan/Notes Agent), the ABL Agent or any ABL Lender may Exercise Any Secured Creditor Remedies under the ABL Documents or applicable law as to any Term Loan/Notes Priority Collateral (other than with respect to any real property a mortgage over which has been granted pursuant to the terms of the Term Loan/Notes Documents and has not been granted pursuant to the terms of the ABL Documents); provided, however, that any Exercise of Secured Creditor Remedies with respect to any Collateral by the ABL Agent is at all times subject to the provisions of this Agreement, including Section 4.1 hereof.

(c) Notwithstanding any other provision of this agreement, nothing contained herein shall be construed to prevent (i) the ABL Agent or any ABL Lender from objecting to any proposed retention of collateral by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party in full or partial satisfaction of any Term Loan/Notes Obligations or (ii) any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party from objecting to any proposed retention of collateral by the ABL Agent or any ABL Lender in full or partial satisfaction of any ABL Obligations.

Section 2.4 Exercise of Rights.

(a) No Other Restrictions. Except as expressly set forth in this Agreement, each of the First Lien Term Agent, each First Lien Term Lender, the First Lien Notes Agent, each First Lien Notes Secured Party, each Future Term Loan/Notes Indebtedness Secured Party, the ABL Agent and each ABL Lender shall have any and all rights and remedies it may have as a creditor under applicable law, including the right to the Exercise of Secured Creditor Remedies; provided, however, that the Exercise of Secured Creditor Remedies with respect to the Collateral shall be subject to the Lien Priority and to the provisions of this Agreement, including Sections 2.3 and 4.1 hereof. None of any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, any Future Term Loan/Notes Indebtedness Secured Party, the ABL Agent or any ABL Lender waives any claim it may have on grounds of commercial reasonableness. The ABL Agent may enforce the provisions of the ABL Documents, the First Lien Term Agent may enforce the provisions of the applicable Term Loan/Notes Documents, the First Lien Notes Agent may enforce the provisions of the applicable Term Loan/Notes Documents, and each may Exercise Any Secured Creditor Remedies, all in such order and in such manner as each may determine in the exercise of its sole discretion, consistent with the terms of this Agreement and mandatory provisions of applicable law; provided, however, that each of the ABL Agent and each Term Loan/Notes Agent agrees to provide to the other copies of any notices that it is required under applicable law to deliver to any Borrower or any Guarantor; provided further, however, that the ABL Agent's failure to provide any such copies to any Term Loan/Notes Agent shall not impair any of the ABL Agent's rights hereunder or under any of the ABL Documents and any Term Loan/Notes Agent's failure to provide any such copies to the ABL Agent shall not impair any of such Term Loan/Notes Agent's rights hereunder or under any of the applicable Term Loan/Notes Documents. Each of the First Lien Term Agent, each First Lien Term Lender, each First Lien Notes Agent, each First Lien Notes Secured Party, each Future Term Loan/Notes Indebtedness Secured Party, the ABL Agent and each ABL Lender agrees that (i) it will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim, in the case of the First Lien Term Agent, each First Lien Term Lender, the First Lien Notes Agent, each First Lien Notes Secured Party, and each Future Term Loan/Notes Indebtedness Secured Party against either the ABL Agent or any other ABL Secured Party, and in the case of the ABL Agent and each other ABL Secured Party, against either any Term Loan/Notes Agent or any other Term Loan/Notes Secured Party, seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, any action taken or omitted to be taken by such Person with respect to the Collateral which is consistent with the terms of this Agreement, and none of such Parties shall be liable for any such action taken or omitted to be taken and (ii) it will not be a petitioning creditor or otherwise assist in the filing of any involuntary Insolvency Proceeding.

(b) Release of Liens. (i) In the event of (A) any private or public sale of all or any portion of the ABL Priority Collateral in connection with any Exercise of Secured Creditor Remedies by or with the consent of the ABL Agent (other than in connection with a refinancing as described in Section 5.2(c)), (B) any sale, transfer or other disposition of all or any portion of the ABL Priority Collateral (other than in connection with a refinancing as described in Section 5.2(c)), so long as such sale, transfer or other disposition is then permitted by the ABL Documents or shall have been approved by the requisite ABL Lenders or (C) the release of the ABL Secured Parties' Lien on all or any portion of the ABL Priority Collateral (other than in connection with a sale, transfer or other disposition as described in clauses (A) and (B) above), so long as such release is then permitted by the ABL Documents or shall have been approved by the requisite ABL Lenders, in the case of clause (C) only to the extent prior to the date upon which the Discharge of ABL Obligations shall have occurred and not in connection with a Discharge of ABL Obligations (and irrespective of whether an Event of Default has occurred), each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees such sale, transfer, other disposition or release will be free and clear of the Liens on such ABL Priority Collateral securing the Term Loan/Notes Obligations, and each Term Loan/Notes Agent's and the Term Loan/Notes Secured Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, disposed or released shall terminate and be automatically released without further action. In furtherance of, and subject to, the foregoing, each Term Loan/Notes Agent agrees, at the Credit Parties' expense, that it will promptly execute any and all Lien releases or other documents reasonably requested by the ABL Agent in connection therewith. Each Term Loan/Notes Agent hereby appoints the ABL Agent and any officer or duly authorized person of the ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of such Term Loan/Notes Agent and in the name of such Term Loan/Notes Agent or in the ABL Agent's own name, from time to time, in the ABL Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable). All proceeds realized from any such sale or disposition shall be applied to the ABL Obligations or the Term Loan/Notes Obligations in accordance with the terms of this Agreement.

(ii) In the event of (A) any private or public sale of all or any portion of the Term Loan/Notes Priority Collateral in connection with any Exercise of Secured Creditor Remedies by or with the consent of the Controlling Term Loan/Notes Agent (other than in connection with a refinancing as described in Section 5.2(c)), (B) any sale, transfer or other disposition of all or any portion of the Term Loan/Notes Priority Collateral (other than in connection with a refinancing as described in Section 5.2(c)), so long as such sale, transfer or other disposition is then permitted by the Controlling Term Loan/Notes Documents or shall have been approved by the requisite Controlling Term Loan/Notes Secured Parties, or (C) the release of the Term Loan/Notes Secured Parties' Lien on all or any portion of the Term Loan/Notes Priority Collateral (other than in connection with a sale, transfer or other disposition as described in clauses (A) and (B) above), so long as such release is then permitted by the Term Loan/Notes Documents or shall have been approved by the requisite Controlling Term Loan/Notes Secured Parties in the case of clause (C) only to the extent prior to the date upon which the Discharge of Term Loan/Notes Obligations shall have occurred and not in connection with a Discharge of ABL Obligations (and irrespective of whether an Event of Default has occurred), the ABL Agent agrees, on behalf of itself and the ABL Lenders, that such sale, transfer, other disposition or release will be free and clear of the Liens on such Term Loan/Notes Priority Collateral securing the ABL Obligations and the ABL Agent's and the ABL Secured Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, disposed or released shall terminate and be automatically released without further action. In furtherance of, and subject to, the foregoing, the ABL Agent agrees, at the Credit Parties' expense, that it will promptly execute any and all Lien releases or other documents reasonably requested by the Controlling Term Loan/Notes Agent in connection therewith. The ABL Agent hereby appoints the Controlling Term Loan/Notes Agent and any officer or duly authorized person of the Controlling Term Loan/Notes Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the ABL Agent and in the name of the ABL Agent or in the Controlling Term Loan/Notes Agent's own name, from time to time, in the Controlling Term Loan/Notes Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable). All proceeds realized from any such sale or disposition shall be applied to the ABL Obligations or the Term Loan/Notes Obligations in accordance with the terms of this Agreement.

Section 2.5 No New Liens.

(a) Subject to Section 2.5(c), until the date upon which the Discharge of ABL Obligations shall have occurred, the parties hereto agree that no Term Loan/Notes Secured Party shall acquire or hold any Lien on any assets of any Credit Party securing any Term Loan/Notes Obligation which assets are not also subject to the Lien of the ABL Agent under the ABL Documents, subject to the Lien Priority set forth herein. Subject to Section 2.5(c), if any Term Loan/Notes Secured Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of any Credit Party securing any Term Loan/Notes Obligation which assets are not also subject to the Lien of the ABL Agent under the ABL Documents, subject to the Lien Priority set forth herein, then the applicable Term Loan/Notes Agent (or the relevant Term Loan/Notes Secured Party) shall, without the need for any further consent of any other Term Loan/Notes Secured Party, the First Lien Term Borrower, the First Lien Notes Issuer, any First Lien Term Guarantor, or any First Lien Notes Guarantor, and notwithstanding anything to the contrary in any other Term Loan/Notes Document, be deemed to also hold and have held such Lien as bailee for the benefit of the ABL Agent as security for the ABL Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the ABL Agent in writing of the existence of such Lien.

(b) Until the date upon which the Discharge of Term Loan/Notes Obligations shall have occurred, the parties hereto agree that no ABL Secured Party shall acquire or hold any Lien on any assets of any Credit Party securing any ABL Obligation which assets are not also subject to the Lien of each Term Loan/Notes Agent under the Term Loan/Notes Documents, subject to the Lien Priority set forth herein. If any ABL Secured Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of any Credit Party securing any ABL Obligation which assets are not also subject to the Lien of each Term Loan/Notes Agent under the Term Loan/Notes Documents, subject to the Lien Priority set forth herein, then the ABL Agent (or the relevant ABL Secured Party) shall, without the need for any further consent of any other ABL Secured Party, any ABL Borrower or any ABL Guarantor and notwithstanding anything to the contrary in any other ABL Document be deemed to also hold and have held such Lien as bailee for the benefit of each Term Loan/Notes Agent as security for the Term Loan/Notes Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the Controlling Term Loan/Notes Agent in writing of the existence of such Lien.

(c) Notwithstanding anything in this Agreement to the contrary, the provisions of clauses (a) and (b) of this Section 2.5 shall not apply to any real property a mortgage over which has been granted pursuant to the terms of the Term Loan/Notes Documents and has not been granted pursuant to the terms of the ABL Documents.

Section 2.6 **Waiver of Marshalling**

(a) Until the Discharge of the ABL Obligations, each Term Loan/Notes Agent, on behalf of itself and the applicable Term Loan/Notes Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

(b) Until the Discharge of the Term Loan/Notes Obligations, the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Loan/Notes Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

ARTICLE 3
ACTIONS OF THE PARTIES

Section 3.1 **Certain Actions Permitted**. Each Term Loan/Notes Agent and the ABL Agent may make such demands or file such claims in respect of the Term Loan/Notes Obligations or the ABL Obligations, as applicable, as are necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders, or rules of procedure at any time.

Section 3.2 **Agent for Perfection**. The ABL Agent, for and on behalf of itself and each ABL Lender, the First Lien Term Agent, for and on behalf of itself and each First Lien Term Lender, and the First Lien Notes Agent, for and on behalf of itself, each First Lien Notes Secured Party and each Future Term Loan/Notes Indebtedness Secured Party, as applicable, each agree to hold all Control Collateral and Cash Collateral that is part of the Collateral in their respective possession, custody, or control (or in the possession, custody, or control of agents or bailees for either) as agent for the other solely for the purpose of perfecting the security interest granted to each in such Control Collateral or Cash Collateral, subject to the terms and conditions of this Section 3.2. None of the ABL Agent, the ABL Lenders, the First Lien Term Agent, the First Lien Term Lenders, the First Lien Notes Agent, the First Lien Notes Secured Parties or the Future Term Loan/Notes Indebtedness Secured Parties, as applicable, shall have any obligation whatsoever to the others to assure that the Control Collateral is genuine or owned by any Borrower, any Guarantor, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the ABL Agent and each Term Loan/Notes Agent under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral and the Cash Collateral as agent for the other Party for purposes of perfecting the Lien held by the First Lien Term Agent, the First Lien Notes Agent, or the ABL Agent, as applicable. The ABL Agent is not and shall not be deemed to be a fiduciary of any kind for any Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, the Future Term Loan/Notes Indebtedness Secured Parties, or any other Person. No Term Loan/Notes Agent is or shall be deemed to be a fiduciary of any kind for the ABL Agent, the ABL Lenders, or any other Person. In the event that (a) any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party receives any Collateral or Proceeds of the Collateral in violation of the terms of this Agreement, or (b) the ABL Agent or any ABL Lender receives any Collateral or Proceeds of the Collateral in violation of the terms of this Agreement, then such Term Loan/Notes Agent, such First Lien Term Lender, such First Lien Notes Secured Party, such Future Term Loan/Notes Indebtedness Secured Party, the ABL Agent, or such ABL Lender, as applicable, shall promptly pay over such Proceeds or Collateral to (i) in the case of clause (a), the ABL Agent, or (ii) in the case of clause (b), the Controlling Term Loan/Notes Agent, in each case, in the same form as received with any necessary endorsements, for application in accordance with the provisions of Section 4.1 of this Agreement.

Section 3.3 **Sharing of Information and Access**. In the event that the ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any books and Records of any Term Loan/Notes Credit Party which contain information identifying or pertaining to the Term Loan/Notes Priority Collateral, the ABL Agent shall, upon request from any Term Loan/Notes Agent and as promptly as practicable thereafter, either make available to the Term Loan/Notes Agents such books and Records for inspection and duplication or provide to the Term Loan/Notes Agents copies thereof. In the event that any Term Loan/Notes Agent shall, in the exercise of its rights under the applicable Term Loan/Notes Collateral Documents or otherwise, receive possession or control of any books and records of any ABL Credit Party which contain information identifying or pertaining to any of the ABL Priority Collateral, such Term Loan/Notes Agent shall, upon request from the ABL Agent and as promptly as practicable thereafter, either make available to the ABL Agent such books and records for inspection and duplication or provide the ABL Agent copies thereof.

Section 3.4 **Insurance**. Proceeds of Collateral include insurance proceeds and, therefore, the Lien Priority shall govern the ultimate disposition of casualty insurance proceeds. Each of the ABL Agent, the First Lien Term Agent, and the First Lien Notes Agent shall be named as additional insured or loss payee, as applicable, with respect to all insurance policies relating to Collateral. The ABL Agent shall have the sole and exclusive right, as against each Term Loan/Notes Agent, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of ABL Priority Collateral. The Controlling Term Loan/Notes Agent shall have the sole and exclusive right, as against the ABL Agent, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of Term Loan/Notes Priority Collateral. All proceeds of such insurance shall be remitted to the ABL Agent or the applicable Term Loan/Notes Agent, as the case may be, and each of the First Lien Term Agent, the First Lien Notes Agent, and ABL Agent shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance with Section 4.1 hereof.

Section 3.5 **No Additional Rights For the Credit Parties Hereunder**. Except as provided in Section 3.6, if any ABL Secured Party or Term Loan/Notes Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, the Credit Parties shall not be entitled to use such violation as a defense to any action by any ABL Secured Party or Term Loan/Notes Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against any ABL Secured Party or Term Loan/Notes Secured Party.

Section 3.6 **Inspection Rights and Insurance**.

