

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

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FILER

**Sleep Number Corp**

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

FORM 10-K

(Mark one)

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

For the Fiscal Year Ended December 29, 2018

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

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

Commission File No. 0-25121

**SLEEP NUMBER CORPORATION**

(Exact name of registrant as specified in its charter)

MINNESOTA

(State or other jurisdiction of incorporation or organization)

41-1597886

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

1001 Third Avenue South

Minneapolis, Minnesota

(Address of principal executive offices)

55404

(Zip Code)

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

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

Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

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

The aggregate market value of the common stock held by non-affiliates of the Registrant as of June 30, 2018, was \$604,888,000 (based on the last reported sale price of the Registrant's common stock on that date as reported by NASDAQ).

As of January 26, 2019, there were 30,522,000 shares of the Registrant's Common Stock outstanding.

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## DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement to be furnished to shareholders in connection with its 2019 Annual Meeting of Shareholders are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

As used in this Form 10-K, the terms "we," "us," "our," the "Company," and "Sleep Number" mean Sleep Number Corporation and its subsidiaries and the term "common stock" means our common stock, par value \$0.01 per share.

*Sleep Number®*, *SleepIQ®*, *Sleep Number 360®*, *360®*, *SleepIQ Kids®*, *the Double Arrow logo*, *Select Comfort®*, *AirFit®*, *BAM Labs®*, *the "B" logo*, *Comfortaire®*, *ComfortFit®*, *Comfort.Individualized.®*, *Does Your Bed Do That?®*, *the DualTemp logo*, *the DualAir Technology Inside logo*, *FlexTop®*, *IndividualFit®*, *Individualized Sleep Experiences®*, *It®*, *Know Better Sleep®*, *Pillow[ology]®*, *PillowFit®*, *Probably the Best Bed in the World®*, *Responsive Air®*, *Sleep Number Inner Circle®*, *Sleep30®*, *Smart Bed For Smart Kids®*, *Smart Bed Technology®*, *Tech-e®*, *The Only Bed That Grows With Them®*, *The Only Bed That Knows You®*, *Tonight Bedtime. Tomorrow The World®*, *We Make Beds Smart®*, *What's Your Sleep Number?®*, *SleepIQ LABS™*, *Auto Snore™*, *HealthIQ™*, *HeartIQ™*, *RespiratoryIQ™*, *Sleep For The Future™*, *Sleep Is Training™*, *This Is Not A Bed™*, *WellnessIQ™*, *ActiveComfort™*, *Comfortable. Adjustable. Affordable.™*, *CoolFit™*, *DualAir™*, *DualTemp™*, *Firmness Control™*, *FlexFit™*, *In Balance™*, *Partner Snore™*, *the SleepIQ LABS logo*, *The Bed Reborn™*, *The Bed That Moves You™*, *The Best Bed For Couples™*, our bed model names, and our other marks and stylized logos are trademarks and/or service marks of Sleep Number. This Form 10-K may also contain trademarks, trade names and service marks that are owned by other persons or entities.

Our fiscal year ends on the Saturday closest to December 31, and, unless the context otherwise requires, all references to years in this Form 10-K refer to our fiscal years. Our fiscal year is based on a 52- or 53-week year. All years presented in this Form 10-K are 52 weeks, except for the 2014 fiscal year ended January 3, 2015, which was a 53-week year.

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## PART I

*This Annual Report on Form 10-K contains or incorporates by reference certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. For this purpose, any statements contained in or incorporated by reference into this Annual Report on Form 10-K that are not statements of historical fact may be deemed to be forward-looking statements, including but not limited to projections of revenues, results of operations, financial condition or other financial items; any statements of plans, strategies and objectives of management for future operations; any statements regarding proposed new products, services or developments; any statements regarding future economic conditions, prospects or performance; statements of belief and any statement or assumptions underlying any of the foregoing. In addition, we or others on our behalf may make forward-looking statements from time to time in oral presentations, including telephone conferences and/or Webcasts open to the public, in press releases or reports, on our website or otherwise. We try to identify forward-looking statements in this report and elsewhere by using words such as “may,” “will,” “should,” “could,” “expect,” “anticipate,” “believe,” “estimate,” “plan,” “project,” “predict,” “intend,” “potential,” “continue” or the negative of these or similar terms.*

*Our forward-looking statements speak only as of the date made and by their nature involve substantial risks and uncertainties. Our actual results may differ materially depending on a variety of factors, including the items discussed in greater detail below under the caption “Risk Factors.” These risks and uncertainties are not exclusive and further information concerning the Company and our business, including factors that potentially could materially affect our financial results or condition, may emerge from time to time, including factors that we may consider immaterial or do not anticipate at this time.*

*We wish to caution readers not to place undue reliance on any forward-looking statement and to recognize that forward-looking statements are predictions of future results, which may not occur as anticipated. We assume no obligation to update forward-looking statements to reflect actual results or changes in factors or assumptions affecting such forward-looking statements. We advise you, however, to review and consider any further disclosures we make on related subjects in our quarterly reports on Form 10-Q and current reports on Form 8-K that we file with or furnish to the Securities and Exchange Commission.*

### ITEM 1. BUSINESS

#### Overview

Sleep Number Corporation, based in Minneapolis, Minnesota, was founded in 1987 and became publicly traded in 1998. We are listed on the NASDAQ Stock Market LLC (NASDAQ Global Select Market) under the symbol “SNBR.” When used herein, the terms “Sleep Number,” “Company,” “we,” “us” and “our” refer to Sleep Number Corporation, including consolidated subsidiaries.

Our mission is to improve lives by individualizing sleep experiences. Our vision is to become one of the world's most beloved brands by delivering an unparalleled sleep experience. We expect to achieve our goals by executing our consumer innovation strategy with three significant competitive advantages: proprietary sleep innovations, exclusive retail distribution and lifelong customer relationships.

As a purpose-driven brand and the leader in sleep innovation, Sleep Number delivers proven quality sleep through effortless, adjustable comfort and biometric sleep tracking. We are visionary leaders in sleep and wellness and are redefining what consumers should expect from their bed. Our vertically integrated business model and role as the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number® beds allows us to offer consumers high-quality, individualized sleep solutions and services. As a direct-to-consumer brand, we offer a cohesive experience across our Sleep Number® stores, online at SleepNumber.com and via phone at (800)753-3768. We also offer mattress home-delivery/installation and maintain an in-house customer service department.

In 2018, we revolutionized sleep with our complete line of Sleep Number 360® smart beds. The 360® smart bed, at the forefront of the digital health and wellness revolution, is rapidly becoming the “hub” for a healthy life by delivering proven quality sleep. It is the only bed in the world that offers SleepIQ® technology, a proprietary sensor technology that tracks each sleeper’s individual data, including movement, breathing rate, heartbeat and sleep habits. The SleepIQ technology platform captures over 8.5 billion biometric data points every night, building one of the most comprehensive databases of biometric sleep data in the world. Today, the 360 smart bed uses this data to automatically adjust the comfort of the bed for proven quality sleep. In the future, this high-quality data will likely enable customers to use their smart bed to manage their health and wellness. Through daily digital interactions that build lifelong relationships, SleepIQ technology also communicates how you slept and provides insight into what adjustments you can make, including adjusting your Sleep Number® setting, to optimize your sleep and improve your daily life.

Our commitment to quality, value and service has been widely recognized, including being ranked #1 in Customer Satisfaction with Mattresses by J.D. Power in 2018 and the best in six out of seven categories (support, durability, comfort, variety of features, value and

warranty). Sleep Number has received the highest score in the 2015, 2016 and 2018 Mattress Satisfaction Report. Sleep Number ranked 27 points above the industry average in 2018.

We are committed to delivering superior shareholder value by: (1) increasing consumer demand; (2) leveraging our business model; and (3) deploying capital efficiently. Over the past six years, we have transformed the business with \$481 million of capital expenditures and acquisitions, while building vital new demand-driving capabilities. This effort has positioned us for accelerated profits and cash generation. In 2018, we increased net sales by 6% to \$1.53 billion and increased earnings per diluted share by 24% to \$1.92.