(a) Without limiting any rights the ABL Agent or any other ABL Secured Party may otherwise have under applicable law or by agreement, the ABL Agent, the ABL Secured Parties and any representatives designated by the ABL Agent may, at any time and whether or not any Term Loan/Notes Agent or any other Term Loan/Notes Secured Party has commenced and is continuing to Exercise Any Secured Creditor Remedies (the "**ABL Permitted Access Right**"), (i) during normal business hours on any business day, access ABL Priority Collateral that (A) is stored or located in or on, (B) has become an accession with respect to (within the meaning of Section 9-335 of the Uniform Commercial Code), or (C) has been commingled with (within the meaning of Section 9-336 of the Uniform Commercial Code), Term Loan/Notes Priority Collateral and (ii) in the event of any liquidation of the ABL Priority Collateral (or any other Exercise of Any Secured Creditor Remedies by the ABL Agent or any representatives designated by the ABL Agent (including any ABL Borrower or ABL Guarantor) acting with the consent or on behalf of the ABL Agent), use the Term Loan/Notes Priority Collateral (including without limitation, Equipment, Fixtures, Intellectual Property, General Intangibles and Real Estate) (A) in the case of Term Loan/Notes Priority Collateral other than Intellectual Property, until the date that is 120 days after the commencement of such liquidation of the ABL Priority Collateral or Exercise of Any Secured Creditor Remedies, as the case may be, and (B) in the case of Intellectual Property until the liquidation of such ABL Collateral is completed, non-exclusively, royalty free and without other costs, expenses or charges, in the case of each of (i) and (ii), (x) for the limited purposes of assembling, inspecting, copying or downloading information stored on, taking actions to perfect its Lien on, completing a production run of inventory involving, taking possession of, moving, preparing and advertising for sale, selling, liquidating (by public auction, private sale or a "store closing", "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business, which sale may include augmented inventory of the same type sole in the ABL Borrowers' and ABL Guarantors' business), storing or otherwise dealing with, or to Exercise Any Secured Creditor Remedies with respect to, the ABL Priority Collateral (collectively, "**ABL Permitted Access Purposes**") and (y) without notice to, the involvement of or interference by any Term Loan/Notes Secured Party or liability to any Term Loan/Notes Secured Party. In the event that any ABL Secured Party has commenced and is continuing to Exercise Any Secured Creditor Remedies with respect to any ABL Priority Collateral, no Term Loan/Notes Agent may sell, assign or otherwise transfer the related Term Loan/Notes Priority Collateral prior to the expiration of the 120-day period commencing on the date such ABL Secured Party begins to Exercise Any Secured Creditor Remedies, unless the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.6. If any stay or other order that prohibits the ABL Agent and other ABL Secured Parties from commencing and continuing to Exercise Any Secured Creditor Remedies with respect to ABL Priority Collateral has been entered by a court of competent jurisdiction, such 120-day period shall be tolled during the pendency of any such stay or other order. The ABL Agent and the ABL Secured parties shall not be obligated to pay any amounts to any Term Loan/Notes Agent or the Term Loan/Notes Secured Parties (or any Person claiming by, through or under the Term Loan/Notes Secured Parties, including any purchaser of the Term Loan/Notes Priority Collateral) or to the ABL Borrowers and ABL Guarantors, for or in respect of the use by the ABL Agent and the ABL Secured Parties of the Term Loan/Notes Priority Collateral in accordance with this Section and none of the ABL Agent or the ABL Secured Parties shall be obligated to secure, protect, insure or repair any such Term Loan/Notes Priority Collateral (other than for damages caused by the ABL Agent, the ABL Secured Parties or other respective employees, agents and representatives).

(b) The Term Loan/Notes Agents and the other Term Loan/Notes Secured Parties shall use commercially reasonable efforts to not hinder or obstruct the ABL Agent and the other ABL Secured Parties from exercising the ABL Permitted Access Right.

(c) Subject to the terms hereof, any Term Loan/Notes Agent may advertise and conduct public auctions or private sales of the Term Loan/Notes Priority Collateral without notice (except as required herein or by applicable law) to, the involvement of or interference by any ABL Secured Party or liability to any ABL Secured Party.

ARTICLE 4
APPLICATION OF PROCEEDS

Section 4.1 Application of Proceeds.

(a) Revolving Nature of ABL Obligations. Each of the First Lien Term Agent, for and on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, for and on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, expressly acknowledges and agrees that (i) any ABL Credit Agreement includes a revolving commitment, that in the ordinary course of business the ABL Agent and the ABL Lenders will apply payments and make advances thereunder, and that no application of any Payment Collateral or Cash Collateral or the release of any Lien by the ABL Agent upon any portion of the Collateral in connection with a permitted disposition under any ABL Credit Agreement shall constitute the Exercise of Secured Creditor Remedies under this Agreement; (ii) the amount of the ABL Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the ABL Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the ABL Obligations may be increased, replaced or refinanced, in each event, without notice to or consent by the Term Loan/Notes Secured Parties and without affecting the provisions hereof; and (iii) all Payment Collateral or Cash Collateral received by the ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, to the ABL Obligations at any time; provided, however, that from and after the date on which the ABL Agent (or any ABL Lender) commences the Exercise of Any Secured Creditor Remedies (other than, prior to the acceleration of any of the Term Loan/Notes Obligations, the exercise of its rights in accordance with Section 7.02 of the Original ABL Credit Agreement or any similar provision of any other ABL Credit Agreement), all amounts received by the ABL Agent or any ABL Lender shall be applied as specified in this Section 4.1. The Lien Priority shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the ABL Obligations or the Term Loan/Notes Obligations, or any portion thereof.

(b) Application of Proceeds of ABL Priority Collateral. The ABL Agent, the First Lien Term Agent, and the First Lien Notes Agent hereby agree that all ABL Priority Collateral, and all ABL Priority Proceeds thereof, received by either of them in connection with any Exercise of Secured Creditor Remedies with respect to ABL Priority Collateral shall be applied,

first, to the payment of costs and expenses of the ABL Agent in connection with such Exercise of Secured Creditor Remedies,

second, to the payment of the ABL Obligations in accordance with the ABL Documents until the Discharge of ABL Obligations shall have occurred,

third, subject to the terms of the Term Loan/Notes Intercreditor Agreement, to the payment, on a pro rata basis, of the Term Loan/Notes Obligations, and

fourth, the balance, if any, to the Credit Parties or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct;

provided that in the event any Term Loan/Notes Agent receives, in connection with an Insolvency Proceeding, any Proceeds of any ABL Priority Collateral and the Lien granted in favor of the ABL Agent or the ABL Lenders in respect of such ABL Priority Collateral has been voided, avoided or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, then such Proceeds received by such Term Loan/Notes Agent with respect to the ABL Priority Collateral shall be applied to the extent permitted by applicable law, subject to the terms of the Term Loan/Notes Intercreditor Agreement, to the payment, on a pro rata basis, of the Term Loan/Notes Obligations in accordance with the Term Loan/Notes Documents until the Discharge of the Term Loan/Notes Obligations shall have occurred.

(c) Application of Proceeds of Term Loan/Notes Priority Collateral. The ABL Agent, the First Lien Term Agent, and the First Lien Notes Agent hereby agree that all Term Loan/Notes Priority Collateral, and all Term Loan/Notes Priority Proceeds thereof, received by either of them in connection with any Exercise of Secured Creditor Remedies with respect to Term Loan/Notes Priority Collateral shall be applied,

first, subject to the terms of the Term Loan/Notes Intercreditor Agreement, to the payment of costs and expenses of the Term Loan/Notes Agents in connection with such Exercise of Secured Creditor Remedies,

second, subject to the terms of the Term Loan/Notes Intercreditor Agreement, to the payment, on a pro rata basis, of the Term Loan/Notes Obligations in accordance with the Term Loan/Notes Documents until the Discharge of Term Loan/Notes Obligations shall have occurred,

third, to the payment of the ABL Obligations; and

fourth, the balance, if any, to the Credit Parties or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct;

provided that in the event the ABL Agent receives, in connection with an Insolvency Proceeding, any Proceeds of any Term Loan/Notes Priority Collateral and the Lien granted in favor of each Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties in respect of such Term Loan/Notes Priority Collateral has been voided, avoided or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, then such Proceeds received by the ABL Agent with respect to the Term Loan/Notes Priority Collateral as a result of such defect shall be applied to the extent permitted by applicable law, to the payment, on a pro rata basis, of the ABL Obligations in accordance with the ABL Documents until the Discharge of the ABL Obligations shall have occurred.

(d) Limited Obligation or Liability. In exercising remedies, whether as a secured creditor or otherwise, the ABL Agent shall have no obligation or liability to any Term Loan/Notes Agent or to any First Lien Term Lender or to any First Lien Notes Secured Party or to any Future Term Loan/Notes Indebtedness Secured Party, and no Term Loan/Notes Agent shall have any obligation or liability to the ABL Agent or any ABL Lender, regarding the adequacy of any Proceeds or for any action or omission, save and except solely for an action or omission that breaches the express obligations undertaken by each Party under the terms of this Agreement so long as such exercise of remedies is conducted in a commercially reasonable manner, in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(e) Turnover of Cash Collateral After Discharge. Upon the Discharge of ABL Obligations, the ABL Agent shall (at the ABL Borrowers' expense) deliver to the Controlling Term Loan/Notes Agent or shall execute such documents as the Controlling Term Loan/Notes Agent may reasonably request to enable the Controlling Term Loan/Notes Agent to have control over any Cash Collateral or Control Collateral still in the ABL Agent's possession, custody, or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Upon the Discharge of Term Loan/Notes Obligations, the Term Loan/Notes Agents shall (at the First Lien Term Borrower's or the First Lien Notes Issuer's, as the case may be, expense) deliver to the ABL Agent or shall execute such documents as the ABL Agent may reasonably request to enable the ABL Agent to have control over any Cash Collateral or Control Collateral still in any Term Loan/Notes Agent's possession, custody or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

Section 4.2 **Specific Performance**. Each of the ABL Agent, the First Lien Term Agent and the First Lien Notes Agent is hereby authorized to demand specific performance of this Agreement, whether or not any Borrower or any Guarantor shall have complied with any of the provisions of any of the Credit Documents, at any time when the other Party shall have failed to comply with any of the provisions of this Agreement applicable to it. Each of the ABL Agent, for and on behalf of itself and the ABL Lenders, the First Lien Term Agent, for and on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, for and on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

ARTICLE 5
INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS

Section 5.1 **Notice of Acceptance and Other Waivers.**

(a) All ABL Obligations at any time made or incurred by any Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, hereby waives notice of acceptance, or proof of reliance by the ABL Agent or any ABL Lender of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the ABL Obligations. All Term Loan/Notes Obligations at any time made or incurred by any Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the ABL Agent, on behalf of itself and the ABL Lenders, hereby waives notice of acceptance, or proof of reliance, by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Term Loan/Notes Obligations.

(b) None of the ABL Agent, any ABL Lender, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the ABL Agent or any ABL Lender honors (or fails to honor) a request by any Borrower for an extension of credit pursuant to any ABL Credit Agreement or any of the other ABL Documents, whether the ABL Agent or any ABL Lender has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any First Lien Term Credit Agreement, any First Lien Notes Indenture, or any other Term Loan/Notes Document (but not a default under this Agreement) or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the ABL Agent or any ABL Lender otherwise should exercise any of its contractual rights or remedies under any ABL Documents (subject to the express terms and conditions hereof), neither the ABL Agent nor any ABL Lender shall have any liability whatsoever to any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). The ABL Agent and the ABL Lenders shall be entitled to manage and supervise their loans and extensions of credit under any ABL Credit Agreement and any of the other ABL Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that any Term Loan/Notes Agent or any of the First Lien Term Lenders or any of the First Lien Notes Secured Parties or any of the Future Term Loan/Notes Indebtedness Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that neither the ABL Agent nor any ABL Lender shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or Proceeds thereof, pursuant to the ABL Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) None of the First Lien Term Agent, the First Lien Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, any Future Term Loan/Notes Indebtedness Secured Party, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party honors (or fails to honor) a request by any Borrower for an extension of credit pursuant to any First Lien Term Credit Agreement, any First Lien Notes Indenture, or any of the other Term Loan/Notes Documents, whether any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any ABL Credit Agreement or any other ABL Document (but not a default under this Agreement) or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party otherwise should exercise any of its contractual rights or remedies under the Term Loan/Notes Documents (subject to the express terms and conditions hereof), none of any Term Loan/Notes Agent or any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party shall have any liability whatsoever to the ABL Agent or any ABL Lender as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). Each Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under the Term Loan/Notes Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the ABL Agent or any ABL Lender has in the Collateral, except as otherwise expressly set forth in this Agreement. The ABL Agent, on behalf of itself and the ABL Lenders, agrees that none of the Term Loan/Notes Agents, the First Lien Term Lenders, the First Lien Notes Secured Parties, or the Future Term Loan/Notes Indebtedness Secured Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of the Collateral or any part or Proceeds thereof, pursuant to the Term Loan/Notes Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

Section 5.2 Modifications to ABL Documents and Term Loan/Notes Documents.

(a) Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, hereby agrees that, without affecting the obligations of the Term Loan/Notes Agents, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties hereunder, the ABL Agent and the ABL Lenders may, at any time and from time to time, in their sole discretion without the consent of or notice to any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the ABL Documents in any manner whatsoever, including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the ABL Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the ABL Obligations or any of the ABL Documents;

(ii) retain or obtain a Lien on any Property of any Person to secure any of the ABL Obligations, and in connection therewith to enter into any additional ABL Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the ABL Obligations;

(iv) release its Lien on any Collateral or other Property;

(v) exercise or refrain from exercising any rights against any Borrower, any Guarantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the ABL Obligations; and

(vii) otherwise manage and supervise the ABL Obligations as the ABL Agent shall deem appropriate.

(b) The ABL Agent, on behalf of itself and the ABL Lenders, hereby agrees that, without affecting the obligations of the ABL Agent and the ABL Lenders hereunder, each Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to the ABL Agent or any ABL Lender (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the ABL Agent or any ABL Lender or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the Term Loan/Notes Documents in any manner whatsoever, including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Term Loan/Notes Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Term Loan/Notes Obligations or any of the Term Loan/Notes Documents;

(ii) retain or obtain a Lien on any Property of any Person to secure any of the Term Loan/Notes Obligations, and in connection therewith to enter into any additional Term Loan/Notes Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Term Loan/Notes Obligations;

(iv) release its Lien on any Collateral or other Property;

(v) exercise or refrain from exercising any rights against any Borrower, any Guarantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the Term Loan/Notes Obligations; and

(vii) otherwise manage and supervise the applicable Term Loan/Notes Obligations as the applicable Term Agent shall deem appropriate.

(c) The ABL Obligations and the Term Loan/Notes Obligations of any series may be refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is required to permit the refinancing transaction under any ABL Document or any Term Document) of the ABL Agent, the ABL Lenders, the First Lien Term Agent, the First Lien Term Lenders, First Lien Notes Agent, the First Lien Notes Secured Parties, or the Future Term Loan/Notes Indebtedness Secured Parties, as the case may be, all without affecting the Lien Priorities provided for herein or the other provisions hereof, provided, however, that the holders of such refinancing Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement pursuant to such documents or agreements (including amendments or supplements to this Agreement) as the ABL Agent, the First Lien Term Agent, or the First Lien Notes Agent, as the case may be, shall reasonably request and in form and substance reasonably acceptable to the ABL Agent, the First Lien Term Agent, or the First Lien Notes Agent, as the case may be, and any such refinancing transaction shall be in accordance with any applicable provisions of both the ABL Documents and the Term Loan/Notes Documents.

Section 5.3 Reinstatement and Continuation of Agreement.

(a) If the ABL Agent or any ABL Lender is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the ABL Obligations (an "**ABL Recovery**"), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery. If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect in the event of such ABL Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement. All rights, interests, agreements, and obligations of the ABL Agent, each Term Loan/Notes Agent, the ABL Lenders, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Loan/Notes Obligations. No priority or right of the ABL Agent or any ABL Lender shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the ABL Documents, regardless of any knowledge thereof which the ABL Agent or any ABL Lender may have.

(b) If the First Lien Term Agent, any First Lien Term Lender, the First Lien Notes Agent, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the Term Loan/Notes Obligations (a "**Term Loan/Notes Recovery**"), then the Term Loan/Notes Obligations shall be reinstated to the extent of such Term Loan/Notes Recovery. If this Agreement shall have been terminated prior to such Term Loan/Notes Recovery, this Agreement shall be reinstated in full force and effect in the event of such Term Loan/Notes Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement. All rights, interests, agreements, and obligations of the ABL Agent, the First Lien Term Agent, the First Lien Notes Agent, the ABL Lenders, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Loan/Notes Obligations. No priority or right of the First Lien Term Agent, any First Lien Term Lender, the First Lien Notes Agent, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the Term Loan/Notes Documents, regardless of any knowledge thereof which the First Lien Term Agent, any First Lien Term Lender, the First Lien Notes Agent, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party may have.

ARTICLE 6
INSOLVENCY PROCEEDINGS

Section 6.1 DIP Financing.

(a) If any Borrower or any Guarantor shall be subject to any Insolvency Proceeding in the United States at any time prior to the Discharge of ABL Obligations, and the ABL Agent or the ABL Lenders shall seek to provide any Borrower or any Guarantor with, or consent to a third party providing, any financing under Section 364 of the Bankruptcy Code or consent to any order for the use of cash collateral under Section 363 of the Bankruptcy Code (each, a "**DIP Financing**"), with such DIP Financing to be secured by all or any portion of the ABL Priority Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code would be ABL Priority Collateral) (it being understood that the ABL Agent and the ABL Secured Parties shall not propose any DIP Financing with respect to the Term Loan/Notes Priority Collateral in competition with the Term Loan/Notes Agents and the Term Loan/Notes Secured Parties without the consent of the Controlling Term Loan/Notes Agent), then each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that it will raise no objection and will not support any objection to such DIP Financing or to the Liens securing the same on the grounds of a failure to provide "adequate protection" for the Liens of such Term Loan/Notes Agent securing the Term Loan/Notes Obligations or on any other grounds (and will not request any adequate protection solely as a result of such DIP Financing), so long as (i) each Term Loan/Notes Agent retains its Lien on the Collateral to secure the Term Loan/Notes Obligations (in each case, including Proceeds thereof arising after the commencement of the case under the Bankruptcy Code) and, as to the Term Loan/Notes Priority Collateral only, such Lien has the same priority as existed prior to the commencement of the case under the Bankruptcy Code and any Lien on Term Loan/Notes Priority Collateral securing such DIP Financing is junior and subordinate to the Lien of each Term Loan/Notes Agent on the Term Loan/Notes Priority Collateral, (ii) all Liens on ABL Priority Collateral securing any such DIP Financing shall be senior to or on a parity with the Liens of the ABL Agent and the ABL Lenders securing the ABL Obligations on ABL Priority Collateral and (iii) if the ABL Agent receives an adequate protection Lien on post-petition assets of the debtor to secure the ABL Obligations, the Controlling Term Loan/Notes Agent also may seek to obtain an adequate protection Lien on such post-petition assets of the debtor to secure the Term Loan/Notes Obligations, provided that (x) such Liens in favor of the ABL Agent, the First Lien Term Agent, and the First Lien Notes Agent shall be subject to the provisions of Section 6.1(c) hereof and (y) the foregoing provisions of this Section 6.1(a) shall not prevent any Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties from objecting to any provision in any DIP Financing relating to any provision or content of a plan of reorganization.

(b) If any Borrower or any Guarantor shall be subject to any Insolvency Proceeding in the United States at any time prior to the Discharge of Term Loan/Notes Obligations, and any Term Loan/Notes Agent, the First Lien Term Lenders, the First Lien Notes Secured Parties, or the Future Term Loan/Notes Indebtedness Secured Parties shall seek to provide any Borrower or any Guarantor with, or consent to a third party providing, any DIP Financing, with such DIP Financing to be secured by all or any portion of the Term Loan/Notes Priority Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code would be Term Loan/Notes Priority Collateral) (it being understood that the Term Loan/Notes Agents and the Term Loan/Notes Secured Parties shall not propose any DIP Financing with respect to the ABL Priority Collateral in competition with the ABL Agent and the ABL Secured Parties without the consent of the ABL Agent), then the ABL Agent, on behalf of itself and the ABL Lenders, agrees that it will raise no objection and will not support any objection to such DIP Financing or to the Liens securing the same on the grounds of a failure to provide "adequate protection" for the Liens of the ABL Agent securing the ABL Obligations or on any other grounds (and will not request any adequate protection solely as a result of such DIP Financing), so long as (i) the ABL Agent retains its Lien on the Collateral to secure the ABL Obligations (in each case, including Proceeds thereof arising after the commencement of the case under the Bankruptcy Code) and, as to the ABL Priority Collateral only, such Lien has the same priority as existed prior to the commencement of the case under the Bankruptcy Code and any Lien on ABL Priority Collateral securing such DIP Financing is junior and subordinate to the Lien of the ABL Agent on the ABL Priority Collateral, (ii) all Liens on Term Loan/Notes Priority Collateral securing any such DIP Financing shall be senior to or on a parity with the Liens of the Term Loan/Notes Agents, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties securing the Term Loan/Notes Obligations on Term Loan/Notes Priority Collateral and (iii) if any Term Loan/Notes Agent receives an adequate protection Lien on post-petition assets of the debtor to secure the Term Loan/Notes Obligations, the ABL Agent also may seek to obtain an adequate protection Lien on such post-petition assets of the debtor to secure the ABL Obligations, provided that (x) such Liens in favor of the Term Loan/Notes Agents and the ABL Agent shall be subject to the provisions of Section 6.1(c) hereof and (y) the foregoing provisions of this Section 6.1(b) shall not prevent the ABL Agent and the ABL Lenders from objecting to any provision in any DIP Financing relating to any provision or content of a plan of reorganization.

(c) All Liens granted to the ABL Agent or any Term Loan/Notes Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the Parties to be and shall be deemed to be subject to the Lien Priority and the other terms and conditions of this Agreement.

Section 6.2 **Relief From Stay**. Until the Discharge of ABL Obligations has occurred, each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the ABL Priority Collateral without the ABL Agent's express written consent. Until the Discharge of Term Loan/Notes Obligations has occurred, the ABL Agent, on behalf of itself and the ABL Lenders, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the Term Loan/Notes Priority Collateral without the Controlling Term Loan/Notes Agent's express written consent. In addition, neither any Term Loan/Notes Agent nor the ABL Agent shall seek any relief from the automatic stay with respect to any Collateral without providing 7 business days' prior written notice to the other, unless such period is agreed by both the ABL Agent and the Controlling Term Loan/Notes Agent to be modified or unless the ABL Agent or the Controlling Term Loan/Notes Agent, as applicable, makes a good faith determination that either (A) the ABL Priority Collateral or the Term Loan/Notes Priority Collateral, as applicable, will decline speedily in value, or (B) the failure to take any action will have a reasonable likelihood of endangering the ABL Agent's or any Term Loan/Notes Agent's ability to realize upon its Collateral.

Section 6.3 **No Contest**. Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that, prior to the Discharge of ABL Obligations, none of them shall contest (or support any other Person contesting) (a) any request by the ABL Agent or any ABL Lender for adequate protection of its interest in the Collateral (unless in contravention of Section 6.1(b) above), or (b) any objection by the ABL Agent or any ABL Lender to any motion, relief, action, or proceeding based on a claim by the ABL Agent or any ABL Lender that its interests in the Collateral (unless in contravention of Section 6.1(b) above) are not adequately protected (or any other similar request under any law applicable to an Insolvency Proceeding), so long as any Liens granted to the ABL Agent as adequate protection of its interests are subject to this Agreement. The ABL Agent, on behalf of itself and the ABL Lenders, agrees that, prior to the Discharge of Term Loan/Notes Obligations, none of them shall contest (or support any other Person contesting) (i) any request by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party for adequate protection of its interest in the Collateral (unless in contravention of Section 6.1(a) above), or (ii) any objection by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party to any motion, relief, action or proceeding based on a claim by any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party that its interests in the Collateral (unless in contravention of Section 6.1(a) above) are not adequately protected (or any other similar request under any law applicable to an Insolvency Proceeding), so long as any Liens granted to any Term Loan/Notes Agent as adequate protection of its interests are subject to this Agreement.

Section 6.4 **Asset Sales.** Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, that it will not oppose any sale consented to by the ABL Agent of any ABL Priority Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) so long as the proceeds of such sale are applied in accordance with this Agreement. The ABL Agent agrees, on behalf of itself and the ABL Lenders, that it will not oppose any sale consented to by any Term **Loan/Notes Agent of any Term Loan/Notes Priority Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) so long as the proceeds of such sale are applied in accordance with this Agreement. If such sale of Collateral includes both ABL Priority Collateral and Term Loan/Notes Priority Collateral and the Parties are unable after negotiating in good faith to agree on the allocation of the purchase price between the ABL Priority Collateral and Term Loan/Notes Priority Collateral, either Party may apply to the court in such Insolvency Proceeding to make a determination of such allocation, and the court's determination shall be binding upon the Parties.**

Section 6.5 **Separate Grants of Security and Separate Classification**. Each First Lien Term Lender, the First Lien Term Agent, each First Lien Notes Secured Party, each Future Term Loan/Notes Indebtedness Secured Party, the First Lien Notes Agent, each ABL Lender and the ABL Agent acknowledges and agrees that (i) the grants of Liens pursuant to the ABL Security Documents and the Term Security Documents constitute two or more separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Term Loan/Notes Obligations are fundamentally different from the ABL Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Secured Parties and the Term Loan/Notes Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the ABL Secured Parties and the Term Loan/Notes Secured Parties hereby acknowledge and agree that all distributions shall be made as if there were separate classes of ABL Obligation claims and Term Loan/Notes Obligation claims against the Credit Parties (with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral or Term Loan/Notes Priority Collateral is sufficient (for this purpose ignoring all claims held by the other Secured Parties), the ABL Secured Parties or the Term Loan/Notes Secured Parties, respectively, shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest that is available from each pool of Priority Collateral for each of the ABL Secured Parties and the Term Loan/Notes Secured Parties, respectively, before any distribution is made in respect of the claims held by the other Secured Parties, with the other Secured Parties hereby acknowledging and agreeing to turn over to the respective other Secured Parties amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries.

Section 6.6 **Enforceability**. The provisions of this Agreement are intended to be and shall be enforceable under Section 510(a) of the Bankruptcy Code.

Section 6.7 **ABL Obligations Unconditional**. All rights of the ABL Agent hereunder, and all agreements and obligations of the Term Loan/Notes Agents and the Credit Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any ABL Document;

(ii) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the ABL Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any ABL Document;

(iii) any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, restatement or increase of all or any portion of the ABL Obligations or any guarantee or guaranty thereof; or

(iv) any other circumstances that otherwise might constitute a defense (other than payment in full of the ABL Obligations) available to, or a discharge of, any Credit Party in respect of the ABL Obligations, or of any of the Term Loan/Notes Agents or any Credit Party, to the extent applicable, in respect of this Agreement.

Section 6.8 **Term Loan/Notes Obligations Unconditional**. All rights of each Term Loan/Notes Agent hereunder, all agreements and obligations of the ABL Agent and the Credit Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any Term Document;

(ii) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Term Loan/Notes Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Term Document;

(iii) any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral, or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, restatement or increase of all or any portion of the Term Loan/Notes Obligations or any guarantee or guaranty thereof; or

(iv) any other circumstances that otherwise might constitute a defense (other than payment in full of the Term Loan/Notes Obligations) available to, or a discharge of, any Credit Party in respect of the Term Loan/Notes Obligations, or of any of the ABL Agent or any Credit Party, to the extent applicable, in respect of this Agreement.

Section 6.9 **Adequate Protection**. Except to the extent expressly provided in Sections 6.1 and 6.3, nothing in this Agreement shall limit the rights of the ABL Agent and the ABL Lenders, on the one hand, and the Term Loan/Notes Agents, the First Lien Term Lenders, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, on the other hand, from seeking or requesting adequate protection with respect to their respective interests in the applicable Collateral in any Insolvency Proceeding, including adequate protection in the form of a cash payment, periodic cash payments, cash payments of interest, additional collateral or otherwise; provided that (a) in the event that the ABL Agent, on behalf of itself or any of the ABL Lenders, seeks or requests adequate protection in respect of the ABL Obligations and such adequate protection is granted in the form of additional collateral comprising assets of the type of assets that constitute Term Loan/Notes Priority Collateral, then the ABL Agent, on behalf of itself and each of the ABL Lenders, agrees that each Term Loan/Notes Agent shall have the right to seek or request a senior Lien on such collateral as security for the Term Loan/Notes Obligations and that any Lien on such collateral securing the ABL Obligations shall be subordinate to the Lien on such collateral securing the Term Loan/Notes Obligations and (b) in the event that either the First Lien Term Agent, on behalf of itself or any of the First Lien Term Lenders, or the First Lien Notes Agent, on behalf of itself, any of the First Lien Notes Secured Parties, or any of the Future Term Loan/Notes Indebtedness Secured Parties, seeks or requests adequate protection in respect of the Term Loan/Notes Obligations and such adequate protection is granted in the form of additional collateral comprising assets of the type of assets that constitute ABL Priority Collateral, then each of the First Lien Term Agent, on behalf of itself and each of the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, each of the First Lien Notes Secured Parties, and each of the Future Term **Loan/Notes Indebtedness Secured Parties, agrees that the ABL Agent shall have the right to seek or request a senior Lien on such collateral as security for the ABL Obligations and that any Lien on such collateral securing the Term Loan/Notes Obligations shall be subordinate to the Lien on such collateral securing the ABL Obligations.**

ARTICLE 7
MISCELLANEOUS

Section 7.1 **Rights of Subrogation**. Each of the First Lien Term Agent, on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, agrees that no payment to the ABL Agent or any ABL Lender pursuant to the provisions of this Agreement shall entitle any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of ABL Obligations shall have occurred. Following the Discharge of ABL Obligations, the ABL Agent agrees to execute such documents, agreements, and instruments as the First Lien Term Agent, the First Lien Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the ABL Obligations resulting from payments to the ABL Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the ABL Agent are paid by the Credit Parties or such Person upon request for payment thereof. The ABL Agent, for and on behalf of itself and the ABL Lenders, agrees that no payment to any Term Loan/Notes Agent, any First Lien Term Lender, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party pursuant to the provisions of this Agreement shall entitle the ABL Agent or any ABL Lender to exercise any rights of subrogation in respect thereof until the Discharge of Term Loan/Notes Obligations shall have occurred. Following the Discharge of Term Loan/Notes Obligations, each Term Loan/Notes Agent agrees to execute such documents, agreements, and instruments as the ABL Agent or any ABL Lender may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Term Loan/Notes Obligations resulting from payments to any Term Loan/Notes Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by any Term Loan/Notes Agent are paid by the Credit Parties or such Person upon request for payment thereof.

Section 7.2 **Further Assurances**. The Parties will, at the cost and expense of the Credit Parties, and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the ABL Agent or any Term Loan/Notes Agent to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 7.2, to the extent that such action would contravene any law, order or other legal requirement or any of the terms or provisions of this Agreement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 7.2.

Section 7.3 **Representations**. The First Lien Term Agent represents and warrants to the ABL Agent that it has the requisite power and authority under the First Lien Term Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of the First Lien Term Agent and the First Lien Term Lenders, and that this Agreement shall be a binding obligation of the First Lien Term Agent and the First Lien Term Lenders, enforceable against the First Lien Term Agent and the First Lien Term Lenders in accordance with its terms. The First Lien Notes Agent represents and warrants to the ABL Agent that it has the requisite power and authority under the First Lien Notes Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of the First Lien Notes Agent, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties that this Agreement shall be a binding obligation of the First Lien Notes Agent, enforceable against the First Lien Notes Agent, and that the terms of the First Lien Notes Indenture authorize the First Lien Notes Agent to execute and deliver this Agreement and bind the First Lien Notes Secured Parties and the Future Term Loan/Notes Indebtedness Secured Parties to the terms hereof. The ABL Agent represents and warrants to each Term Loan/Notes Agent that it has the requisite power and authority under the ABL Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the ABL Lenders and that this Agreement shall be a binding obligation of the ABL Agent and the ABL Lenders, enforceable against the ABL Agent and the ABL Lenders in accordance with its terms.

Section 7.4 **Amendments**. No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by each Term Loan/Notes Agent and the ABL Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.5 **Addresses for Notices**. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or five (5) days after deposit in the United States mail (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

ABL Agent:

Bank of America, N.A.
100 Federal Street, 9th Floor
Boston, MA 02110
Attention: Roger Malouf
E-mail: roger.malouf@baml.com
Facsimile No.: (617) 341-7701

First Lien Term Agent:

JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 7th Floor
Chicago, IL 60603
Attention: Cheryl Lyons
E-mail: jpm.agency.servicing.1@jpmorgan.com
Facsimile No.: (888) 303-9732

With a copy to:

JPMorgan Chase Bank, N.A.
277 Park Avenue, 22nd Floor
New York, NY 10172
Attention: Kennedy A. Capin
E-mail: kennedy.a.capin@jpmorgan.com
Facsimile No.: (646) 534-2273

First Lien Notes Agent:	Wilmington Trust, National Association 50 South Sixth Street, Suite 1290 Minneapolis, MN 55402 Attention: Burlington Coat Factory Warehouse Notes Administrator E-mail: bsomrock@wilmingtontrust.com Facsimile No.: (612) 217-5651

Section 7.6 **No Waiver, Remedies**. No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 7.7 **Continuing Agreement, Transfer of Secured Obligations**. This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Discharge of ABL Obligations and the Discharge of Term Loan/Notes Obligations shall have occurred, (b) be binding upon the Parties and their successors and assigns, and (c) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Collateral. All references to any Credit Party shall include any Credit Party as debtor-in-possession and any receiver or trustee for such Credit Party in any Insolvency Proceeding. Without limiting the generality of the foregoing clause (c), the ABL Agent, any ABL Lender, the First Lien Term Agent, any First Lien Term Lender, the First Lien Notes Agent, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party may assign or otherwise transfer all or any portion of the ABL Obligations or the Term Loan/Notes Obligations, as applicable, to any other Person (other than any Borrower, any Guarantor or any Affiliate of any Borrower or any Guarantor (except as provided in the ABL Credit Agreement, any First Lien Term Credit Agreement, or the First Lien Notes Indenture) and any Subsidiary of any Borrower or any Guarantor), and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the ABL Agent, any ABL Lender, the First Lien Term Agent, any First Lien Term Lender, the First Lien Notes Agent, any First Lien Notes Secured Party, or any Future Term Loan/Notes Indebtedness Secured Party, as the case may be, herein or otherwise. The ABL Secured Parties and the Term Loan/Notes Secured Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide Indebtedness to, or for the benefit of, any Credit Party on the faith hereof.