## **Social Impact Commitment**

Because excellent sleep is essential to a healthier and happier society, we are committed to helping future generations achieve quality sleep. In 2018, we announced a social impact commitment to help one million young people achieve life-changing sleep through our products and sleep expertise by 2025. Since announcing this commitment, we have already donated more than \$1 million and helped to improve the lives of nearly 100,000 youth through our partnerships with Good360, GenYOUth and the Alliance for a Healthier Generation.

## **Proprietary Sleep Innovations**

As the creator and leader of the “sleep tech” category, Sleep Number introduced the revolutionary Sleep Number 360 smart bed at the Consumer Electronics Show (CES) in 2017 and completed the transition to all 360 smart beds in 2018. The winner of 13 CES innovation awards and the Edison Award for breakthrough product design and innovation in the Wellness Technology category, the 360 smart bed uses the sleeper’s movements and biometrics to automatically adjust the bed’s firmness throughout the night, providing the highest quality sleep.

Unlike the “one-size-fits-all” solution offered by other mattress brands, the Sleep Number 360 smart bed offers individualized comfort that is adjustable on each side of the bed. Our proprietary DualAir™ technology features two independent air chambers and allows couples to adjust firmness to their individual preference at the touch of a button. Each sleeper can set their ideal firmness, support and pressure-relieving comfort – their Sleep Number® setting – for deep, restful sleep.

SleepIQ technology, our proprietary sleep tracking technology, is the bed’s operating system. It measures the user's sleep, continuously gathering hundreds of biometric readings per second, including average heart rate, breathing rate and movement. Using these measurements, the 360 smart bed automatically adjusts the firmness to keep each sleeper comfortable throughout the night. This data also enables our proprietary algorithm to deliver a daily SleepIQ® score from 1 to 100, helping sleepers understand how restful their sleep was the night before. Over time, we expect SleepIQ technology to provide individualized insights so the sleeper knows how to improve their health and wellness.

The Sleep Number 360 smart bed includes additional smart features, like foot warming, which gently warms your feet to help you fall asleep faster. The 360 smart bed also connects seamlessly with other smart devices, like the Nest Learning Thermostat™ and fitness trackers like Apple® HealthKit or Fitbit®, to help sleepers understand how daily activities impact their sleep. The Sleep Number 360 smart bed is more than just a bed – it’s the center of health and wellness.

The Sleep Number 360 smart bed is available at our Sleep Number stores and online at SleepNumber.com, with pricing starting at \$999. We offer our beds in good, better and best price ranges within the premium mattress category. Our Classic, Performance and Innovation lines come in a broad range of sizes, including twin, full, queen, eastern king and California king.

## **Additional Sleep Number Innovations**

We also offer a full line of exclusive FlexFit™ smart adjustable bases that allow customers to raise the head or foot of the bed. Our industry-leading FlexFit bases seamlessly integrate with SleepIQ to deliver features like our Partner Snore™ technology, which allows your partner to press a button and raise the head of the bed to temporarily relieve snoring.

The SleepIQ Kids® k2 bed extends Sleep Number's DualAir adjustability and SleepIQ technology to the children's mattress market. The k2 bed adjusts with children as they grow, giving them the best possible sleep.

Our exclusive Sleep Number® bedding collection features a full line of sleep products that are designed to help you get better sleep. Sleep Number has a wide assortment of pillows designed to fit each individual's size, shape and sleeping position for a more comfortable sleep.

We also offer a wide assortment of temperature-balancing products including the DualTemp® layer. This proprietary sleep innovation features active air technology that allows each sleeper to select their ideal temperature at the simple touch of a button and can be used with any mattress brand or adjustable base.





## **Exclusive Distribution**

Over 99% of our net sales are generated by our direct-to-consumer business, through a cohesive experience across our Sleep Number stores, online at SleepNumber.com and via phone.

As the exclusive distributor of Sleep Number products, we target high-quality, convenient and visible store locations based on several factors, including each market's overall sales potential, store geographic location, demographics and proximity to other specialty retail stores. Since 2012, we have overhauled our direct-to-consumer distribution strategy, repositioning a large percentage of our mall stores to stronger, out-of-mall locations, improving the size and positioning within each location and adding stores in both existing and new markets. As of December 29, 2018, there were 579 Sleep Number stores in all 50 states, 41% more than six years ago. Approximately 55% of our stores (including remodels) are less than five years old. With these investments, we created an exclusive, value-added retail in-store experience through award-winning store design, technology enhancements and stores that are about 50% larger on average.

Our sleep experts in each store recognize that sleep is not "one size fits all" and provide individualized sleep solutions for each person. Shopping online is easy, too, at SleepNumber.com. Working in conjunction with our retail stores, we have a cohesive online experience that helps customers easily research our products and solutions, find and purchase products online, and receive post-sales support. Our omni-channel experience expands our digital brand, connecting with consumers to drive deeper awareness, consideration and engagement.

Our retail stores accounted for 91.5% of our net sales in 2018. Average annual net sales per store, based on Company-Controlled comparable sales, were \$2.7 million in 2018. In 2018, 98% of our stores open for a full year, generated net sales over \$1 million and 65% of our stores open for a full-year generated net sales over \$2 million. We now have 25% of our stores delivering greater than \$3 million in annual net sales. In 2018, our online and phone sales accounted for 7.6% of our net sales and increased double digits year-over-year. Wholesale/Other channel accounted for 0.9% of our net sales in 2018.

## **Marketing**

We use a wide-ranging set of marketing and advertising instruments to expand brand reach, drive emotional brand engagement and create lifelong customer relationships. This relationship with our customers is an effective driver of repeat purchases and new customers referrals. Our marketing efforts target a broad customer demographic: 35-64 years old with greater than \$75,000 household income for our core line of products. Our customers care about their own and their family's sleep quality and know that it leads to better overall health and well-being.

Marketing drives growth in our business by building brand relevance, reputation, awareness, consideration and ongoing engagement through integrated and authentic communications that amplify the value of the 360 smart bed. This results in increased quality traffic to our website and stores. Our advertising communications use a mix of national and local marketing to target existing customers for referral and repeat purchases and to attract new customers. Television is our most efficient media, followed by digital and social media. Our in-house digital capabilities, content marketing, user experience and data-driven tools allow us to optimize media investment, messages and audience in real-time. In 2018, media expense represented 13.7% of net sales.

In early 2018, we entered into a multi-year, strategic partnership as the Official Sleep and Wellness Partner of the National Football League (NFL) to broaden brand reach and engagement, amplify the benefits of our 360 smart beds and link quality sleep to performance. We also established partnerships with the NFL Players Associations (NFLPA) and the Professional Football Athletic Trainers Society (PFATS). After year one of our partnership with the NFL, most active NFL players have Sleep Number 360 smart beds, which are helping players compete more effectively by measuring, understanding and maximizing the benefits of a great night's sleep. Sleep Number will continue to work with the NFL, the NFLPA, PFATS, trainers, teams and players as they integrate sleep insights into their overall performance regimens.

## **Operations**

### Manufacturing and Distribution

We have two manufacturing plants located in Irmo, South Carolina and Salt Lake City, Utah. The manufacturing operations in South Carolina and Utah consist of cutting and sewing of the fabric covers for our beds and final assembly and packaging of mattresses and bases. In addition, our electrical Firmness Control™ systems are assembled in our Utah plant.

We obtain all the raw materials and components used to produce our beds from outside sources. A number of components, including our air chambers, our adjustable foundations, various components for our Firmness Control systems, as well as fabrics and zippers, are

sourced from suppliers who currently serve as our sole or primary source of supply for these components. We believe we can obtain these raw materials and components from other sources of supply, although we could experience some short-term disruption in our

ability to fulfill orders in the event of an unexpected loss of supply from one of our primary suppliers. We utilize dual sourcing on targeted components when effective.

We have taken, and continue to take, various measures to mitigate the potential impact of an unexpected disruption in supply from any sole-source suppliers, including increasing safety stocks and identifying potential secondary sources of supply. All the suppliers that produce unique or proprietary products for us have in place either contingency or disaster recovery plans, or redundant production capabilities in multiple locations in order to safeguard against any unforeseen disasters. We review these plans and sites on a regular basis to ensure the suppliers' ability to maintain an uninterrupted supply of materials and components.

Historically, we manufactured our bed components in our two plants and completed final bed assembly in customers' homes. We are pursuing a multi-year evolution to enable delivery of assembled mattresses to customers' homes. Since 2017, we have opened three assembly distribution centers to assemble beds prior to delivery: Irmo, South Carolina, Salt Lake City, Utah and Baltimore, Maryland. We expect to expand this capability to approximately six assembly distribution centers over the next few years. We are also advancing our outbound logistics network to reduce product handling, hand-offs, damage and costs while in transit to customers' homes. We see these initiatives providing a superior and reliable experience for customers with lower costs for the business.

### Home Delivery Service

In July 2018, we completed the transition of our entire core mattress line to 360 smart beds. With this change, 100% of our 360 smart beds sold are now delivered and installed by our home delivery technicians or by our third-party service providers in certain markets.

### Customer Service

Through our U.S.-based, in-house customer service team, we provide direct post-purchase support and are able to develop one-to-one relationships that improve the customer experience and drive our business. This team provides service and support via phone, email, "live chat" and social media. They also provide a unique opportunity to gather insights that help us continuously improve our product, strengthen our service quality and advance our innovation. This integration enables operational synergies and drives organizational efficiencies.

### Research and Development

As the leader in consumer-driven sleep innovation, Sleep Number conducts extensive research to understand consumers' needs and operates R&D facilities in San Jose, California and Minneapolis, Minnesota. This research drives the design and delivery of our award-winning sleep innovations, our customer experience and our proprietary SleepIQ technology. As consumers are rapidly adopting new digital tools and using their personal data to improve health and wellness, developing new technology that improves the quality of sleep and overall wellness of our customers will remain a top priority for Sleep Number. Our research and development expenses were \$29 million in 2018, \$28 million in 2017 and \$28 million in 2016.

### **Information Systems**

We use information technology systems to operate, analyze and manage our business, to reduce operating costs and to enhance our customers' experience. Our major systems include an in-store order entry system, a retail portal system, a payment processing system, in-bound and out-bound telecommunications systems for direct marketing, delivery scheduling and customer service, e-commerce systems, a data warehouse system and an enterprise resource planning (ERP) system. These systems are primarily comprised of packaged applications licensed from various software vendors plus a limited number of internally developed programs. Please refer to the information set forth in Part I, Item 1A., *Risk Factors*, for a discussion of certain risks that may be encountered in connection with our information systems.

### **Intellectual Property**

We hold various U.S. and foreign patents and patent applications regarding certain elements of the design and function of our products, including air control systems, remote control systems, air chamber features, mattress construction, foundation systems, sensing systems, as well as other technology. We have numerous U.S. patents, expiring at various dates between February 2019 and February 2037 and numerous U.S. patent applications pending. We also have numerous foreign patents and patent applications pending. Notwithstanding these patents and patent applications, we cannot ensure that these patent rights will provide substantial protection or that others will not be able to develop products that are similar to or competitive with our products.

We have a number of trademarks and service marks registered with the U.S. Patent and Trademark Office, including Sleep Number®, SleepIQ®, Sleep Number 360®, 360®, SleepIQ Kids®, the Double Arrow logo, Select Comfort®, AirFit®, BAM Labs®, the “B” logo, Comfortaire®, ComfortFit®, Comfort.Individualized.®, Does Your Bed Do That?®, the DualTemp logo, the DualAir Technology Inside

logo, FlexTop®, IndividualFit®, Individualized Sleep Experiences®, It®, Know Better Sleep®, Pillow[ology]®, PillowFit®, Probably the Best Bed in the World®, Responsive Air®, Sleep Number Inner Circle®, Sleep30®, Smart Bed For Smart Kids®, Smart Bed Technology®, Tech-e®, The Only Bed That Grows With Them®, The Only Bed That Knows You®, Tonight Bedtime. Tomorrow The World®, We Make Beds Smart® and What's Your Sleep Number?®. We have several trademarks that are the subject of pending applications, including SleepIQ LABS™, Auto Snore™, HealthIQ™, HeartIQ™, RespiratoryIQ™, Sleep for the Future™, Sleep Is Training™, This Is Not A Bed™ and WellnessIQ™. Each registered mark is renewable indefinitely as long as the mark remains in use and/or is not deemed to be invalid or canceled. We also have a number of common law trademarks, including ActiveComfort™, Comfortable. Adjustable. Affordable.™, CoolFit™, DualAir™, DualTemp™, Firmness Control™, FlexFit™, In Balance™, Partner Snore™, the SleepIQ LABS logo, The Bed Reborn™, The Bed That Moves You™, The Best Bed For Couples™ and our bed model names. Several of our trademarks have been registered, or are the subject of pending applications for registration, in various foreign countries. We also have other intellectual property rights related to our products, processes and technologies, including trade secrets, trade dress and copyrights. We protect and enforce our intellectual property rights, including through litigation as necessary.

## Industry and Competition

The U.S. bedding industry, including mattresses and foundations, is a mature and generally stable industry. According to the International Sleep Products Association (ISPA), the industry has grown by approximately 4% annually over the last 20 years and at an estimated 4% annually, on average, over the past five years. We believe that industry unit growth has been primarily driven by population growth, an increase in the number of homes (including secondary residences) and the increased size of homes. We believe growth in average wholesale prices resulted from a shift to both larger and higher-quality beds, which are typically more expensive. According to ISPA and Company estimates, industry wholesale shipments of mattresses and foundations (excluding adjustable bases) were approximately \$8.2 billion in 2018 compared to \$8.4 billion in 2017. *Furniture/Today*, a furniture industry trade publication, has ranked Sleep Number as the 5th largest mattress manufacturer and 2nd largest U.S. bedding retailer for 2017, with an 8% market share of industry retail revenue.

The retail bedding industry is fragmented and highly competitive. Our Company-Controlled distribution channel is exclusive, and we compete against regional and local specialty bedding retailers, home furnishing stores, mass merchants, national discount stores and online marketers. Our consumer innovation strategy with exclusive distribution is highly differentiated, and results in a retail-leading customer experience.

Manufacturers in the bedding industry compete on price, quality, brand name recognition, product availability and product performance, including the perceived levels of comfort and support provided by a mattress. There is a high degree of concentration among manufacturers, who produce innerspring, memory foam and hybrid beds, under nationally recognized brand names, including Tempur Sealy, Stearns & Foster, Serta and Simmons. In recent years, numerous (approximately 200) direct-to-consumer companies and low-cost importers have entered the market, offering “bed-in-a-box” products to consumers primarily through the Internet. These companies market directly to consumers, competing primarily on convenience of online shopping and speed of delivery. Their products are generally foam-based and undifferentiated in terms of sleep benefits.

## Governmental Regulation and Compliance

As a vertically integrated manufacturer and retailer, we are subject to extensive federal, state and local laws and regulations affecting all aspects of our business.

As a manufacturer, we are committed to product quality and safety, including adherence to all applicable laws and regulations affecting our products. Compliance with health, safety and environmental laws and regulations, including the federal fire retardant standards developed by the U.S. Consumer Product Safety Commission, which requires rigorous and costly testing, has increased the cost and complexity of manufacturing our products and may adversely impact the speed and cost of product development efforts. Further, our manufacturing and other business operations and facilities are, or may, become subject to additional federal, state or local laws or regulations relating to supply chain transparency, conflict minerals sourcing and disclosure, end-of-life disposal and recycling requirements, and other laws or regulations relating to environmental protection and health and safety requirements.

As a retailer, we are subject to additional laws and regulations that apply to retailers generally and govern the marketing and sale of our products and the operation of both our retail stores and our e-commerce activities. Many of the statutory and regulatory requirements which impact our retail and e-commerce operations are consumer-focused and pertain to activities such as the advertising and selling of credit-based promotional offers, truth-in-advertising, privacy, “do not call/mail” requirements, warranty disclosure, delivery timing requirements, accessibility and similar requirements.