Section 7.8 **Governing Law: Entire Agreement**. The validity, performance, and enforcement of this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto.

Section 7.9 **Counterparts**. This Agreement may be executed in any number of counterparts, and it is not necessary that the signatures of all Parties be contained on any one counterpart hereof, each counterpart will be deemed to be an original, and all together shall constitute one and the same document. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic methods shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 7.10 **No Third Party Beneficiaries**. This Agreement is solely for the benefit of the ABL Agent, ABL Lenders, First Lien Term Agent, First Lien Term Lenders, First Lien Notes Agent, First Lien Notes Secured Parties, and Future Term Loan/Notes Indebtedness Secured Parties. **No other Person (including any Borrower, any Guarantor or any Affiliate of any Borrower or any Guarantor, or any Subsidiary of any Borrower or any Guarantor) shall be deemed to be a third party beneficiary of this Agreement.**

Section 7.11 **Headings**. The headings of the articles and sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 7.12 **Severability**. If any of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and shall not invalidate the Lien Priority or the application of Proceeds and other priorities set forth in this Agreement.

Section 7.13 **Attorneys' Fees**. The Parties agree that if any dispute, arbitration, litigation, or other proceeding is brought with respect to the enforcement of this Agreement or any provision hereof, the prevailing party in such dispute, arbitration, litigation, or other proceeding shall be entitled to recover its reasonable attorneys' fees and all other costs and expenses incurred in the enforcement of this Agreement, irrespective of whether suit is brought and whether incurred before or after judgment.

Section 7.14 **VENUE; JURY TRIAL WAIVER.**

(a) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY ABL SECURED PARTY OR ANY TERM LOAN/NOTES SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY ABL DOCUMENTS AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(c) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.5. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 7.15 **Intercreditor Agreement**. This Agreement is the Intercreditor Agreement referred to in the Original ABL Credit Agreement, the Original First Lien Term Credit Agreement, and the Original First Lien Notes Indenture. Nothing in this Agreement shall be deemed to subordinate the obligations due (i) to any ABL Secured Party to the obligations due to any Term Loan/Notes Secured Party or (ii) to any Term Loan/Notes Secured Party to the obligations due to any ABL Secured Party, in each case whether before or after the occurrence of an Insolvency Proceeding, it being the intent of the Parties that this Agreement shall effectuate a subordination of Liens but not a subordination of Indebtedness.

Section 7.16 **No Warranties or Liability**. The First Lien Term Agent, the First Lien Notes Agent, and the ABL Agent acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any other ABL Document or any Term Document. Except as otherwise provided in this Agreement, the First Lien Term Agent, the First Lien Notes Agent, and the ABL Agent will be entitled to manage and supervise their respective extensions of credit to any Credit Party in accordance with law and their usual practices, modified from time to time as they deem appropriate.

Section 7.17 **Conflicts**. In the event of any conflict between the provisions of this Agreement and the provisions of any ABL Document or any Term Loan/Notes Document, the provisions of this Agreement shall govern.

Section 7.18 **Information Concerning Financial Condition of the Credit Parties**. The First Lien Term Agent, the First Lien Notes Agent, and the ABL Agent hereby assume responsibility for keeping itself informed of the financial condition of the Credit Parties and all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Loan/Notes Obligations; provided that nothing in this Section 7.18 shall impose any obligation on the First Lien Notes Agent to keep itself informed of the financial condition or the risk of nonpayment beyond that which may be required by the First Lien Notes Indenture. The First Lien Term Agent, the First Lien Notes Agent, and the ABL Agent hereby agree that no party shall have any duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the First Lien Term Agent, the First Lien Notes Agent, or the ABL Agent, in its sole discretion, undertakes at any time or from time to time to provide any information to any other party to this Agreement, (a) it shall be under no obligation (i) to provide any such information to such other party or any other party on any subsequent occasion, (ii) to undertake any investigation not a part of its regular business routine, or (iii) to disclose any other information, (b) it makes no representation as to the accuracy or completeness of any such information and (c) the party receiving such information hereby agrees to hold harmless the other party from and against any and all losses, claims, damages, liabilities and expenses to which such receiving party may become subject arising out of or in connection with the use of such information.

Section 7.19 **Amendment and Restatement**. This Agreement amends and restates, replaces and supersedes in its entirety the Existing Intercreditor Agreement; provided that, except as expressly modified herein, all of the terms and provisions of the Existing Intercreditor Agreement shall continue to apply for the period prior to the date hereof.

Section 7.20 Agent Capacities. Except as expressly set forth herein, the ABL Agent, the First Lien Term Agent and the First Lien Notes Agent shall not have any duties or obligations in respect of any of the Collateral, all of such duties and obligations, if any, being subject to and governed by the applicable ABL Documents, First Lien Term Documents or First Lien Notes Documents, as the case may be. It is understood and agreed that (i) Bank of America is entering into this Agreement in its capacity as administrative agent and collateral agent under the Original ABL Credit Agreement, and the provisions of the Original ABL Credit Agreement applicable to Bank of America as administrative agent and collateral agent thereunder (including its rights, privileges, immunities and indemnities) shall also apply to Bank of America as the ABL Agent hereunder, (ii) JPMorgan is entering into this Agreement in its capacity as administrative agent and collateral agent under the Original First Lien Credit Agreement and the provisions of the Original First Lien Credit Agreement applicable to JPMorgan as administrative agent and collateral agent thereunder (including its rights, privileges, immunities and indemnities) shall also apply to JPMorgan as First Lien Term Agent hereunder and (iii) Wilmington Trust is entering into this Agreement in its capacity as collateral agent under the Original First Lien Notes Indenture and the provisions of the Original First Lien Notes Indenture applicable to Wilmington Trust as collateral agent thereunder (including its rights, privileges, immunities and indemnities) shall also apply to Wilmington Trust as First Lien Notes Agent hereunder.

[*Remainder of Page Intentionally Left Blank; Signature Pages Follow.*]

IN WITNESS WHEREOF, the ABL Agent, for and on behalf of itself and the ABL Lenders, the First Lien Term Agent, for and on behalf of itself and the First Lien Term Lenders, and the First Lien Notes Agent, for and on behalf of itself, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties have caused this Agreement to be duly executed and delivered as of the date first above written.

BANK OF AMERICA, N.A., in its capacity as the ABL Agent

By: /s/ Roger Malouf
Name: Roger Malouf
Title: Senior Vice President

JPMORGAN CHASE BANK, N.A., in its capacity as the First Lien Term Agent

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

[Burlington Coat Factory – Signature Page to Amended and Restated Intercreditor Agreement]

WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as the First Lien Notes Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

[Burlington Coat Factory – Signature Page to Amended and Restated Intercreditor Agreement]

ACKNOWLEDGMENT

Each Borrower and each Guarantor hereby acknowledges that it has received a copy of this Agreement and consents thereto, agrees to recognize all rights granted thereby to the ABL Agent, the ABL Lenders, the First Lien Term Agent, the First Lien Term Lenders, the First Lien Notes Agent, the First Lien Notes Secured Parties, and the Future Term Loan/Notes Indebtedness Secured Parties, and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. Each Borrower and each Guarantor further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement and that the ABL Documents and Term Loan/Notes Documents remain in full force and effect as written.

BORROWER: **BURLINGTON COAT FACTORY WAREHOUSE CORPORATION**

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

GUARANTORS: **THE ENTITIES LIST ON SCHEDULE I HERETO**

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

[Burlington Coat Factory – Signature Page to Amended and Restated Intercreditor Agreement]

SCHEDULE I TO CREDIT PARTY ACKNOWLEDGEMENT

1. Burlington Coat Factory of Texas, L.P., a Delaware limited partnership
2. Burlington Coat Factory of Kentucky, Inc., a Kentucky corporation
3. BURLINGTON COAT FACTORY DIRECT CORPORATION, a New Jersey corporation
4. BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK, INC., a New Jersey corporation
5. Burlington Coat Factory Warehouse of New Jersey, Inc., a New Jersey corporation
6. BURLINGTON COAT FACTORY OF PUERTO RICO, LLC, a Puerto Rico limited liability company
7. COHOES FASHIONS OF CRANSTON, INC., a Rhode Island corporation
8. BURLINGTON COAT FACTORY WAREHOUSE OF BAYTOWN INC, a Texas corporation
9. Burlington Coat Factory of Pocono Crossing, LLC, a Virginia limited liability company
10. Burlington Coat Factory Holdings, LLC, a Delaware limited liability company
11. Burlington Coat Factory Investments Holdings, Inc., a Delaware corporation
12. BURLINGTON COAT FACTORY OF TEXAS, INC., a Florida corporation
13. BURLINGTON COAT FACTORY REALTY OF EDGEWATER PARK, INC., a New Jersey corporation
14. BURLINGTON COAT FACTORY REALTY OF PINEBROOK, INC., a New Jersey corporation
15. BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK URBAN RENEWAL CORP., a New Jersey corporation
16. Scottchris, LLC, a Delaware limited liability company
17. BCF Florence Urban Renewal, L.L.C., a New Jersey limited liability company
18. BCF Florence Urban Renewal II, LLC, a New Jersey limited liability company
19. Burlington Merchandising Corporation, a Delaware corporation

Exhibit 10.5

PARI PASSU INTERCREDITOR AGREEMENT

among

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION,

the other Grantors party hereto,

JPMORGAN CHASE BANK, N.A.,
as Credit Agreement Collateral Agent for the Credit Agreement Secured Parties

JPMORGAN CHASE BANK, N.A.,
as Authorized Representative for the Credit Agreement Secured Parties,

WILMINGTON TRUST, NATIONAL ASSOCIATION
as the Additional Pari Passu Collateral Agent

WILMINGTON TRUST, NATIONAL ASSOCIATION
as the Initial Additional Authorized Representative,

and

each additional Authorized Representative from time to time party hereto

dated as of April 16, 2020

PARI PASSU INTERCREDITOR AGREEMENT, dated as of April 16, 2020 (as amended, restated, supplemented and/or otherwise modified from time to time, this "Agreement"), among BURLINGTON COAT FACTORY WAREHOUSE CORPORATION, a Florida corporation (the "Company"), the other Grantors (as defined below) from time to time party hereto, JPMORGAN CHASE BANK, N.A., ("JPMCB"), as collateral agent for the Credit Agreement Secured Parties (as defined below) (in such capacity and together with its successors in such capacity, the "Credit Agreement Collateral Agent"), JPMCB, as Authorized Representative for the Credit Agreement Secured Parties (as each such term is defined below), WILMINGTON TRUST, NATIONAL ASSOCIATION ("Wilmington Trust"), as collateral agent for the Additional Pari Passu Secured Parties (as defined below) (in such capacity and together with its successors in such capacity, the "Additional Pari Passu Collateral Agent"), WILMINGTON TRUST, as Trustee (as defined below) for the Initial Additional Pari Passu Secured Parties (as defined below) (in such capacity and together with its successors in such capacity, the "Initial Additional Authorized Representative") and each additional Authorized Representative from time to time party hereto for the other Additional Pari Passu Secured Parties of the Series (as defined below) with respect to which it is acting in such capacity.

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Collateral Agent, the Administrative Agent (for itself and on behalf of the Credit Agreement Secured Parties), the Initial Additional Authorized Representative (for itself and on behalf of the Initial Additional Pari Passu Secured Parties) and each additional Authorized Representative (for itself and on behalf of the Additional Pari Passu Secured Parties of the applicable Series) agree as follows:

ARTICLE I

Definitions

SECTION 1.01 Certain Defined Terms. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Credit Agreement or, if defined in the New York UCC, the meanings specified therein. As used in this Agreement, the following terms have the meanings specified below:

"ABL Collateral Agent" means Bank of America, N.A., in its capacity as collateral agent under the ABL Credit Agreement, and its successors and permitted assigns.

"ABL Credit Agreement" means that certain Second Amended and Restated Credit Agreement, dated as of September 2, 2011, among the Company, as lead borrower, the Guarantors, the lenders party thereto and Bank of America, N.A., as administrative agent and collateral agent, as the same may be amended, restated, supplemented, replaced, refinanced or increased (to the extent any such replacement, refinancing or increase has been designated as an "ABL Credit Agreement" for purposes of the ABL Intercreditor Agreement).

"ABL Intercreditor Agreement" shall mean that certain Amended and Restated Intercreditor Agreement, dated as of April 16, 2020, among the Company, the other Grantors, the ABL Collateral Agent, JPMCB, in its capacity as First Lien Term Agent (as defined in the ABL Intercreditor Agreement), Wilmington Trust, in its capacity as First Lien Notes Agent (as defined in the ABL Intercreditor Agreement) and each additional agent from time to time party thereto, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time in accordance with its terms.

"Additional Pari Passu Collateral Agent" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Additional Pari Passu Documents" means, with respect to the Initial Additional Pari Passu Obligations or any Series of Additional Senior Class Debt, the notes, indentures, security documents and other operative agreements evidencing or governing such indebtedness and liens securing such indebtedness, including the Initial Additional Pari Passu Documents and the Additional Pari Passu Security Documents and each other agreement entered into for the purpose of securing the Initial Additional Pari Passu Obligations or any Series of Additional Senior Class Debt; provided that, in each case, the Indebtedness thereunder (other than the Initial Additional Pari Passu Obligations) has been designated as Additional Pari Passu Obligations pursuant to Section 5.13.

"Additional Pari Passu Obligations" means all amounts owing to any Additional Pari Passu Secured Party (including the Initial Additional Pari Passu Secured Parties) pursuant to the terms of any Additional Pari Passu Document (including the Initial Additional Pari Passu Documents), including, without limitation, all amounts in respect of any principal, premium, interest (including any interest, fees, and expenses accruing subsequent to the commencement of an Insolvency or Liquidation Proceeding at the rate provided for in the respective Additional Pari Passu Document, whether or not such interest, fees, or expenses is an allowed claim under any such proceeding or under applicable state, federal or foreign law), penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts.

"Additional Pari Passu Secured Party" means the holders of any Additional Pari Passu Obligations and any Authorized Representative with respect thereto, and shall include the Initial Additional Pari Passu Secured Parties.

"Additional Pari Passu Security Documents" means any security agreement or any other document now existing or entered into after the date hereof that create Liens on any assets or properties of any Grantor to secure the Additional Pari Passu Obligations, including the Initial Additional Pari Passu Security Documents.

"Additional Senior Class Debt" has the meaning assigned to such term in Section 5.13.

"Additional Senior Class Debt Parties" has the meaning assigned to such term in Section 5.13.

"Additional Senior Class Debt Representative" has the meaning assigned to such term in Section 5.13.

"Administrative Agent" has the meaning assigned to such term in the definition of "Credit Agreement".

"Agreement" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Applicable Authorized Representative" means, with respect to any Shared Collateral, (i) until the earlier of (x) the Discharge of Credit Agreement Obligations and (y) the Non-Controlling Authorized Representative Enforcement Date, the Administrative Agent and (ii) from and after the earlier of (x) the Discharge of Credit Agreement Obligations and (y) the Non-Controlling Authorized Representative Enforcement Date, the Major Non-Controlling Authorized Representative.

"Applicable Collateral Agent" means (i) until the earlier of (x) Discharge of Credit Agreement Obligations and (y) the Non-Controlling Authorized Representative Enforcement Date, the Credit Agreement Collateral Agent and (ii) from and after the earlier of (x) the Discharge of Credit Agreement Obligations and (y) the Non-Controlling Authorized Representative Enforcement Date, the Additional Pari Passu Collateral Agent. Upon the Additional Pari Passu Collateral Agent becoming the Applicable Collateral Agent, it shall provide a notice to the ABL Collateral Agent that it shall be the "Controlling Term Loan/Notes Agent" for all purposes under the ABL Intercreditor Agreement.

"Authorized Representative" means, at any time, (i) in the case of any Credit Agreement Obligations or the Credit Agreement Secured Parties, the Administrative Agent, (ii) in the case of the Initial Additional Pari Passu Obligations or the Initial Additional Pari Passu Secured Parties, the Initial Additional Authorized Representative, and (iii) in the case of any other Series of Additional Pari Passu Obligations or Additional Pari Passu Secured Parties that become subject to this Agreement after the date hereof, the Authorized Representative named for such Series in the applicable Joinder Agreement.

"Bankruptcy Case" has the meaning assigned to such term in Section 2.05(b).