All of our operations are or may become subject to federal, state and local labor laws including, but not limited to, those relating to occupational health and safety, employee privacy, wage and hour, overtime pay, harassment and discrimination, equal opportunity and employee leaves and benefits. We are also subject to existing and emerging federal and state laws relating to data security and privacy.

It is our policy and practice to comply with all legal and regulatory requirements and our procedures and internal controls are designed to promote such compliance.

### **Customers**

No single customer accounts for 10% or more of our net sales.

### **Seasonality**

Our business is modestly impacted by seasonal influences inherent in the U.S. bedding industry and general retail shopping patterns. The U.S. bedding industry generally experiences lower sales in the second quarter of the calendar year and increased sales during selected holiday or promotional periods.

### **Working Capital**

We are able to operate with minimal working capital requirements because we sell directly to customers, utilize a primarily hybrid "make-to-stock" production process and operate retail stores that serve mainly as showrooms. We have historically generated sufficient cash flows to self-fund operations through an accelerated cash-conversion cycle. In February 2019, we amended our revolving credit facility (Credit Agreement) with a syndicate of banks (Lenders). The Credit Agreement provides a revolving credit facility for general corporate purposes with net aggregate availability of \$450 million. The Credit Agreement contains an accordion feature that allows us to increase the amount of the credit facility from \$450 million up to \$600 million in total availability, subject to Lenders' approval. The Credit Agreement matures in February 2024.

Qualified customers are offered revolving credit to finance purchases through a private-label consumer credit facility provided by Synchrony Bank. Approximately 50% of our net sales in 2018 were financed by Synchrony Bank. Our current agreement with Synchrony Bank expires December 31, 2023, subject to earlier termination upon certain events. We pay Synchrony Bank a fee for extended credit promotional financing offers. Under the terms of our agreement, Synchrony Bank sets the minimum acceptable credit ratings, the interest rates, fees and all other terms and conditions of the customer accounts, including collection policies and procedures. As the receivables are owned by Synchrony Bank, at no time are the receivables purchased or acquired from us. We are not liable to Synchrony Bank for our customers' credit defaults. In connection with all purchases financed under these arrangements, Synchrony Bank pays us an amount equal to the total amount of such purchases, net of promotional related discounts, upon delivery to the customer. Customers that do not qualify for credit under our agreement with Synchrony Bank may apply for credit under a secondary program that we offer through another provider.

### **Team Members**

At December 29, 2018, we employed 4,220 individuals, including 2,167 retail sales and support team members, 382 customer service team members, 1,185 manufacturing and logistics team members, and 486 management and administrative team members, of which 59 were employed on a part-time or temporary basis. Except for managerial team members and professional support staff, all of our team members are paid on an hourly basis (plus commissions for sales professionals). Additionally, we provide various broad-participation incentive compensation programs tied to various performance objectives. None of our team members are represented by a labor union or covered by a collective bargaining agreement. We regularly survey our team members with regard to engagement, and review engagement metrics and input with team members. We have a highly engaged team working in a values-driven culture, which we believe is important for an innovation company with an aspirational vision and life-changing mission.



## Executive Officers of the Registrant

### **SHELLY R. IBACH, 59**

*President and Chief Executive Officer (Joined the Company in April 2007 and was promoted to President and CEO in June 2012)*  
Shelly R. Ibach, Sleep Number® setting 40, is the President and Chief Executive Officer (CEO) for Sleep Number (NASDAQ: SNBR). From June 2011 to June 2012, Ms. Ibach served as the Company's Executive Vice President and Chief Operating Officer and from October 2008 to June 2011, she served as Executive Vice President, Sales & Merchandising. Ms. Ibach joined the Company in April 2007 as Senior Vice President of U.S. sales for Company-owned channels. Before joining the Company, Ms. Ibach was Senior Vice President and General Merchandise Manager for Macy's home division. From 1982 to 2005, Ms. Ibach held various leadership and executive positions within Target Corporation.

### **MELISSA BARRA, 47**

*Senior Vice President, Chief Strategy and Customer Relationship Officer (Joined the Company in 2013 and was promoted to current role in January 2015)*

Melissa Barra, Sleep Number® setting 30, serves as the Senior Vice President, Chief Strategy and Customer Relationship Officer. Ms. Barra was Vice President, Consumer Insights and Strategy from February 2013 to January 2015. Prior to joining Sleep Number in February 2013, Ms. Barra was Vice President, Process Reengineering Officer for Best Buy Co., Inc. from 2011 to 2012. In a dual role, she also served as Vice President, Finance, New Business Customer Solutions Group from 2010 to 2012. From 2005 to 2010, she held leadership positions in Strategic Alliances and Corporate Development for Best Buy. Prior to Best Buy, Ms. Barra held corporate finance and strategy leadership roles in companies in the U.S. and internationally, including Grupo Futuro S.A., Citibank and GE Capital.

### **ANNIE L. BLOOMQUIST, 49**

*Senior Vice President and Chief Product Officer (Joined the Company in 2008 and was promoted to current role in June 2012)*

Annie L. Bloomquist, Sleep Number® setting 25, serves as the Senior Vice President and Chief Product Officer and leads all product innovation, research and development for software and hardware, product brand management, clinical sleep research and merchandising. Ms. Bloomquist was the Chief Product and Merchandising Officer from June 2011 to June 2012. Ms. Bloomquist joined Sleep Number in May 2008 as Vice President and General Merchandise Manager. Prior to joining Sleep Number, Ms. Bloomquist held leadership positions in product and merchandising at Macy's and Marshall Field's Department Stores for Target Corporation.

### **KEVIN K. BROWN, 50**

*Senior Vice President and Chief Marketing Officer (Joined the Company in 2014)*

Kevin K. Brown, Sleep Number® setting 40, serves as Senior vice President and Chief Marketing Officer and is responsible for building the Sleep Number brand through stories that set the Company apart, communicate Sleep Number's innovation and drive brand advocacy across all customer touchpoints. Before joining Sleep Number in 2014, Mr. Brown served in executive leadership roles at Meijer, Inc., Sears Holdings Corporation, Jo-Ann Stores, Inc. and Accenture.

### **DAVID R. CALLEN, 52**

*Chief Financial Officer (Joined the Company in 2014)*

David R. Callen, Sleep Number® setting 50, serves as the Chief Financial Officer for Sleep Number. Prior to joining Sleep Number in April 2014, Mr. Callen served as the Principal Financial Officer for Ethan Allen Interiors, Inc., from 2007 to 2014. Mr. Callen has served for 30 years in several high-performing companies in increasingly responsible international financial management positions. His breadth of experience has emphasized business and financial strategy, brand support, and operational excellence across multiple industries including automotive, high-tech, dental, outdoor recreational products and public accounting.

### **ANDY P. CARLIN, 55**

*Executive Vice President, Chief Sales and Services Officer (Joined the Company in 2008 and was promoted to current role in April 2016)*

Andy P. Carlin, Sleep Number® setting 60, serves as the Executive Vice President and Chief Sales and Service Officer for Sleep Number and leads all sales channels, real estate and home delivery operations. From June 2012 to April 2016, Mr. Carlin was Senior Vice President and Chief Sales Officer; from May 2011 to June 2012, Mr. Carlin was the Vice President and Chief Sales Officer; and from January 2009 to May 2011 he was the Vice President of U.S. Retail Sales. Mr. Carlin joined Sleep Number in February 2008 as Regional Vice President, East Region. Prior to joining Sleep Number, Mr. Carlin spent more than 20 years in sales leadership roles for companies including Senior Vice President of Store Operations at Gander Mountain from 2003 to 2008, Kohl's Department Stores from 1995 to 2003 and the department store division of Target Corporation from 1986 to 1995.

**PATRICIA A. DIRKS, 62**

*Senior Vice President and Chief Human Resources Officer (Joined the Company in 2014)*

Patricia A. Dirks (Tricia), Sleep Number® setting 25, serves as the Senior Vice President and Chief Human Resources Officer for Sleep Number and leads all human resources functions. Prior to joining Sleep Number in April 2014, Ms. Dirks served as Senior Vice President Organizational Effectiveness for Target Corporation. From 2004 to 2009, Ms. Dirks was Vice President Headquarters Human Resources for Target Corporation. Prior to 2004, Ms. Dirks was Senior Vice President Human Resources at Marshall Field's Department Stores of Target Corporation.