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

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

"Collateral" means all assets and properties subject to Liens created pursuant to any Pari Passu Security Document to secure one or more Series of Pari Passu Obligations.

"Collateral Agent" means (i) in the case of any Credit Agreement Obligations, the Credit Agreement Collateral Agent and (ii) in the case of the Additional Pari Passu Obligations, the Additional Pari Passu Collateral Agent.

"Company" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Controlling Secured Parties" means, with respect to any Shared Collateral, (i) at any time when the Credit Agreement Collateral Agent is the Applicable Collateral Agent, the Credit Agreement Secured Parties and (ii) at any other time, the Series of Pari Passu Secured Parties whose Authorized Representative is the Applicable Authorized Representative for such Shared Collateral.

"Credit Agreement" means that certain Credit Agreement, dated as of February 24, 2011, among the Company, the guarantors party thereto, the lenders from time to time party thereto, JPMCB, as administrative agent (in such capacity and together with its successors in such capacity, the "Administrative Agent") and the other parties thereto, as amended, restated, supplemented, modified, replaced and/or Refinanced from time to time.

"Credit Agreement Collateral Agent" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Credit Agreement Obligations" means all Obligations as defined in the Credit Agreement.

"Credit Agreement Secured Parties" means the "Secured Parties" as defined in the Credit Agreement.

"Credit Agreement Security Documents" means the Security Agreement, the Pledge Agreement, the other Security Documents (as defined in the Credit Agreement) and each other agreement entered into in favor of the Credit Agreement Collateral Agent for the purpose of securing any Credit Agreement Obligations.

"DIP Financing" has the meaning assigned to such term in Section 2.05(b).

"DIP Financing Liens" has the meaning assigned to such term in Section 2.05(b).

"DIP Lenders" has the meaning assigned to such term in Section 2.05(b).

"Discharge" means, with respect to any Shared Collateral and any Series of Pari Passu Obligations, the date on which such Series of Pari Passu Obligations is no longer secured by such Shared Collateral in accordance with the terms of the documents governing such Series. The term "Discharged" shall have a corresponding meaning.

"Discharge of Credit Agreement Obligations" means, with respect to any Shared Collateral, the Discharge of the Credit Agreement Obligations with respect to such Shared Collateral; provided that the Discharge of Credit Agreement Obligations shall not be deemed to have occurred in connection with a Refinancing of such Credit Agreement Obligations with additional Pari Passu Obligations secured by such Shared Collateral under an Additional Pari Passu Document which has been designated in writing by the Administrative Agent (under the Credit Agreement so Refinanced) to the Additional Pari Passu Collateral Agent and each other Authorized Representative as the "Credit Agreement" for purposes of this Agreement.

"Event of Default" means an "Event of Default" (or similarly defined term) as defined in any Secured Credit Document.

"Grantors" means the Company and each of the Facility Guarantors (as defined in the Credit Agreement) and each other Subsidiary of the Company which has granted a security interest pursuant to any Pari Passu Security Document to secure any Series of Pari Passu Obligations. The Grantors existing on the date hereof are set forth in Annex I hereto.

"Impairment" has the meaning assigned to such term in Section 1.03.

"Initial Additional Authorized Representative" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Initial Additional Pari Passu Agreement" means that certain Indenture, dated as of April 16, 2020, among the Company, the Guarantors identified therein, and Wilmington Trust, as trustee (in such capacity, the "Trustee") and Wilmington Trust, as collateral agent, as amended, restated, supplemented, modified, replaced and/or Refinanced from time to time.

"Initial Additional Pari Passu Documents" means the Initial Additional Pari Passu Agreement, the notes issued thereunder, the Initial Additional Pari Passu Security Documents and any security documents and other operative agreements evidencing or governing the Indebtedness thereunder, and the liens securing such Indebtedness, including any agreement entered into for the purpose of securing the Initial Additional Pari Passu Obligations.

"Initial Additional Pari Passu Obligations" means the Secured Obligations as such term is defined in the Initial Additional Pari Passu Security Agreement.

"Initial Additional Pari Passu Pledge Agreement" means the pledge agreement, dated as of the date hereof, among the Company, the Additional Pari Passu Collateral Agent and the other parties thereto, as amended, restated, supplemented, modified or replaced from time to time.

"Initial Additional Pari Passu Secured Parties" means the Additional Pari Passu Collateral Agent, the Initial Additional Authorized Representative and the holders of the Initial Additional Pari Passu Obligations issued pursuant to the Initial Additional Pari Passu Agreement.

"Initial Additional Pari Passu IP Security Agreement" means the intellectual property security agreement, dated as of the date hereof, among the Company, the Additional Pari Passu Collateral Agent and the other parties thereto, as amended, restated, supplemented, modified or replaced from time to time.

"Initial Additional Pari Passu Security Agreement" means the security agreement, dated as of the date hereof, among the Company, the Additional Pari Passu Collateral Agent and the other parties thereto, as amended, restated, supplemented, modified or replaced from time to time.

"Initial Additional Pari Passu Security Documents" means the Initial Additional Pari Passu Security Agreement, the Initial Additional Pari Passu Pledge Agreement, the Initial Additional Pari Passu IP Security Agreement, the other Collateral Documents (as defined in the Initial Additional Pari Passu Agreement) and each other agreement entered into in favor of the Additional Pari Passu Collateral Agent for the purpose of securing any Initial Additional Pari Passu Obligations.

"Insolvency or Liquidation Proceeding" means:

(1) any case or proceeding commenced by or against the Company or any other Grantor under any Bankruptcy Law, any other case or proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any other Grantor, any receivership or assignment for the benefit of creditors relating to the Company or any other Grantor or any similar case or proceeding relative to the Company or any other Grantor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company or any other Grantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other case or proceeding of any type or nature in which substantially all claims of creditors of the Company or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

"Intervening Creditor" has the meaning assigned to such term in Section 2.01(a).

"Joinder Agreement" means a joinder to this Agreement in the form of Annex II hereof required to be delivered by an Additional Senior Class Debt Representative to each Collateral Agent, each Authorized Representative and each Grantor pursuant to Section 5.13 hereof in order to establish an additional Series of Additional Pari Passu Obligations and add Additional Pari Passu Secured Parties hereunder.

"JPMCB" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Major Non-Controlling Authorized Representative" means, with respect to any Shared Collateral, the Authorized Representative of the Series of Additional Pari Passu Obligations that constitutes the largest outstanding principal amount of any then outstanding Series of Pari Passu Obligations with respect to such Shared Collateral.

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

"Non-Controlling Authorized Representative" means, at any time with respect to any Shared Collateral, any Authorized Representative that is not the Applicable Authorized Representative at such time with respect to such Shared Collateral.

"Non-Controlling Authorized Representative Enforcement Date" means, with respect to any Non-Controlling Authorized Representative, the date which is 90 days (throughout which 90 day period such Non-Controlling Authorized Representative was the Major Non-Controlling Authorized Representative) after the occurrence of both (i) an Event of Default (under and as defined in the Additional Pari Passu Document under which such Non-Controlling Authorized Representative is the Authorized Representative) and (ii) each Collateral Agent's and each other Authorized Representative's receipt of written notice from such Non-Controlling Authorized Representative certifying that (x) such Non-Controlling Authorized Representative is the Major Non-Controlling Authorized Representative and that an Event of Default (under and as defined in the Additional Pari Passu Document under which such Non-Controlling Authorized Representative is the Authorized Representative) has occurred and is continuing and (y) the Additional Pari Passu Obligations of the Series with respect to which such Non-Controlling Authorized Representative is the Authorized Representative are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the applicable Additional Pari Passu Document; provided that the Non-Controlling Authorized Representative Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred with respect to any Shared Collateral (1) at any time the Administrative Agent or the Credit Agreement Collateral Agent has commenced and is diligently pursuing any enforcement action with respect to such Shared Collateral, (2) at any time the Grantor which has granted a security interest in such Shared Collateral is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding or (3) at any time the Credit Agreement Collateral Agent is stayed from exercising remedies with respect to a material portion of the Shared Collateral pursuant to the ABL Intercreditor Agreement.

"Non-Controlling Secured Parties" means, with respect to any Shared Collateral, the Pari Passu Secured Parties which are not Controlling Secured Parties with respect to such Shared Collateral.

"Pari Passu Obligations" means, collectively, (i) the Credit Agreement Obligations and (ii) each Series of Additional Pari Passu Obligations.

"Pari Passu Secured Parties" means (i) the Credit Agreement Secured Parties and (ii) the Additional Pari Passu Secured Parties with respect to each Series of Additional Pari Passu Obligations.

"Pari Passu Security Documents" means, collectively, (i) the Credit Agreement Security Documents and (ii) the Additional Pari Passu Security Documents.

"Pledge Agreement" means the Pledge Agreement, dated as of February 24, 2011, among the Company, the Credit Agreement Collateral Agent and the other parties thereto, as amended, restated, supplemented, modified or replaced from time to time.

"Possessory Collateral" means any Shared Collateral in the possession of a Collateral Agent (or its agents or bailees), to the extent that possession thereof perfects a Lien thereon under the Uniform Commercial Code of any jurisdiction. Possessory Collateral includes, without limitation, any Investment Property, Instruments, and Chattel Paper (each as defined in the Security Agreement), in each case, delivered to or in the possession of a Collateral Agent under the terms of the Pari Passu Security Documents.

"Proceeds" has the meaning assigned to such term in Section 2.01(a).

"Refinance" means, in respect of any indebtedness, to refinance, or replace, or to issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness (in whole or in part), including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated and including, in each case, through any credit agreement, indenture or other agreement. "Refinanced" and "Refinancing" have correlative meanings.

"Secured Credit Document" means (i) the Credit Agreement and each Loan Document (as defined in the Credit Agreement), (ii) the Initial Additional Pari Passu Agreement and each Initial Additional Pari Passu Document, and (iii) each Additional Pari Passu Document.

"Security Agreement" means the Security Agreement, dated as of February 24, 2011, among the Company, the Credit Agreement Collateral Agent and the other parties thereto, as amended, restated, supplemented, modified or replaced from time to time.

"Series" means (a) with respect to the Pari Passu Secured Parties, each of (i) the Credit Agreement Secured Parties (in their capacities as such), (ii) the Initial Additional Pari Passu Secured Parties (in their capacities as such), and (iii) the Additional Pari Passu Secured Parties that become subject to this Agreement after the date hereof that are represented by a common Authorized Representative (in its capacity as such for such Additional Pari Passu Secured Parties) and (b) with respect to any Pari Passu Obligations, each of (i) the Credit Agreement Obligations, (ii) the Initial Additional Pari Passu Obligations, and (iii) the Additional Pari Passu Obligations incurred pursuant to any Additional Pari Passu Document, which pursuant to any Joinder Agreement, are to be represented hereunder by a common Authorized Representative (in its capacity as such for such Additional Pari Passu Obligations).

"Shared Collateral" means, at any time, Collateral in which the holders of two or more Series of Pari Passu Obligations hold a valid and perfected security interest at such time. If more than two Series of Pari Passu Obligations are outstanding at any time and the holders of less than all Series of Pari Passu Obligations hold a valid and perfected security interest in any Collateral at such time, then such Collateral shall constitute Shared Collateral for those Series of Pari Passu Obligations that hold a valid and perfected security interest in such Collateral at such time and shall not constitute Shared Collateral for any Series which does not have a valid and perfected security interest in such Collateral at such time.

"Wilmington Trust" has the meaning assigned to such term in the introductory paragraph of this Agreement.

SECTION 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) unless otherwise expressly qualified herein, the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive.

SECTION 1.03 Impairments. It is the intention of the Pari Passu Secured Parties of each Series that the holders of Pari Passu Obligations of such Series (and not the Pari Passu Secured Parties of any other Series) bear the risk of (i) any determination by a court of competent jurisdiction that (x) any of the Pari Passu Obligations of such Series are unenforceable under applicable law or are subordinated to any other obligations (other than another Series of Pari Passu Obligations), (y) any of the Pari Passu Obligations of such Series do not have an enforceable security interest in any of the Collateral securing any other Series of Pari Passu Obligations and/or (z) any intervening security interest exists securing any other obligations (other than another Series of Pari Passu Obligations) on a basis ranking prior to the security interest of such Series of Pari Passu Obligations but junior to the security interest of any other Series of Pari Passu Obligations or (ii) the existence of any Collateral for any other Series of Pari Passu Obligations that is not Shared Collateral (any such condition referred to in the foregoing clauses (i) or (ii) with respect to any Series of Pari Passu Obligations, an "Impairment" of such Series); provided, that the existence of a maximum claim with respect to any real property subject to a mortgage which applies to all Pari Passu Obligations shall not be deemed to be an Impairment of any Series of Pari Passu Obligations. In the event of any Impairment with respect to any Series of Pari Passu Obligations, the results of such Impairment shall be borne solely by the holders of such Series of Pari Passu Obligations, and the rights of the holders of such Series of Pari Passu Obligations (including, without limitation, the right to receive distributions in respect of such Series of Pari Passu Obligations pursuant to Section 2.01) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of the Series of such Pari Passu Obligations subject to such Impairment. Additionally, in the event the Pari Passu Obligations of any Series are modified pursuant to applicable law (including, without limitation, pursuant to Section 1129 of the Bankruptcy Code), any reference to such Pari Passu Obligations or the Pari Passu Security Documents governing such Pari Passu Obligations shall refer to such obligations or such documents as so modified.

SECTION 1.04 Additional First Lien Obligations. It is hereby agreed that (i) all obligations of the Grantors under the Initial Additional Pari Passu Documents and (ii) all Additional Pari Passu Obligations are hereby designated as "Additional First Lien Obligations" for all purposes under this Agreement, the Credit Agreement, the Credit Agreement Security Documents, the Initial Additional Pari Passu Agreement, the Initial Additional Pari Passu Documents, all Additional Pari Passu Documents, and all operative agreements evidencing or governing any Pari Passu Obligations.

ARTICLE II

Priorities and Agreements with Respect to Shared Collateral

SECTION 2.01 Priority of Claims.

(a) Anything contained herein or in any of the Secured Credit Documents to the contrary notwithstanding (but subject to Section 1.03 and the ABL Intercreditor Agreement), if an Event of Default has occurred and is continuing, and the Applicable Collateral Agent or any Pari Passu Secured Party is taking action to enforce rights in respect of any Shared Collateral, or any distribution is made in respect of any Shared Collateral in any Insolvency or Liquidation Proceeding of the Company or any other Grantor or any Pari Passu Secured Party receives any payment pursuant to any intercreditor agreement (other than this Agreement) with respect to any Shared Collateral, the proceeds of any sale, collection or other liquidation of any such Collateral by any Pari Passu Secured Party or received by the Applicable Collateral Agent or any Pari Passu Secured Party pursuant to any such intercreditor agreement with respect to such Shared Collateral and proceeds of any such distribution (subject, in the case of any such payments, proceeds, or distribution, to the sentence immediately following) to which the Pari Passu Obligations are entitled under any intercreditor agreement (other than this Agreement) (all payments, distributions, proceeds of any sale, collection or other liquidation of any Collateral and all proceeds of any such distribution being collectively referred to as "Proceeds"), shall be applied (i) FIRST, to the payment of all amounts owing to each Collateral Agent (in its capacity as such) pursuant to the terms of any Secured Credit Document, (ii) SECOND, subject to Section 1.03, to the payment in full of the Pari Passu Obligations of each Series on a ratable basis, with such Proceeds to be applied to the Pari Passu Obligations of a given Series in accordance with the terms of the applicable Secured Credit Documents and (iii) THIRD, after payment of all Pari Passu Obligations, to the Company and the other Grantors or their successors or assigns, as their interests may appear, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct. Notwithstanding the foregoing, with respect to any Shared Collateral for which a third party (other than a Pari Passu Secured Party) has a lien or security interest that is junior in priority to the security interest of any Series of Pari Passu Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of any other Series of Pari Passu Obligations (such third party, an "Intervening Creditor"), the value of any Shared Collateral or Proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Shared Collateral or Proceeds to be distributed in respect of the Series of Pari Passu Obligations with respect to which such Impairment exists.

(b) It is acknowledged that the Pari Passu Obligations of any Series may, subject to the limitations set forth in the then extant Secured Credit Documents, be increased, extended, renewed, restated, supplemented, restructured, repaid, refunded, Refinanced or otherwise amended or modified from time to time, all without affecting the priorities set forth in Section 2.01(a) or the provisions of this Agreement defining the relative rights of the Pari Passu Secured Parties of any Series.