**SAMUEL R. HELLFELD, 40**

*Senior Vice President and Chief Legal and Risk Officer and Secretary (Joined the Company in 2013 and was promoted to current role in September 2018)*

Samuel R. Hellfeld, Sleep Number® setting 65, serves as the Senior Vice President, Chief Legal and Risk Officer. From October 2015 to September 2018, Mr. Hellfeld served as Vice President, Associate General Counsel. Mr. Hellfeld joined Sleep Number in March 2013 as Corporate Counsel. Prior to joining Sleep Number, Mr. Hellfeld was a Partner in the law firm of Fox Rothschild LLP (fka Oppenheimer Wolff & Donnelly LLP) practicing in the areas of intellectual property and litigation. Prior to 2010, Mr. Hellfeld was an Associate at several law firms and also served as Law Clerk in the United States Court of Appeals for the Ninth Circuit and the United States District Court, Southern District of California.

**SURESH KRISHNA, 50**

*Senior Vice President and Chief Operations, Supply Chain and Lean Officer (Joined the Company in 2016)*

Suresh Krishna, Sleep Number® setting 95, serves as the Senior Vice President and Chief Operations, Supply Chain and Lean Officer of Sleep Number. Prior to joining Sleep Number, Mr. Krishna joined Polaris in 2010 as Vice President of Global Operations and Integration. In July 2014, he was promoted to Vice President and Business Unit Head of Europe Middle East & Africa (EMEA) for Polaris. From 2007 to 2010, he served as Vice President Global Operations, Supply Chain and IT at a division of UTC Fire & Security. Mr. Krishna also served in a variety of roles for Diageo, ABB and earlier in his career, he was an associate at Booz Allen & Hamilton.

**J. HUNTER SAKLAD, 49**

*Senior Vice President, Chief Information Officer (Joined the Company in 2004 and was promoted to current role in December 2012)*

Hunter Saklad, Sleep Number® setting 55, is the Senior Vice President and Chief Information Officer at Sleep Number. From June 2011 to December 2012, Mr. Saklad served as the Vice President, Consumer Insight and Strategy at Sleep Number. From March 2006 to June 2011 he was Vice President of Finance and held a variety of positions across Finance serving business partners in marketing, sales, supply chain, FP&A, investor relations and treasury. Mr. Saklad joined Sleep Number in October 2004 as Sr. Director of Finance. Prior to joining Sleep Number, Mr. Saklad held finance leadership roles at Ford Motor Company and Visteon.

## Available Information

We are subject to the reporting requirements of the Exchange Act and its rules and regulations. The Exchange Act requires us to file reports, proxy statements and other information with the Securities and Exchange Commission (SEC).

Our corporate website is [www.SleepNumber.com](http://www.SleepNumber.com). Through a link to a third-party content provider, our corporate website provides free access to our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after electronic filing with the SEC. These documents are posted on our website at [www.SleepNumber.com](http://www.SleepNumber.com) — select the “Investors” link, the “Financials & Filings” link, and then the “SEC Filings” link. The information contained on our website or connected to our website is not incorporated by reference into this Form 10-K and should not be considered part of this report.

We also make available, free of charge on our website, the charters of the Audit Committee, Management Development and Compensation Committee, and Corporate Governance and Nominating Committee as well as our Code of Business Conduct (including any amendment to, or waiver from, a provision of our Code of Business Conduct) adopted by our Board. These documents are posted on our website — select the “Investors” link, the “Governance” link and then the “Documents & Charters” link.

Copies of any of the above referenced information will also be made available, free of charge, upon written request to:

Sleep Number Corporation  
Investor Relations Department  
1001 Third Avenue South  
Minneapolis, MN 55404

## ITEM 1A. RISK FACTORS

*An investment in our common stock involves a high degree of risk. You should carefully consider the specific risks set forth below and other matters described in this Annual Report on Form 10-K before making an investment decision. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties, including risks and uncertainties not presently known to us or that we currently see as immaterial, may also harm our business. If any of these risks occur, our business, results of operations, cash flows and financial condition could be materially and adversely affected.*

### ***Current and future economic conditions could materially adversely affect our sales, profitability, cash flows and financial condition.***

Our success depends significantly upon discretionary consumer spending, which is influenced by a number of general economic factors, including without limitation economic growth, consumer confidence, the housing market, employment and income levels, interest rates, inflation, taxation, consumer shopping trends and the level of customer traffic in malls and shopping centers. Adverse trends in any of these economic factors may adversely affect our sales, profitability, cash flows and financial condition.

### ***Our future growth and profitability depend upon the effectiveness and efficiency of our marketing programs.***

We are highly dependent on the effectiveness of our marketing messages and the efficiency of our advertising expenditures in generating consumer awareness and sales of our products. We continue to evolve our marketing strategies, adjust our messages, the amount we spend on advertising and where we spend it. We may not always be successful in developing effective messages, as the consumer and competition change and in achieving efficiency in our advertising expenditures.

Consumers are increasingly using digital tools as a part of their shopping experience. As a result, our future growth and profitability will depend in part on (i) the effectiveness and efficiency of our online experience, including without limitation advertising and search optimization programs, in generating consumer awareness and sales of our products, (ii) our ability to prevent confusion among consumers that can result from search engines that allow competitors to use or bid on our trademarks to direct consumers to competitors' websites, (iii) our ability to prevent Internet publication of false or misleading information regarding our products or our competitors' products; (iv) reviews of our products; (v) the nature and tone of consumer sentiment, including those published online or elsewhere; and (vi) the stability of our website. In recent periods, competitor spending on Internet-based marketing programs has increased, including without limitation from a number of direct-to-consumer, Internet-based retailers, which has and may continue to increase the cost of basic search terms and the cost of our Internet-based marketing programs.

If our marketing messages are ineffective or our advertising expenditures and other marketing programs, including digital programs, are inefficient in creating awareness and consideration of our products and brand name, and in driving consumer traffic to our website or stores, our sales, profitability, cash flows and financial condition may be adversely impacted. In addition, if we are not effective in preventing the publication of confusing, false or misleading information regarding our brand or our products, or if there is publication online or elsewhere of significant negative consumer sentiment regarding our Company, brand or our products, our sales, profitability, cash flows and financial condition may be adversely impacted.

### ***Our future growth and profitability depend on our ability to execute our Company-Controlled distribution strategy.***

The vast majority of our sales occur through our Company-Controlled distribution channels, including our retail stores and our website. These Company-Controlled distribution channels represent our largest opportunity for growth in sales and improvement in profitability. Our retail stores carry significant fixed costs. We also make significant capital expenditures as we open new stores and remodel or reposition existing stores. We are highly dependent on our ability to maintain and increase sales per store to cover these fixed expenses, provide a return on our capital investments and improve our operating margins.

Many of our stores are mall-based. We depend on the continued popularity of malls as shopping destinations and the ability of mall anchor tenants and other attractions to generate customer traffic for our mall-based retail stores. Any decrease in mall traffic could adversely affect our sales, profitability, cash flows and financial condition.

Our Company-Controlled distribution strategy results in relatively few points of distribution, including 579 retail stores in 50 U.S. states as of the end of 2018 and our website. Several of the mattress manufacturers and retailers with which we compete have significantly more points of distribution than we do, which makes us highly dependent on our ability to drive consumers to our points of distribution to gain market share.



Our longer-term Company-Controlled distribution strategy is also dependent on our ability to renew existing store leases and to secure suitable locations for new store openings, in each case on a cost-effective basis. We may encounter higher than anticipated rents and other costs in connection with managing our retail store base. We may also be unable to find or obtain suitable new locations.

***Failure to achieve and maintain a high level of product quality could negatively impact our sales, profitability, cash flows and financial condition.***

Our products are highly differentiated from traditional innerspring mattresses and from viscoelastic and other foam mattresses, which have little or no technology and do not rely on electronics and air control systems. As a result, our beds may be susceptible to failures that do not exist with traditional or foam mattresses. Failure to achieve and maintain acceptable quality standards could impact consumer acceptance of our products or could result in negative media and Internet reports or owner dissatisfaction that could negatively impact our brand image and sales levels.