(c) Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing any Series of Pari Passu Obligations granted on the Shared Collateral and notwithstanding any provision of the Uniform Commercial Code of any jurisdiction, or any other applicable law or the Secured Credit Documents or any defect or deficiencies in the Liens securing the Pari Passu Obligations of any Series or any other circumstance whatsoever (but, in each case, subject to Section 1.03), each Pari Passu Secured Party hereby agrees that the Liens securing each Series of Pari Passu Obligations on any Shared Collateral shall be of equal priority.

SECTION 2.02 Actions with Respect to Shared Collateral; Prohibition on Contesting Liens.

(a) Subject to the ABL Intercreditor Agreement, only the Applicable Collateral Agent shall act or refrain from acting with respect to any Shared Collateral (including with respect to any intercreditor agreement with respect to any Shared Collateral). At any time when the Credit Agreement Collateral Agent is the Applicable Collateral Agent, no Additional Pari Passu Secured Party shall or shall instruct any Collateral Agent to, commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its security interest in or realize upon, or take any other action available to it in respect of, any Shared Collateral (including with respect to any intercreditor agreement with respect to any Shared Collateral), whether under any Additional Pari Passu Security Document, applicable law or otherwise, it being agreed that only the Credit Agreement Collateral Agent, acting in accordance with the Credit Agreement Security Documents, shall be entitled to take any such actions or exercise any such remedies with respect to Shared Collateral at such time; provided that, notwithstanding the foregoing, (i) in any Insolvency or Liquidation Proceeding, any Collateral Agent or any other Pari Passu Secured Party may file a proof of claim or statement of interest with respect to the Pari Passu Obligations owed to the Pari Passu Secured Parties; (ii) any Collateral Agent or any other Pari Passu Secured Party may take any action to preserve or protect the validity and enforceability of the Liens granted in favor of Pari Passu Secured Parties, provided that no such action is, or could reasonably be expected to be, (A) adverse, in any material respect, to the Liens granted in favor of the Controlling Secured Parties or the rights of the Controlling Collateral Agent or any other Controlling Secured Parties to exercise remedies in respect thereof or (B) otherwise inconsistent with the terms of this Agreement or the ABL Intercreditor Agreement; and (iii) any Collateral Agent or any other Pari Passu Secured Party may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims or Liens of such Pari Passu Secured Party, including any claims secured by the Shared Collateral, in each case, to the extent not inconsistent with the terms of this Agreement and the ABL Intercreditor Agreement.

(b) With respect to any Shared Collateral at any time when the Additional Pari Passu Collateral Agent is the Applicable Collateral Agent, (i) the Additional Pari Passu Collateral Agent shall act only on the instructions of the Applicable Authorized Representative, (ii) the Additional Collateral Agent shall not follow any instructions with respect to such Shared Collateral (including with respect to any intercreditor agreement with respect to any Shared Collateral) from any Non-Controlling Authorized Representative (or any other Pari Passu Secured Party other than the Applicable Authorized Representative) and (iii) no Non-Controlling Authorized Representative or other Pari Passu Secured Party (other than the Applicable Authorized Representative) shall or shall instruct the Additional Pari Passu Collateral Agent to, commence any judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its security interest in or realize upon, or take any other action available to it in respect of, any Shared Collateral (including with respect to any intercreditor agreement with respect to any Shared Collateral), whether under any Pari Passu Security Document, applicable law or otherwise, it being agreed that only the Additional Collateral Agent, acting on the instructions of the Applicable Authorized Representative and in accordance with the Additional Pari Passu Security Documents, shall be entitled to take any such actions or exercise any such remedies with respect to Shared Collateral.

(c) Notwithstanding the equal priority of the Liens on the Shared Collateral securing each Series of Pari Passu Obligations, the Applicable Collateral Agent (in the case of the Additional Pari Passu Collateral Agent, acting on the instructions of the Applicable Authorized Representative) may deal with the Shared Collateral as if such Applicable Collateral Agent had a senior Lien on such Collateral. No Non-Controlling Authorized Representative or Non-Controlling Secured Party will contest, protest or object to any foreclosure proceeding or action brought by the Applicable Collateral Agent, the Applicable Authorized Representative or the Controlling Secured Party or any other exercise by the Applicable Collateral Agent, the Applicable Authorized Representative or the Controlling Secured Party of any rights and remedies relating to the Shared Collateral, or to cause the Applicable Collateral Agent to do so. The foregoing shall not be construed to limit the rights and priorities of any Pari Passu Secured Party, the Applicable Collateral Agent or any Authorized Representative with respect to any Collateral not constituting Shared Collateral.

(d) Each of the Pari Passu Secured Parties agrees that it will not (and hereby waives any right to) question or contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the perfection, priority, validity, attachment or enforceability of a Lien held by or on behalf of any of the Pari Passu Secured Parties in all or any part of the Collateral, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Collateral Agent or any Authorized Representative to enforce this Agreement.

SECTION 2.03 No Interference; Payment Over.

(a) Each Pari Passu Secured Party agrees that (i) it will not challenge or question in any proceeding (including any Insolvency or Liquidation Proceeding) the validity or enforceability of any Pari Passu Obligations of any Series or any Pari Passu Security Document or the validity, attachment, perfection or priority of any Lien under any Pari Passu Security Document or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement; (ii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Shared Collateral by the Applicable Collateral Agent, (iii) except as provided in Section 2.02, it shall have no right to (A) direct the Applicable Collateral Agent or any other Pari Passu Secured Party to exercise any right, remedy or power with respect to any Shared Collateral (including pursuant to any intercreditor agreement) or (B) consent to the exercise by the Applicable Collateral Agent or any other Pari Passu Secured Party of any right, remedy or power with respect to any Shared Collateral, (iv) it will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Applicable Collateral Agent or any other Pari Passu Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Shared Collateral, and none of the Applicable Collateral Agent, any Applicable Authorized Representative or any other Pari Passu Secured Party shall be liable for any action taken or omitted to be taken by the Applicable Collateral Agent, such Applicable Authorized Representative or other Pari Passu Secured Party with respect to any Shared Collateral in accordance with the provisions of this Agreement, (v) it will not seek, and hereby waives any right, to have any Shared Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Collateral and (vi) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any of the Applicable Collateral Agent or any other Pari Passu Secured Party to enforce this Agreement.

(b) Each Pari Passu Secured Party hereby agrees that if it shall obtain possession of any Shared Collateral or shall realize any proceeds or payment in respect of any such Shared Collateral, pursuant to any Pari Passu Security Document or by the exercise of any rights available to it under applicable law or in any Insolvency or Liquidation Proceeding or through any other exercise of remedies (including pursuant to any intercreditor agreement), at any time prior to the Discharge of each of the Pari Passu Obligations, then it shall hold such Shared Collateral, proceeds or payment in trust for the other Pari Passu Secured Parties and promptly transfer such Shared Collateral, proceeds or payment, as the case may be, to the Applicable Collateral Agent, to be distributed in accordance with the provisions of Section 2.01 hereof.

SECTION 2.04 Automatic Release of Liens; Amendments to Pari Passu Security Documents.

(a) If, at any time the Applicable Collateral Agent forecloses upon or otherwise exercises remedies against any Shared Collateral resulting in a sale or disposition thereof, then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the other Collateral Agent for the benefit of each Series of Pari Passu Secured Parties upon such Shared Collateral will automatically be released and discharged as and when, but only to the extent, such Liens of the Applicable Collateral Agent on such Shared Collateral are released and discharged; provided that any proceeds of any Shared Collateral realized therefrom shall be applied pursuant to Section 2.01.

(b) Each Collateral Agent and Authorized Representative agrees to execute and deliver (at the sole cost and expense of the Grantors) all such authorizations and other instruments as shall reasonably be requested by the Applicable Collateral Agent or any Grantor to evidence and confirm any release of Shared Collateral provided for in this Section.

SECTION 2.05 Certain Agreements with Respect to Bankruptcy or Insolvency Proceedings.

(a) This Agreement shall continue in full force and effect notwithstanding the commencement of any Insolvency or Liquidation Proceeding (including any case or proceeding under the Bankruptcy Code or any other Bankruptcy Law or similar law by or against the Company or any of its Subsidiaries.

(b) If the Company and/or any other Grantor shall become subject to a case (a "Bankruptcy Case") under the Bankruptcy Code and shall, as debtor(s)-in-possession, move for approval of financing ("DIP Financing") to be provided by one or more lenders (the "DIP Lenders") under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law and/or the use of cash collateral under Section 363 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, each Pari Passu Secured Party (other than any Controlling Secured Party or Authorized Representative of any Controlling Secured Party) agrees that it will raise no objection to any such financing or to the Liens on the Shared Collateral securing the same ("DIP Financing Liens") or to any use of cash collateral that constitutes Shared Collateral, unless any Controlling Secured Party, or an Authorized Representative of any Controlling Secured Party, shall then oppose or object to such DIP Financing or such DIP Financing Liens and/or use of cash collateral (and (i) to the extent that such DIP Financing Liens are senior to the Liens on any such Shared Collateral for the benefit of the Controlling Secured Parties, each Non-Controlling Secured Party will subordinate its Liens with respect to such Shared Collateral on the same terms as the Liens of the Controlling Secured Parties (other than any Liens of any Pari Passu Secured Parties constituting DIP Financing Liens) are subordinated thereto, and (ii) to the extent that such DIP Financing Liens rank *pari passu* with the Liens on any such Shared Collateral granted to secure the Pari Passu Obligations of the Controlling Secured Parties, each Non-Controlling Secured Party will confirm the priorities with respect to such Shared Collateral as set forth herein), in each case so long as (A) the Pari Passu Secured Parties of each Series retain the benefit of their Liens on all such Shared Collateral pledged to the DIP Lenders, including proceeds thereof arising after the commencement of such proceeding, with the same priority vis-à-vis all the other Pari Passu Secured Parties (other than any Liens of the Pari Passu Secured Parties constituting DIP Financing Liens) as existed prior to the commencement of the Bankruptcy Case, (B) the Pari Passu Secured Parties of each Series are granted Liens on any additional collateral pledged to any Pari Passu Secured Parties as adequate protection or otherwise in connection with such DIP Financing and/or use of cash collateral, with the same priority vis-à-vis the Pari Passu Secured Parties as set forth in this Agreement (other than any Liens of the Pari Passu Secured Parties constituting DIP Financing Liens), (C) if any amount of such DIP Financing and/or cash collateral is applied to repay any of the Pari Passu Obligations, such amount is applied pursuant to Section 2.01, and (D) if any Pari Passu Secured Parties are granted adequate protection, including in the form of periodic payments in cash, in connection with such DIP Financing and/or use of cash collateral, the cash proceeds of such adequate protection are applied pursuant to Section 2.01; provided that the Pari Passu Secured Parties of each Series shall have a right to object to the grant of a Lien to secure the DIP Financing over any Collateral subject to Liens in favor of the Pari Passu Secured Parties of such Series or its Authorized Representative that shall not constitute Shared Collateral; and provided, further, that the Pari Passu Secured Parties receiving adequate protection shall not object to any other Pari Passu Secured Party receiving adequate protection comparable to any adequate protection granted to such Pari Passu Secured Parties in connection with a DIP Financing and/or use of cash collateral.

SECTION 2.06 Reinstatement. In the event that any of the Pari Passu Obligations shall be paid in full and such payment or any part thereof shall subsequently, for whatever reason (including an order or judgment for disgorgement or avoidance of a preference or fraudulent transfer under the Bankruptcy Code, any Bankruptcy Law or any similar law, or the settlement of any claim in respect thereof), be required to be returned or repaid, the terms and conditions of this Article II shall be fully applicable thereto until all such Pari Passu Obligations shall again have been paid in full (other than contingent obligations).

SECTION 2.07 Insurance. As between the Pari Passu Secured Parties, the Applicable Collateral Agent, (and in the case of the Additional Pari Passu Collateral Agent, acting at the direction of the Applicable Authorized Representative), shall have the right to adjust or settle any insurance policy or claim covering or constituting Shared Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Shared Collateral.

SECTION 2.08 Refinancings. The Pari Passu Obligations of any Series may be amended, restated, extended, renewed, increased, registered, defeased, restructured, refunded, repaid, modified, supplemented or otherwise Refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the Refinancing transaction under any Secured Credit Document) of any Pari Passu Secured Party of any other Series, all without affecting the priorities provided for herein or the other provisions hereof; provided that the Authorized Representative of the holders of any such Refinancing indebtedness shall have executed a Joinder Agreement on behalf of the holders of such Refinancing indebtedness.

SECTION 2.09 Possessory Collateral Agent as Gratuitous Bailee for Perfection.

(a) The Possessory Collateral shall be delivered to the Credit Agreement Collateral Agent and the Credit Agreement Collateral Agent agrees to hold any Shared Collateral constituting Possessory Collateral that is part of the Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee for the benefit of each other Pari Passu Secured Party and any assignee solely for the purpose of perfecting the security interest granted in such Possessory Collateral, if any, pursuant to the applicable Pari Passu Security Documents, in each case, subject to the terms and conditions of this Section 2.10; provided that at any time the Credit Agreement Collateral Agent is not the Applicable Collateral Agent, the Credit Agreement Collateral Agent shall, at the request of the Additional Pari Passu Collateral Agent, promptly deliver all Possessory Collateral to the Additional Pari Passu Collateral Agent together with any necessary endorsements (or otherwise allow the Additional Pari Passu Collateral Agent to obtain control of such Possessory Collateral). The Company shall take such further action as reasonably requested by such Collateral Agent to effectuate the transfer contemplated hereby.

(b) The Additional Pari Passu Collateral Agent agrees to hold any Shared Collateral constituting Possessory Collateral, from time to time in its possession, as gratuitous bailee for the benefit of each other Pari Passu Secured Party and any assignee, solely for the purpose of perfecting the security interest granted in such Possessory Collateral, if any, pursuant to the applicable Pari Passu Security Documents, in each case, subject to the terms and conditions of this Section 2.09.

(c) The duties or responsibilities of each Collateral Agent under this Section 2.09 shall be limited solely to holding any Shared Collateral constituting Possessory Collateral as gratuitous bailee for the benefit of each other Pari Passu Secured Party for purposes of perfecting the Lien held by such Pari Passu Secured Parties therein.

SECTION 2.10 Amendments to Security Documents.

(a) Without the prior written consent of the Credit Agreement Collateral Agent, the Additional Pari Passu Collateral Agent agrees that no Additional Pari Passu Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Additional Pari Passu Security Document would be prohibited by, or would require any Grantor to act or refrain from acting in a manner that would violate, any of the terms of this Agreement.

(b) Without the prior written consent of the Additional Pari Passu Collateral Agent, the Credit Agreement Collateral Agent agrees that no Credit Agreement Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Credit Agreement Security Document would be prohibited by, or would require any Grantor to act or refrain from acting in a manner that would violate, any of the terms of this Agreement.

(c) In making determinations required by this Section 2.10, each Collateral Agent may conclusively rely on an officer's certificate of the Company.

ARTICLE III

Existence and Amounts of Liens and Obligations

SECTION 3.01 Determinations with Respect to Amounts of Liens and Obligations. Whenever a Collateral Agent or any Authorized Representative shall be required, in connection with the exercise of its rights or the performance of its obligations hereunder, to determine the existence or amount of any Pari Passu Obligations of any Series, or the Shared Collateral subject to any Lien securing the Pari Passu Obligations of any Series, it may request that such information be furnished to it in writing by each other Authorized Representative or Collateral Agent and shall be entitled to make such determination or not make any determination on the basis of the information so furnished; provided, however, that if an Authorized Representative or a Collateral Agent shall fail or refuse to reasonably promptly provide the requested information, the requesting Collateral Agent or Authorized Representative shall be entitled to make any such determination by such method as it may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of the Company. Each Collateral Agent and each Authorized Representative may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to any Grantor, any Pari Passu Secured Party or any other person as a result of such determination.

ARTICLE IV

The Applicable Collateral Agent

SECTION 4.01 Authority.

(a) Notwithstanding any other provision of this Agreement, nothing herein shall be construed to impose any fiduciary or other duty on any Applicable Collateral Agent to any Non-Controlling Secured Party or give any Non-Controlling Secured Party the right to direct any Applicable Collateral Agent, except that each Applicable Collateral Agent shall be obligated to distribute proceeds of any Shared Collateral in accordance with Section 2.01 hereof.

(b) In furtherance of the foregoing, each Non-Controlling Secured Party acknowledges and agrees that the Applicable Collateral Agent shall be entitled, for the benefit of the Pari Passu Secured Parties, to sell, transfer or otherwise dispose of or deal with any Shared Collateral as provided herein and in the Pari Passu Security Documents, as applicable, for which the Applicable Collateral Agent is the collateral agent of such Shared Collateral, without regard to any rights to which the Non-Controlling Secured Parties would otherwise be entitled as a result of the Pari Passu Obligations held by such Non-Controlling Secured Parties. Without limiting the foregoing, each Non-Controlling Secured Party agrees that none of the Applicable Collateral Agent, the Applicable Authorized Representative or any other Pari Passu Secured Party shall have any duty or obligation first to marshal or realize upon any type of Shared Collateral (or any other Collateral securing any of the Pari Passu Obligations), or to sell, dispose of or otherwise liquidate all or any portion of such Shared Collateral (or any other Collateral securing any Pari Passu Obligations), in any manner that would maximize the return to the Non-Controlling Secured Parties, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the Non-Controlling Secured Parties from such realization, sale, disposition or liquidation. Each of the Pari Passu Secured Parties waives any claim it may now or hereafter have against any Collateral Agent or the Authorized Representative of any other Series of Pari Passu Obligations or any other Pari Passu Secured Party of any other Series arising out of (i) any actions which any Collateral Agent, Authorized Representative or the Pari Passu Secured Parties take or omit to take (including, actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Collateral and actions with respect to the collection of any claim for all or any part of the Pari Passu Obligations from any account debtor, guarantor or any other party) in accordance with the Pari Passu Security Documents or any other agreement related thereto or to the collection of the Pari Passu Obligations or the valuation, use, protection or release of any security for the Pari Passu Obligations, (ii) any election by any Applicable Authorized Representative or any holders of Pari Passu Obligations, in any Insolvency or Liquidation Proceeding of the application of Section 1111(b) of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law or (iii) subject to Section 2.05, any borrowing by, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, by the Company or any of its Subsidiaries, as debtor-in-possession. Notwithstanding any other provision of this Agreement, the Applicable Collateral Agent shall not accept any Shared Collateral in full or partial satisfaction of any Pari Passu Obligations pursuant to Section 9-620 of the Uniform Commercial Code of any jurisdiction, without the consent of each Authorized Representative representing holders of Pari Passu Obligations for whom such Collateral constitutes Shared Collateral.

SECTION 4.02 Exculpatory Provisions. The Applicable Collateral Agent shall not have any duties or obligations to any Pari Passu Secured Party except those expressly set forth herein. Without limiting the generality of the foregoing, the Applicable Collateral Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby; provided that the Applicable Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Applicable Collateral Agent to liability or that is contrary to this Agreement, the ABL Intercreditor Agreement or applicable law;

(c) shall not, except as expressly set forth herein, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to a Grantor or any of its Affiliates that is communicated to or obtained by the Person serving as the Applicable Collateral Agent or any of its Affiliates in any capacity;

(d) shall not, except as expressly set forth herein, be liable for any action taken or not taken by it (1) in the absence of its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction or (2) in reliance on a certificate from the Company stating that such action is permitted by the terms of this Agreement. The Applicable Collateral Agent shall be deemed not to have knowledge of any Event of Default under any Series of Pari Passu Obligations unless and until notice describing such Event of Default and referencing the applicable Secured Credit Documents is given to the Applicable Collateral Agent;

(e) shall not be responsible for or have any duty to ascertain or inquire into (1) any statement, warranty or representation made in or in connection with this Agreement or any other Secured Credit Document, (2) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (4) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Secured Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Secured Credit Document, (5) the value or the sufficiency of any Collateral for any Series of Pari Passu Obligations, or (6) the satisfaction of any condition set forth in any Secured Credit Document, other than to confirm receipt of items expressly required to be delivered to the Applicable Collateral Agent under the terms of this Agreement; and

(f) need not segregate money held hereunder from other funds except to the extent required by law and shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing.

ARTICLE V

Miscellaneous

SECTION 5.01 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Credit Agreement Collateral Agent or the Administrative Agent, to it at 270 Park Ave., New York, New York 10017, Attention of: Jennifer Heard;

(b) if to the Additional Pari Passu Collateral Agent or the Initial Additional Authorized Representative, to it at Wilmington Trust, National Association, 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attention: Burlington Coat Factory Warehouse Notes Administrator, Facsimile: (612) 217-5651;

(c) if to any other Additional Authorized Representative, to it at the address set forth in the applicable Joinder Agreement.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt (if a Business Day) and on the next Business Day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by telecopy or on the date three Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 5.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 5.01. As agreed to in writing among each Collateral Agent and each Authorized Representative from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

SECTION 5.02 Waivers; Amendment; Joinder Agreements.

(a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be terminated, waived, amended or modified (other than pursuant to any Joinder Agreement) except pursuant to an agreement or agreements in writing entered into by each Authorized Representative and each Collateral Agent (and with respect to any such termination, waiver, amendment or modification which by the terms of this Agreement requires the Company's consent or which increases the obligations or reduces the rights of the Company or any other Grantor, with the consent of the Company).

(c) Notwithstanding the foregoing, without the consent of any Pari Passu Secured Party, any Authorized Representative may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 5.13 and upon such execution and delivery, such Authorized Representative and the Additional Pari Passu Secured Parties and Additional Pari Passu Obligations of the Series for which such Authorized Representative is acting shall be subject to the terms hereof and the terms of the Additional Pari Passu Security Documents applicable thereto.

(d) Notwithstanding the foregoing, without the consent of any other Authorized Representative or Pari Passu Secured Party, the Collateral Agents may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Additional Pari Passu Obligations in compliance with the Credit Agreement and the other Secured Credit Documents.

SECTION 5.03 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the other Pari Passu Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement.

SECTION 5.04 Survival of Agreement. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

SECTION 5.05 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

SECTION 5.06 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 5.07 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 5.08 Submission to Jurisdiction Waivers; Consent to Service of Process. Each Collateral Agent and each Authorized Representative, on behalf of itself and the Pari Passu Secured Parties of the Series for whom it is acting, irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Pari Passu Security Documents, or for recognition and enforcement of any judgment in respect thereof, to the non exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Person (or its Authorized Representative) at the address set forth in Section 5.01;

(d) agrees that nothing herein shall affect the right of any other party hereto (or any Pari Passu Secured Party) to effect service of process in any other manner permitted by law or shall limit the right of any party hereto (or any Pari Passu Secured Party) to sue in any other jurisdiction; and

(e) waives, to the maximum extent permitted by applicable law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 5.08 any special, exemplary, punitive, incidental or consequential damages.

SECTION 5.09 **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR FOR ANY COUNTERCLAIM THEREIN.**

SECTION 5.10 Headings. Article, Section and Annex headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 5.11 Conflicts. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any of the Pari Passu Security Documents or any of the other Secured Credit Documents, the provisions of this Agreement shall control.

SECTION 5.12 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the Pari Passu Secured Parties in relation to one another. None of the Company, any other Grantor or any other creditor thereof shall have any rights or obligations hereunder, except as expressly provided in this Agreement (provided that nothing in this Agreement (other than Section 2.04, 2.05, 2.08, 2.09 or Article V) is intended to or will amend, waive or otherwise modify the provisions of the Credit Agreement or any Additional Pari Passu Documents), and none of the Company or any other Grantor may rely on the terms hereof (other than Sections 2.04, 2.05, 2.08, 2.09 and Article V). Nothing in this Agreement is intended to or shall impair the obligations of any Grantor, which are absolute and unconditional, to pay the Pari Passu Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 5.13 Additional Senior Debt. To the extent, but only to the extent permitted by the provisions of the Credit Agreement and the Additional Pari Passu Documents, the Company may incur additional indebtedness after the date hereof that is permitted by the Credit Agreement and the Additional Pari Passu Documents to be incurred and secured on an equal and ratable basis by the liens securing the Pari Passu Obligations (such indebtedness referred to as "Additional Senior Class Debt"). Any such Additional Senior Class Debt may be secured by a Lien and may be Guaranteed by the Grantors on a senior basis, in each case under and pursuant to the Additional Pari Passu Documents, if and subject to the condition that the Authorized Representative of any such Additional Senior Class Debt (each, a "Additional Senior Class Debt Representative"), acting on behalf of the holders of such Additional Indebtedness (such Authorized Representative and holders in respect of any Additional Senior Class Debt being referred to as the "Additional Senior Class Debt Parties"), becomes a party to this Agreement by satisfying the conditions set forth in clauses (i) through (iv) of the immediately succeeding paragraph.

In order for an Additional Senior Class Debt Representative to become a party to this Agreement,

(i) such Additional Senior Class Debt Representative, each Collateral Agent, each Authorized Representative and each Grantor shall have executed and delivered an instrument substantially in the form of Annex II (with such changes as may be reasonably approved by each Collateral Agent and such Additional Senior Class Debt Representative) pursuant to which such Additional Senior Class Debt Representative becomes an Authorized Representative hereunder, and the Additional Senior Class Debt in respect of which such Additional Senior Class Debt Representative is the Authorized Representative and the related Additional Senior Class Debt Parties become subject hereto and bound hereby;

(ii) the Company shall have (x) delivered to each Collateral Agent true and complete copies of each of the Additional Pari Passu Documents relating to such Additional Senior Class Debt, certified as being true and correct by a Responsible Officer of the Company and (y) identified in a certificate of an authorized officer the obligations to be designated as Additional Pari Passu Obligations and the initial aggregate principal amount or face amount thereof, which certificate shall state that such obligations are permitted to be incurred and secured on a *pari passu* basis with the Liens securing the then existing Pari Passu Obligations and by the terms of the then extant Secured Credit Documents;

(iii) all filings, recordations and/or amendments or supplements to the Pari Passu Security Documents necessary or desirable in the reasonable judgment of the Additional Pari Passu Collateral Agent to confirm and perfect the Liens securing the relevant obligations relating to such Additional Senior Class Debt shall have been made, executed and/or delivered (or, with respect to any such filings or recordations, acceptable provisions to perform such filings or recordings have been taken in the reasonable judgment of the Additional Pari Passu Collateral Agent), and all fees and taxes in connection therewith shall have been paid (or acceptable provisions to make such payments have been taken in the reasonable judgment of the Additional Pari Passu Collateral Agent); and

(iv) the Additional Pari Passu Documents, as applicable, relating to such Additional Senior Class Debt shall provide, in a manner reasonably satisfactory to each Collateral Agent, that each Additional Senior Class Debt Party with respect to such Additional Senior Class Debt will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Additional Senior Class Debt.

Each Authorized Representative acknowledges and agrees that upon execution and delivery of a Joinder Agreement substantially in the form of Annex II by an Additional Senior Class Debt Representative and each Grantor in accordance with Section 5.13, the Additional Pari Passu Collateral Agent will continue to act in its capacity as Additional Pari Passu Collateral Agent in respect of the then existing Authorized Representatives (other than the Administrative Agent) and such Additional Senior Class Debt Representative.

SECTION 5.14 Agent Capacities. Except as expressly provided herein or in the Credit Agreement Security Documents, JPMCB is acting in the capacities of Administrative Agent and Credit Agreement Collateral Agent solely for the Credit Agreement Secured Parties. Except as expressly provided herein or in the Additional Pari Passu Security Documents, Wilmington Trust is acting herein not in its individual capacity, but solely (i) when acting as Additional Pari Passu Collateral Agent, in its capacity as collateral agent under the Initial Additional Pari Passu Agreement, and (ii) when acting as the Initial Additional Authorized Representative, in its capacity as Trustee under the Initial Additional Pari Passu Agreement, solely for the Additional Pari Passu Secured Parties. Except as expressly set forth herein, none of the Administrative Agent, the Credit Agreement Collateral Agent, the Additional Pari Passu Collateral Agent or the Initial Additional Pari Passu Authorized Representative shall have any duties or obligations in respect of any of the Collateral, all of such duties and obligations, if any, being subject to and governed by the applicable Secured Credit Documents. It is understood and agreed that (i) JPMCB is entering into this Agreement solely its capacities as Administrative Agent and collateral agent under the Credit Agreement and the provisions of the Credit Agreement applicable to it as Administrative Agent and collateral agent thereunder shall also apply to it as the Credit Agreement Collateral Agent and Authorized Representative for the Credit Agreement Secured Parties hereunder and (ii) Wilmington Trust is entering into this Agreement in its capacities as trustee and collateral agent under the Initial Additional Pari Passu Agreement and the provisions of the Initial Additional Pari Passu Agreement granting or extending any rights, protections, privileges, indemnities and immunities to Wilmington Trust thereunder shall also apply to its acting as Initial Additional Pari Passu Collateral Agent and Initial Additional Authorized Representative hereunder. Whenever the Initial Additional Authorized Representative is the Applicable Authorized Representative hereunder, the Initial Additional Authorized Representative shall direct the Additional Pari Passu Collateral Agent to act or refrain from acting all in accordance with the terms of the Initial Additional Pari Passu Agreement.

SECTION 5.15 Integration. This Agreement together with the other Secured Credit Documents and the Pari Passu Security Documents represents the agreement of each of the Grantors and the Pari Passu Secured Parties with respect to the subject matter hereof and there are no promises, undertakings, representations or warranties by any Grantor, the Credit Agreement Collateral Agent, the Additional Pari Passu Collateral Agent any or any other Pari Passu Secured Party relative to the subject matter hereof not expressly set forth or referred to herein or in the other Secured Credit Documents or the Pari Passu Security Documents.

SECTION 5.16 Additional Grantors. The Company agrees that, if any Subsidiary shall become a Grantor after the date hereof, it will promptly cause such Subsidiary to become party hereto by executing and delivering an instrument in the form of Annex III. Upon such execution and delivery, such Subsidiary will become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of such instrument shall not require the consent of any other party hereunder, and will be acknowledged by the Additional Pari Passu Collateral Agent and the Credit Agreement Collateral Agent. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

JPMORGAN CHASE BANK, N.A.,
as Credit Agreement Collateral Agent

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

JPMORGAN CHASE BANK, N.A.,
as Authorized Representative for the Credit Agreement Secured Parties

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

[Signature Page to Pari Passu Intercreditor]

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Additional Pari Passu Collateral Agent

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Initial Additional Authorized Representative

By: /s/ Barry D. Somrock
Name: Barry D. Somrock
Title: Vice President

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

THE OTHER GRANTORS LISTED ON SCHEDULE I HERETO

By: /s/ David Glick
Name: David Glick
Title: Senior Vice President, Investor Relations and Treasurer

ANNEX I

Grantors

Schedule I

1. Burlington Coat Factory Holdings, LLC
2. Burlington Coat Factory Investment Holdings, Inc.
3. Burlington Coat Factory of Texas, L.P.
4. Burlington Coat Factory of Kentucky, Inc.
5. BURLINGTON COAT FACTORY DIRECT CORPORATION
6. BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK, INC.
7. Burlington Coat Factory Warehouse of New Jersey, Inc.
8. BURLINGTON COAT FACTORY OF PUERTO RICO, LLC
9. COHOES FASHION OF CRANSTON, INC.
10. BURLINGTON COAT FACTORY WAREHOUSE OF BAYTOWN INC
11. Burlington Coat Factory of Pocono Crossing, LLC
12. BURLINGTON COAT FACTORY OF TEXAS, INC.
13. BURLINGTON COAT FACTORY REALTY OF EDGEWATER PARK, INC.
14. BURLINGTON COAT FACTORY REALTY OF PINEBROOK, INC.
15. BURLINGTON COAT FACTORY WAREHOUSE OF EDGEWATER PARK URBAN RENEWAL CORP.
16. BCF Florence Urban Renewal, L.L.C.
17. BCF Florence Urban Renewal II, LLC
18. Burlington Merchandising Corporation
19. Burlington Distribution Corp.

ANNEX II

[FORM OF] JOINDER NO. [ ] dated as of [ ], 202[ ] to the PARI PASSU INTERCREDITOR AGREEMENT dated as of April 16, 2020 (the "Pari Passu Intercreditor Agreement"), among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company"), the entities listed on Schedule I thereto (collectively with the Company, each, a "Grantor"), JPMorgan Chase Bank, N.A., as Credit Agreement Collateral Agent for the Credit Agreement Secured Parties under the Pari Passu Security Documents (in such capacity, the "Credit Agreement Collateral Agent"), JPMorgan Chase Bank, N.A., as Authorized Representative for the Credit Agreement Secured Parties, Wilmington Trust, National Association, as Additional Pari Passu Collateral Agent, Wilmington Trust, National Association, as Initial Additional Authorized Representative, and the additional Authorized Representatives from time to time a party thereto.[1]

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

B. As a condition to the ability of the Company to incur Additional Pari Passu Obligations and to secure such Additional Senior Class Debt with the liens and security interests created by the Additional Pari Passu Security Documents, the Additional Senior Class Debt Representative in respect of such Additional Senior Class Debt is required to become an Authorized Representative, and such Additional Senior Class Debt and the Additional Senior Class Debt Parties in respect thereof are required to become subject to and bound by, the Pari Passu Intercreditor Agreement. Section 5.13 of the Pari Passu Intercreditor Agreement provides that such Additional Senior Class Debt Representative may become an Authorized Representative, and such Additional Senior Class Debt and such Additional Senior Class Debt Parties may become subject to and bound by, the Pari Passu Intercreditor Agreement, pursuant to the execution and delivery by the Additional Senior Debt Class Representative of an instrument in the form of this Joinder and the satisfaction of the other conditions set forth in Section 5.13 of the Pari Passu Intercreditor Agreement. The undersigned Additional Senior Class Debt Representative (the "New Representative") is executing this Representative Joinder in accordance with the requirements of the Pari Passu Intercreditor Agreement and the Pari Passu Security Documents.