In addition, a decline in product quality could result in an increase in return rates and a corresponding decrease in sales, or an increase in product warranty claims in excess of our warranty reserves. An unexpected increase in return rates or warranty claims could harm our sales, profitability, cash flows and financial condition.

As a consumer innovation company with differentiated products, we face an inherent risk of exposure to product liability claims or regulatory actions if the use of our products is alleged to have resulted in personal injury or property damage. If any of our products proves to be defective, we may be required to recall or redesign such products. We have at times experienced increased returns and adverse impacts on sales, as well as product liability litigation, as a result of media reports related to the alleged propensity of our products to develop mold. We may experience additional adverse impacts on sales and additional litigation if any similar media reports were to occur in the future. We maintain insurance against some forms of product liability claims, but such coverage may not be applicable to, or adequate for, liabilities actually incurred. A successful claim brought against us outside of, or in excess of, available insurance coverage, or any claim or product recall that results in significant adverse publicity against us, may have a material adverse effect on our sales, profitability, cash flows and financial condition.

***Our future growth and profitability depend in part on our ability to continue to improve and expand our product line and to successfully execute new product introductions.***

As described in greater detail below, the bedding industry, as well as the market for sleep monitoring products, are both highly competitive, and our ability to compete effectively and to profitably grow our market share depend in part on our ability to continue to improve and expand our product line of adjustable firmness air beds, SleepIQ technology and related accessory products. We incur significant research and development and other expenditures in the pursuit of improvements and additions to our product line. If these efforts do not result in meaningful product improvements or new product introductions, or if we are not able to gain widespread consumer acceptance of product improvements or new product introductions, our sales, profitability, cash flows and financial condition may be adversely affected. In addition, if any significant product improvements or new product introductions are not successful, our reputation and brand image may be adversely affected.

In 2018, we completed the transition to our new line of 360 smart bed mattresses to replace our prior line of mattresses. This new product roll-out required transition costs in our supply chain and retail stores. If we are not able to continue to innovate and gain widespread consumer acceptance of new products, our sales, profitability, cash flows and financial condition may be adversely affected.

***Significant competition could adversely affect our business.***

Because of the vertical integration of our business model, our products and distribution channels face significant competition from both manufacturers of different types of mattresses and a variety of retailers. Our SleepIQ technology also faces significant competition from various manufacturers and retailers of sleep tracking and monitoring products.

The mattress industry is characterized by a high degree of concentration among the largest manufacturers of innerspring mattresses and foam mattresses and one dominant national mattress retailer. Many newer competitors in the mattress industry have begun to offer “bed-in-a-box” or similar products directly to consumers through the Internet and other distribution channels. The emergence of these new competitors has significantly increased the costs of search terms and digital advertising.

A variety of sleep tracking and monitoring products that compete with our SleepIQ technology have been introduced by various manufacturers and retailers, both within and outside of the traditional mattress industry.

Some of our competitors have substantially greater financial, marketing and manufacturing resources and greater brand name recognition than we do and sell products through broader and more established distribution channels. Our national, exclusive

distribution competes with other retailers who generally provide a wider selection of mattress alternatives than we offer. A number of these retailers also have more points of distribution, greater marketing resources, and greater brand name recognition than we do.

These manufacturing and retailing competitors, or new entrants into the market, may compete aggressively and gain market share with existing or new products, and may pursue or expand their presence in the adjustable firmness air bed segment of the market as well as in the market for sleep tracking and monitoring products. We have limited ability to anticipate the timing and scale of new product introductions, advertising campaigns or new pricing strategies by our competitors, which could inhibit our ability to retain or increase market share, or to maintain our profit margins.

If we are unable to effectively compete with other manufacturers and retailers of mattress and sleep tracking and monitoring products, our sales, profitability, cash flows and financial condition may be adversely impacted.

***Our intellectual property rights may not prevent others from using our technology or trademarks in connection with the sale of competitive products. We may be subject to claims that our products, processes or trademarks infringe intellectual property rights of others.***

We own various U.S. and foreign patents and patent applications related to certain elements of the design and function of our beds and related products. We own numerous registered and unregistered trademarks and trademark applications, including in particular our *Sleep Number*, *Sleep Number 360*, *360*, and *SleepIQ* trademarks, as well as other intellectual property rights, including trade secrets, trade dress and copyrights, which we believe have significant value and are important to the marketing of our products. These intellectual property rights may not provide adequate protection against infringement or piracy, may not prevent competitors from developing and marketing products that are similar to or competitive with our beds or other products, and may be costly and time-consuming to protect and enforce. Our patents are also subject to varying expiration dates. In addition, the laws of some foreign countries may not protect our intellectual property rights and confidential information to the same extent as the laws of the United States. If we are unable to protect and enforce our intellectual property, we may be unable to prevent other companies from using our technology or trademarks in connection with competitive products, which could adversely affect our sales, profitability, cash flows and financial condition.

We may be subject to claims that our products, processes, advertising, or trademarks infringe the intellectual property rights of others. The defense of these claims, even if we are ultimately successful, may result in costly litigation, and if we are not successful in our defense, we could be subject to injunctions and liability for damages or royalty obligations, and our sales, profitability, cash flows and financial condition could be adversely affected.

***A reduction in the availability of credit to consumers generally or under our existing consumer credit programs could harm our sales, profitability, cash flows and financial condition.***

A significant percentage of our sales are made under consumer credit programs through third parties. The amount of credit available to consumers may be adversely impacted by macroeconomic factors that affect the financial position of consumers and as suppliers of credit adjust their lending criteria. In addition, changes in federal regulations effective in 2010 placed additional restrictions on all consumer credit programs, including limiting the types of promotional credit offerings that may be offered to consumers.

Synchrony Bank provides credit to our customers through a private label credit card agreement that is currently scheduled to expire on December 31, 2023, subject to earlier termination upon certain events. Synchrony Bank has discretion to control the content of financing offers to our customers and to set minimum credit standards under which credit is extended to customers.

Reduction of credit availability due to changing economic conditions, changes in credit standards under our private label credit card program or changes in regulatory requirements, or the termination of our agreement with Synchrony Bank, could harm our sales, profitability, cash flows and financial condition.

***We could be vulnerable to shortages in supply of components necessary to manufacture our products due to our manufacturing processes which operate with minimal levels of inventory or due to global shortages of supply of electronic componentry or other materials, which may harm our ability to satisfy consumer demand and may adversely impact our sales and profitability.***

A significant percentage of our products are assembled after we receive orders from customers utilizing manufacturing processes with minimal levels of raw materials, work-in-process inventories and finished goods inventories. Lead times for ordered components may vary significantly, and some components used to manufacture our products are provided on a sole source basis. In addition, with the increasing prevalence of and consumer demand for electronic products, the global supply of electronic componentry is increasingly strained, which may lead to shortages in supply and increased prices. Any unexpected shortage of materials caused by any disruption or unavailability of supply or an unexpected increase in the demand for our products, could lead to delays in shipping our beds to





customers and increased costs. Any such delays could adversely affect our sales, customer satisfaction, profitability, cash flows and financial condition.

***We rely upon several key suppliers and third parties that are, in some instances, the only source of supply or services currently used by us for particular materials, components or services. A disruption in the supply or substantial increase in cost of any of these products or services could harm our sales, profitability, cash flows and financial condition.***

We currently obtain all the materials and components used to produce our beds from outside sources including some who are located outside the United States. In several cases, including our air chambers, blow-molded foundations, integrated non-adjustable foundations, adjustable foundations, various components for our Firmness Control systems, certain foam formulations, as well as our fabrics and zippers, we have chosen to obtain these materials and components from suppliers who serve as the only source of supply, or who supply the vast majority of our needs of the particular material or component. While we believe that these materials and components, or suitable replacements, could be obtained from other sources, in the event of a disruption or loss of supply of relevant materials or components for any reason, we may not be able to find alternative sources of supply, or if found, may not be found on comparable terms. If our relationship with the primary supplier of our air chambers or the supplier of our adjustable foundations is terminated, we could have difficulty in replacing these sources since there are relatively few other suppliers presently capable of manufacturing these components.

Similarly, we rely on third parties to deliver some of our products to our facilities and customers on a timely and cost-effective basis. These third-party providers could be vulnerable to labor shortages, liquidity concerns or other factors that may result in delays in deliveries or increased costs of deliveries. Any significant delay in deliveries to our customers could lead to increased returns and cause us to lose sales. Any increase in freight charges or other costs of deliveries could increase our costs of doing business and harm our sales, profitability, cash flows and financial condition.

***Fluctuations in commodity prices or third-party logistics costs could result in an increase in component costs and/or delivery costs.***

Our business is subject to significant increases or volatility in the prices of certain commodities, including but not limited to electronic componentry, fuel, oil, natural gas, rubber, cotton, plastic resin, steel and chemical ingredients used to produce foam, as well as third-party logistic costs. Increases in prices of these commodities or logistics costs or other inflationary pressures may result in significant cost increases for our raw materials and product components, as well as increases in the cost of delivering our products to our customers. To the extent we are unable to offset any such increased costs through value engineering and similar initiatives, or through price increases, our profitability, cash flows and financial condition may be adversely impacted. If we choose to increase prices to offset the increased costs, our sales volumes could be adversely impacted.

***Our business is subject to risks inherent in global sourcing activities.***

Our air chambers and some of our other components are manufactured outside the United States, and therefore are subject to risks associated with foreign sourcing of materials, including but not limited to:

- Existing or potential duties, tariffs or quotas on certain types of goods that may be imported into the United States;
- Political instability resulting in disruption of trade;
- Disruptions in transportation due to acts of terrorism, shipping delays, foreign or domestic dock strikes, customs inspections or other factors;
- Foreign currency fluctuations; and
- Economic uncertainties, including inflation.

We cannot predict whether the countries in which some of our components are manufactured, or may be manufactured in the future, will be subject to new or additional trade restrictions imposed by the United States or other foreign governments, including the likelihood, type, or effect of any such restrictions. The United States government is contemplating various actions regarding trade with China, including the possibility of levying various tariffs on imports from China. As we source some of our components from China, any tariffs or other trade restrictions impacting the import of those components from China may have a material adverse impact on us.

These factors could increase our costs of doing business with foreign suppliers, lead to inadequate inventory levels or delays in shipping beds to our customers, which could harm our sales, customer satisfaction, profitability, cash flows and financial condition.

***Disruption of operations in either of our two main manufacturing facilities or three assembly facilities could increase our costs of doing business or lead to delays in shipping our beds.***

We have two main manufacturing plants, which are located in Irmo, South Carolina and Salt Lake City, Utah. We co-located two of the three currently operated assembly distribution centers at these sites with a third location in Baltimore, Maryland. A significant percentage of our products are assembled to fulfill orders rather than stocking finished goods inventory in our plants or stores.

Therefore, the disruption of operations of either of our two main manufacturing facilities or three assembly facilities for a significant period of time may increase our costs of doing business and lead to delays in shipping our beds to customers. Such delays could adversely affect our sales, customer satisfaction, profitability, cash flows and financial condition.

***Our business is subject to a wide variety of government laws and regulations. These laws and regulations, as well as any new or changed laws or regulations, could disrupt our operations or increase our compliance costs. Failure to comply with such laws and regulations could have further adverse impact.***

We are subject to a wide variety of laws and regulations relating to the bedding industry or to various aspects of our business. Laws and regulations at the federal, state and local levels frequently change and we cannot always reasonably predict the impact from, or the ultimate cost of compliance with, future regulatory or administrative changes. Changes in law, the imposition of new or additional regulations or the enactment of any new or more stringent legislation that impacts employment and labor, trade, advertising and marketing practices, pricing, consumer credit offerings, product testing and safety, transportation and logistics, health care, tax, accounting, privacy and data security, health and safety or environmental issues, among others, could require us to change the way we do business and could have a material adverse impact on our sales, profitability, cash flows and financial condition. New or different laws or regulations could increase direct compliance costs for us or may cause our vendors to raise the prices they charge us because of increased compliance costs. Further, the adoption of a multi-layered regulatory approach to any one of the state or federal laws or regulations to which we are currently subject, particularly where the layers are in conflict, could require alteration of our manufacturing processes or operational parameters which may adversely impact our business.

Legislative or regulatory changes that impact our relationship with our workforce, such as minimum wage requirements or health insurance or other employee benefits mandates, could increase our expenses and adversely affect our operations. While it is our policy and practice to comply with legal and regulatory requirements and our procedures and internal controls are designed to promote such compliance, we cannot assure that all of our operations will comply with all such legal and regulatory requirements. Further, laws and regulations change over time and we may be required to incur significant expenses and/or to modify our operations in order to ensure compliance. This could harm our profitability or financial condition. If we are found to be in violation of any laws or regulations, we could become subject to fines, penalties, damages or other sanctions as well as potential adverse publicity or litigation exposure. This could adversely impact our business, reputation, sales, profitability, cash flows or financial condition.

***Regulatory requirements related to flammability standards for mattresses may increase our product costs and increase the risk of disruption to our business.***

The federal Consumer Product Safety Commission adopted flammability standards and related regulations which became effective nationwide in July 2007 for mattresses and mattress and foundation sets. Compliance with these requirements has resulted in higher materials and manufacturing costs for our products, and has required modifications to our information systems and business operations, further increasing our costs and negatively impacting our capacity.

These regulations require manufacturers to implement quality assurance programs and encourage manufacturers to conduct random testing of products. These regulations also require maintenance and retention of compliance documentation. These quality assurance and documentation requirements are costly to implement and maintain. If any product testing, other evidence, or regulatory inspections yield results indicating that any of our products may not meet the flammability standards, we may be required to temporarily cease production and distribution and/or to recall products from the field, and we may be subject to fines or penalties, any of which outcomes could harm our business, reputation, sales, profitability, cash flows and financial condition.

***Pending or unforeseen litigation and the potential for adverse publicity associated with litigation could adversely impact our business, reputation, financial results or financial condition.***

We are involved from time to time in various legal proceedings arising in the ordinary course of our business, including primarily commercial, product liability, employment and intellectual property claims. We currently do not expect the outcome of any pending matters to have a material effect on our consolidated results of operations, financial position or cash flows. Litigation, however, is inherently unpredictable, and it is possible that the ultimate outcome of one or more pending claims asserted against us, or claims that may be asserted in the future that we are currently not aware of, or adverse publicity resulting from any such litigation, could adversely impact our business, reputation, sales, profitability, cash flows and financial condition.

***Any improvements or upgrades to our information systems that may be required to meet the evolving needs of our business as well as existing and emerging regulatory requirements may be costly to implement and may take longer or require greater resources than anticipated, and may result in disruptions to our systems or business.***

We depend on our information systems for many aspects of our business. In the fourth quarter of 2015, we implemented a new ERP system and continue to implement operational improvements to our information systems. If our information systems are disrupted in

any material way, or improvements or upgrades are required to meet the evolving needs of our business and existing and emerging regulatory requirements, we may be required to incur significant capital expenditures in the pursuit of improvements or upgrades to our information systems. These efforts may take longer and may require greater financial and other resources than anticipated, may cause distraction of key personnel, and may cause short-term disruptions to our existing systems and our business. Any of these outcomes could impair our ability to achieve critical strategic initiatives and could adversely impact our sales, profitability, cash flows and financial condition.

***Information systems that contain confidential Company data, consumers' private data, and employees' private data may be subject to attacks by hackers or other cyber threats that could compromise the security of the data, which could substantially disrupt our business and could result in the breach of the data.***

Our information systems and information systems of third-party vendors we use to assist in the storage and management of information contain personal information related to our customers and employees in the ordinary course of our business, such as credit card and demographic information of our customers, SleepIQ® data, including biometric data, from our customer base and social security numbers and demographic information of our employees. These information systems also contain confidential Company data regarding our business and innovations. While we maintain and require our third-party vendors to maintain security measures to protect this information, a breach of these security measures, such as through third-party action, employee error, malfeasance or otherwise, could compromise the security of our data and customers' and employees' personal information. As the techniques used to breach such security measures change frequently and may not be recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures. Any failure of our systems and processes or our third-party vendors' systems and processes to adequately protect our data or customer or employee personal information from theft or loss could adversely impact our business, reputation, sales, profitability, cash flows and financial condition.