Accordingly, each Grantor, each Collateral Agent, each Authorized Representative and the New Representative agree as follows:

SECTION 1. The New Representative, as [trustee, administrative agent or other capacity] under the that certain [describe the applicable agreement evidencing the Additional Senior Class Debt] (the "New Additional Pari Passu Document"), hereby represents that it is the representative of [identify the Additional Senior Class Debt Parties] (the "New Additional Pari Passu Secured Parties"). In accordance with Section 5.13 of the Pari Passu Intercreditor Agreement, the New Representative by its signature below becomes an Authorized Representative under, and the related Additional Senior Class Debt and Additional Senior Class Debt Parties become subject to and bound by, the Pari Passu Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as an Authorized Representative and the New Representative, on its behalf and on behalf of such Additional Senior Class Debt Parties, hereby agrees to all the terms and provisions of the Pari Passu Intercreditor Agreement applicable to it as Authorized Representative and to the Additional Senior Class Debt Parties that it represents as Additional Pari Passu Secured Parties. Each reference to a "Authorized Representative" in the Pari Passu Intercreditor Agreement shall be deemed to include the New Representative. The Pari Passu Intercreditor Agreement is hereby incorporated herein by reference. The New Representative also reaffirms the appointment of and appoints Wilmington Trust, National Association to serve as Additional Pari Passu Collateral Agent for the benefit of each Additional Pari Passu Secured Party, including, without limitation, the New Additional Pari Passu Secured Parties, and consents to the Additional Pari Passu Collateral Agent's performance of, and ratifies and authorizes the Additional Pari Passu Collateral Agent to perform, its obligations under the Pari Passu Intercreditor Agreement, the ABL Intercreditor Agreement and all Pari Passue Security Documents.

1 In the event of the Refinancing of the Credit Agreement Obligations, revise to reflect joinder by a new Credit Agreement Collateral Agent.

SECTION 2. The New Representative represents and warrants to each Collateral Agent, each Authorized Representative and the other Pari Passu Secured Parties, individually, that (i) it has full power and authority to enter into this Joinder, in its capacity as [agent] [trustee], (ii) this Joinder has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms and (iii) the Additional Pari Passu Documents relating to such Additional Senior Class Debt provide that, upon the New Representative's entry into this Agreement, the Additional Senior Class Debt Parties in respect of such Additional Senior Class Debt will be subject to and bound by the provisions of the Pari Passu Intercreditor Agreement as Additional Pari Passu Secured Parties.

SECTION 3. This Joinder may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Joinder shall become effective when each Collateral Agent shall have received a counterpart of this Joinder that bears the signatures of the New Representative. Delivery of an executed signature page to this Joinder by facsimile transmission or other electronic means shall be effective as delivery of a manually signed counterpart of this Joinder.

SECTION 4. (a) Each Grantor hereby consents to the designation of additional debt as Additional Pari Passu Obligations and hereby confirms its respective guarantees, pledges, grants of security interests and other obligations, as applicable, under and subject to the terms of each of the Pari Passu Security Documents (including without limitation, the Security Agreement, dated as of April 16, 2020 (the "Security Agreement"), by and among the Grantors party thereto and the Additional Pari Passu Collateral Agent) to which it is party, and agrees that, notwithstanding the designation of such additional indebtedness or any of the transactions contemplated thereby, such guarantees, pledges, grants of security interests and other obligations, and the terms of each Pari Passu Security Document to which it is a party, are not impaired or adversely affected in any manner whatsoever and shall continue to be in full force and effect and such New Additional Pari Passu Obligations shall be entitled to all of the benefits of such Pari Passu Security Documents.

(b) In furtherance of the foregoing, to secure the prompt and complete payment, performance and observance of all of the Secured Obligations (as defined in the Security Agreement), each of the Grantors hereby grants to the Additional Pari Passu Collateral Agent for the Additional Pari Passu Secured Parties (including, in any event, the Additional Pari Passu Collateral Agent,[insert names of any other Authorized Representatives who previously executed a Joinder, becoming party to the Pari Passu Intercreditor Agreement] and the New Representative), a security interest upon all of its right, title and interest in, to and under the Collateral (as defined in the Security Agreement). In addition, each of the Grantors hereby authorizes the Additional Pari Passu Collateral Agent to file (but the Additional Pari Passu Collateral Agent shall not be obligated to file) UCC financing statements and/or amendments to UCC financing statements in any jurisdiction and with any filing office. Such UCC financing statements (and/or amendments) may describe or indicate the collateral covered by such financing statements as "all personal property of debtor, whether now owned or hereafter acquired or arising" or "all personal property of debtor, whether now owned or hereafter acquired " or any words of similar effect and/or meaning.

SECTION 5. Except as expressly supplemented hereby, the Pari Passu Intercreditor Agreement shall remain in full force and effect.

SECTION 6. THIS JOINDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. In case any one or more of the provisions contained in this Joinder should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Pari Passu Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8 All communications and notices hereunder shall be in writing and given as provided in Section 5.01 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to it at its address forth below its signature hereto.

SECTION 9. The Company agrees to reimburse each Collateral Agent and each Authorized Representative for its fees and reasonable out-of-pocket expenses in connection with this Joinder, including the reasonable fees, other charges and disbursements of counsel.

IN WITNESS WHEREOF, the New Representative has duly executed this Joinder to the Pari Passu Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE], as
[ ] for the holders of
[ ],

by _____
Name:
Title:

Address for notices:

_____

_____

attention of: _____

Telecopy: _____

Acknowledged and agreed by:

JPMORGAN CHASE BANK, N.A.,
as the Credit Agreement Collateral Agent and Authorized Representative,

By: _____
Name:
Title:

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as the Additional Pari Passu Collateral Agent and Initial Additional Authorized Representative,

By: _____
Name:
Title:

[OTHER AUTHORIZED REPRESENTATIVES]

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION,
as Company

By: _____
Name:
Title:

THE OTHER GRANTORS
LISTED ON SCHEDULE I HERETO,

By: _____
Name:
Title:

ANNEX III

[FORM OF] SUPPLEMENT NO. [ ] (the "Supplement") dated as of [ ], 20[ ], to the PARI PASSU INTERCREDITOR AGREEMENT dated as of April 16, 2020 (the "Pari Passu Intercreditor Agreement"), among Burlington Coat Factory Warehouse Corporation, a Florida corporation (the "Company") the entities listed on Schedule I thereto (collectively with the Company, each, a "Grantor"), JPMorgan Chase Bank, N.A., as Credit Agreement Collateral Agent for the Credit Agreement Secured Parties under the Pari Passu Security Documents (in such capacity, the "Credit Agreement Collateral Agent"), JPMorgan Chase Bank, N.A., as Authorized Representative for the Credit Agreement Secured Parties, Wilmington Trust, National Association, as Additional Pari Passu Collateral Agent, Wilmington Trust, National Association, as Initial Additional Authorized Representative, and the additional Authorized Representatives from time to time a party thereto.

A. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

B. The Grantors have entered into the Pari Passu Intercreditor Agreement. Pursuant to certain Secured Credit Documents, certain newly acquired or organized Subsidiaries of the Company are required to enter into the Pari Passu Intercreditor Agreement. Section 5.16 of the Pari Passu Intercreditor Agreement provides that such Subsidiaries may become party to the Pari Passu Intercreditor Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Grantor") is executing this Supplement in accordance with the requirements of the Credit Agreement, the Initial Additional Pari Passu Agreement and the Initial Additional Pari Passu Documents.

Accordingly, the Controlling Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 5.16 of the Pari Passu Intercreditor Agreement, the New Grantor by its signature below becomes a Grantor under the Pari Passu Intercreditor Agreement with the same force and effect as if originally named therein as a Grantor, and the New Grantor hereby agrees to all the terms and provisions of the Pari Passu Intercreditor Agreement applicable to it as a Grantor thereunder. Each reference to a "Grantor" in the Pari Passu Intercreditor Agreement shall be deemed to include the New Grantor. The Pari Passu Intercreditor Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Applicable Collateral Agent and the other Pari Passu Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Applicable Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Grantor. Delivery of an executed signature page to this Supplement by facsimile transmission or other electronic means shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. Except as expressly supplemented hereby, the Pari Passu Intercreditor Agreement shall remain in full force and effect.

SECTION 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Pari Passu Intercreditor Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 5.01 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it in care of the Company as specified in the Pari Passu Intercreditor Agreement.

SECTION 8. The New Grantor agrees to reimburse the Applicable Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Applicable Collateral Agent. The Applicable Collateral Agent is executing and delivering this Supplement solely in its capacity as the Applicable Collateral Agent under the Pari Passu Intercreditor Agreement and in acting hereunder shall be entitled to all of the rights, privileges, immunities and indemnities granted to the Applicable Collateral Agent under the Pari Passu Intercreditor Agreement, as if such rights, privileges, immunities and indemnities were set forth herein.

IN WITNESS WHEREOF, the New Grantor, and the Applicable Collateral Agent have duly executed this Supplement to the Pari Passu Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW GRANTOR],
By: _____
Name:
Title:

Acknowledged by:
[_____], as Applicable Collateral Agent,

By: _____
Name:
Title:

Grantors

[ ]

Burlington

Burlington Stores, Inc. Announces Pricing of Offering of Convertible Senior Notes

BURLINGTON, N.J., April 13, 2020 (GLOBE NEWSWIRE) — Burlington Stores, Inc. (NYSE: BURL) (the "Company") announced today that it has priced its private offering of $700 million aggregate principal amount of 2.25% convertible senior notes due 2025 (the "Notes"). The Company also granted the initial purchasers of the Notes an option to purchase up to an additional $105 million aggregate principal amount of the Notes. The offering is expected to close on April 16, 2020, subject to market and other conditions. The Company intends to use the net proceeds from the offering of the Notes for general corporate purposes.

The Notes will be senior, unsecured obligations of the Company and interest will be payable semi-annually in cash at a rate of 2.25% per annum on April 15 and October 15 of each year, commencing on October 15, 2020. The Notes will mature on April 15, 2025 unless converted, repurchased or redeemed prior to such date. Prior to January 15, 2025, the Notes will be convertible at the option of holders during certain periods, upon satisfaction of certain conditions. Thereafter, the Notes will be convertible at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Upon conversion, the Notes may be settled in shares of the Company common stock, cash or a combination of cash and shares of the Company common stock, at the Company's election.

The Notes will have an initial conversion rate of 4.5418 shares of common stock per $1,000 principal amount of Notes (subject to customary adjustments in certain circumstances). This represents an initial effective conversion price of approximately $220.18 per share. The initial conversion price of the Notes represents a premium of approximately 32.5% to the $166.17 per share closing price of the Company common stock on April 13, 2020.

The Company may redeem all or any portion of the Notes, at its option, on or after April 15, 2023, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon, if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption.

Holders of Notes may require the Company to repurchase their Notes upon the occurrence of certain events that constitute a fundamental change under the indenture governing the Notes at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the date of repurchase. In connection with certain corporate events or if the Company issues a notice of redemption, it will, under certain circumstances, increase the conversion rate for holders who elect to convert their Notes in connection with such corporate event or during the relevant redemption period for such Notes.

The Notes will be offered and sold only to persons reasonably believed to be qualified institutional buyers in reliance on Rule 144A and outside the United States to non-U.S. persons in reliance on Regulation S. Neither the Notes nor any shares of common stock issuable upon conversion of the Notes has been, nor will be, registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws and, unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any Notes (including the shares of the Company's common stock, if any, into which the Notes are convertible).

Safe Harbor for Forward-Looking and Cautionary Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact included in this press release, including those regarding the offering, the timing of the closing of the offering and the anticipated use of proceeds from the offering, are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. We do not undertake to publicly update or revise our forward-looking statements even if experience or future changes make it clear that any projected results expressed or implied in such statements will not be realized. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those we expected, including general economic conditions; pandemics, including COVID-19, or natural and man-made disasters, including fire, snow and ice storms, flood, hail, hurricanes and earthquakes; our ability to successfully implement one or more of our strategic initiatives and growth plans; the availability of desirable store locations on suitable terms; changing consumer preferences and demand; industry trends, including changes in buying, inventory and other business practices; competitive factors, including pricing and promotional activities of major competitors and an increase in competition within the markets in which we compete; the availability, selection and purchasing of attractive merchandise on favorable terms; import risks, including tax and trade policies, tariffs and government regulations; weather patterns, including, among other things, changes in year-over-year temperatures; our future profitability; our ability to control costs and expenses; unforeseen cyber-related problems or attacks; any unforeseen material loss or casualty; the effect of inflation; regulatory and tax changes; our relationships with employees; the impact of current and future laws and the interpretation of such laws; terrorist attacks, particularly attacks on or within markets in which we operate; our substantial level of indebtedness and related debt-service obligations; restrictions imposed by covenants in our debt agreements; availability of adequate financing; our dependence on vendors for our merchandise; domestic events affecting the delivery of merchandise to our stores; existence of adverse litigation; and each of the factors that may be described from time to time in our filings with the SEC. For each of these factors, the Company claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, as amended.

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Burlington Stores, Inc. Announces Pricing of Offering of Senior Secured Notes

BURLINGTON, N.J., April 13, 2020 (GLOBE NEWSWIRE) — Burlington Stores, Inc. (NYSE: BURL) (the "Company") announced today that its indirect wholly owned subsidiary, Burlington Coat Factory Warehouse Corporation (the "Corporation"), has priced its private offering of $300 million aggregate principal amount of 6.250% senior secured notes due 2025 (the "Notes"). The Notes will be guaranteed by the same parent entities and subsidiaries of the Corporation that guarantee, and will be secured by the same collateral as, the Corporation's senior secured term loan facility. The Notes were priced at 100% of face amount for a yield to maturity of 6.250%. The offering is expected to close on April 16, 2020, subject to market and other conditions. The Corporation intends to use the net proceeds from the offering of the Notes for general corporate purposes.

The Notes will be offered and sold only to persons reasonably believed to be qualified institutional buyers in reliance on Rule 144A and outside the United States to non-U.S. persons in reliance on Regulation S. The Notes have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws and, unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any Notes.

Safe Harbor for Forward-Looking and Cautionary Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact included in this press release, including those regarding the offering, the timing of the closing of the offering and the anticipated use of proceeds from the offering, are forward-looking statements. Forward-looking statements discuss our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. We do not undertake to publicly update or revise our forward-looking statements even if experience or future changes make it clear that any projected results expressed or implied in such statements will not be realized. If we do update one or more forward-looking statements, no inference should be made that we will make additional updates with respect to those or other forward-looking statements. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those we expected, including general economic conditions; pandemics, including COVID-19, or natural and man-made disasters, including fire, snow and ice storms, flood, hail, hurricanes and earthquakes; our ability to successfully implement one or more of our strategic initiatives and growth plans; the availability of desirable store locations on suitable terms; changing consumer preferences and demand; industry trends, including changes in buying, inventory and other business practices; competitive factors, including pricing and promotional activities of major competitors and an increase in competition within the markets in which we compete; the availability, selection and purchasing of attractive merchandise on favorable terms; import risks, including tax and trade policies, tariffs and government regulations; weather patterns, including, among other things, changes in year-over-year temperatures; our future profitability; our ability to control costs and expenses; unforeseen cyber-related problems or attacks; any unforeseen material loss or casualty; the effect of inflation; regulatory and tax changes; our relationships with employees; the impact of current and future laws and the interpretation of such laws; terrorist attacks, particularly attacks on or within markets in which we operate; our substantial level of indebtedness and related debt-service obligations; restrictions imposed by covenants in our debt agreements; availability of adequate financing; our dependence on vendors for our merchandise; domestic events affecting the delivery of merchandise to our stores; existence of adverse litigation; and each of the factors that may be described from time to time in our filings with the SEC. For each of these factors, the Company claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, as amended.

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