***Our future growth and profitability depend in part upon our ability to attract, retain and motivate qualified personnel.***

As a vertically integrated manufacturer and retailer, our future growth and profitability will depend in part upon our ability to attract, retain and motivate qualified personnel in a wide variety of areas to execute our growth strategy, including qualified management and executive personnel and qualified retail sales professionals and managers. The failure to attract, retain and motivate qualified personnel may hinder our ability to execute our business strategy and growth initiatives and may adversely impact our sales, profitability, cash flows and financial condition.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

### Retail Locations

We currently lease all of our existing retail store locations and expect that our policy of leasing stores, rather than owning stores, will continue. We lease our retail stores under operating leases which, in addition to the minimum lease payments, may require payment of a proportionate share of the real estate taxes and certain building operating expenses. Our retail store leases generally provide for an initial lease term of five to 10 years. In addition, our mall-based retail store leases may require payment of contingent rent based on net sales in excess of certain thresholds. Certain retail store leases may contain options to extend the term of the original lease.

The following table summarizes the geographic locations of our 579 retail stores as of December 29, 2018:

	Retail Stores		Retail Stores		Retail Stores
Alabama	10	Louisiana	8	Ohio	21
Alaska	1	Maine	2	Oklahoma	5
Arizona	10	Maryland	14	Oregon	7
Arkansas	4	Massachusetts	11	Pennsylvania	21
California	66	Michigan	18	Rhode Island	1
Colorado	14	Minnesota	16	South Carolina	8
Connecticut	6	Mississippi	5	South Dakota	2
Delaware	2	Missouri	12	Tennessee	11
Florida	41	Montana	4	Texas	53
Georgia	20	Nebraska	4	Utah	6
Hawaii	1	Nevada	5	Vermont	1
Idaho	8	New Hampshire	4	Virginia	18
Illinois	3	New Jersey	16	Washington	14
Indiana	21	New Mexico	3	West Virginia	2
Iowa	11	New York	20	Wisconsin	12
Kansas	8	North Carolina	16	Wyoming	1
Kentucky	8	North Dakota	4	Total	<u>579</u>

### Manufacturing, Distribution and Headquarters

We lease our 238,000 square-foot corporate headquarters in Minneapolis, Minnesota. The lease term commenced in November 2017 and runs through October 2032. The lease includes three five-year renewal options.

We lease two manufacturing, assembly and distribution centers in Irmo, South Carolina and Salt Lake City, Utah of approximately 151,000 square feet and approximately 101,000 square feet, respectively. The Irmo facility lease runs through June 2026, with two five-year renewal options. The Salt Lake City facility lease runs through July 2020, with two five-year renewal options. We also lease one storage facility in Salt Lake City of approximately 57,000 square feet through April 2020, and a second storage facility in Salt Lake City of approximately 80,000 square feet through November 2019.

We lease a bedding collection and fulfillment center in Brooklyn Park, Minnesota consisting of approximately 60,000 square feet. This lease runs through July 2020, with two three-year renewal options.

We lease a call center in Jefferson, Louisiana consisting of approximately 28,000 square feet. This lease runs through August 2022, with two three-year renewal options.

We lease one facility for our SleepIQ LABS' operations in San Jose, California of approximately 16,000 square feet. This lease runs through February 2029 and contains two five-year renewal options.

We lease one facility for assembly and distribution of products in Baltimore, Maryland containing approximately 89,000 square feet. This lease runs through October 2025 and contains two three-year renewal options.

We lease approximately 900 square feet of office space in Portland, Oregon. This lease runs through September 2019.





### ITEM 3. LEGAL PROCEEDINGS

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

On January 12, 2015, Plaintiffs David and Katina Spade commenced a purported class action lawsuit in New Jersey state court against Sleep Number alleging that Sleep Number violated New Jersey consumer statutes by failing to provide to purchasing consumers certain disclosures required by the New Jersey Furniture Regulations. It is undisputed that plaintiffs suffered no actual damages or in any way relied upon or were impacted by the alleged omissions. Nonetheless, on behalf of a purported class of New Jersey purchasers of Sleep Number beds and bases, plaintiffs seek to recover a \$100 statutory fine for each alleged omission, along with attorneys' fees and costs. Sleep Number removed the case to the United States District Court for the District of New Jersey, which subsequently granted Sleep Number's motion to dismiss. Plaintiffs appealed to the United States Court of Appeals for the Third Circuit, which certified two questions of law to the New Jersey Supreme Court relating to whether plaintiffs who have suffered no actual injury may bring claims. The New Jersey Supreme Court accepted the certified questions and on April 16, 2018, ruled in our favor on one of the two questions, holding that a consumer only has standing to bring a claim under the relevant statute if the consumer has been harmed by the defendant's conduct. The Third Circuit remanded the case to the federal district court, which initially allowed the plaintiffs to file its proposed amended complaint, but thereafter rescinded its order and then denied Plaintiffs' request to file the amended complaint. We plan to ask the Court to dismiss the case.

On September 18, 2018, former Home Delivery Technician, Donald Cassels, and former Field Services Delivery Assistant, Jose Cadenas, filed suit in Superior Court in San Francisco County, California alleging representative claims on a purported class action basis under the California Labor Code Private Attorney General Act. While the two representative plaintiffs were in the Home Delivery workforce, the Complaint does not limit the purported plaintiff class to that group. The plaintiffs allege that Sleep Number failed or refused to adopt adequate practices, policies and procedures relating to wage payments, record keeping, employment disclosures, meal and rest breaks, among other claims, under California law. The plaintiffs purport to represent all former and current Sleep Number employees in the State of California aggrieved by the alleged practices. The Complaint seeks damages in the form of civil penalties and plaintiffs' attorneys' fees, and expressly disclaims the recovery of any purported individual specific relief or underpaid wages. After Sleep Number raised issues with the plaintiffs' choice of venue, the Court transferred venue from the Superior Court in San Francisco County to Superior Court in Fresno County. We intend to vigorously defend this matter.

### ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock trades on The NASDAQ Stock Market LLC (NASDAQ Global Select Market) under the symbol "SNBR." As of January 26, 2019, there were approximately 215 holders of record of our common stock.

We are not restricted from paying cash dividends under our credit agreement so long as we are not in default under the credit agreement, our leverage ratio (as defined in our credit agreement) after giving effect to such restricted payments (as defined in our credit agreement) would not exceed 3.75:1.00 and no default or event of default (as defined in our credit agreement) would result therefrom. However, we have not historically paid, and have no current plans to pay, cash dividends on our common stock.

Information concerning share repurchases completed during the fourth quarter of fiscal 2018 is set forth below:

<b>Fiscal Period</b>	<b>Total Number of Shares Purchased(1)(2)</b>	<b>Average Price Paid per Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(1)</b>	<b>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs(3)</b>
September 30, 2018 through October 27, 2018	614,828	\$ 33.96	612,303	\$ 249,204,000
October 28, 2018 through November 24, 2018	538,300	\$ 37.97	537,913	228,779,000
November 25, 2018 through December 29, 2018	1,233,468	\$ 34.77	1,233,378	185,899,000
Total	<u>2,386,596</u>		<u>2,383,594</u>	\$ 185,899,000

(1) Under our Board-approved \$500 million share repurchase program, we repurchased 2,383,594 shares of our common stock at a cost of \$84 million (based on trade dates) during the three months ended December 29, 2018.

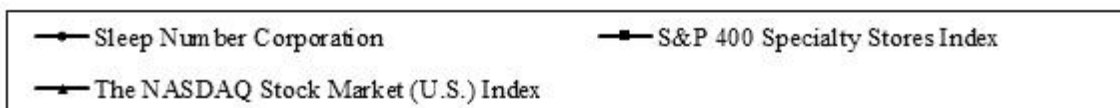
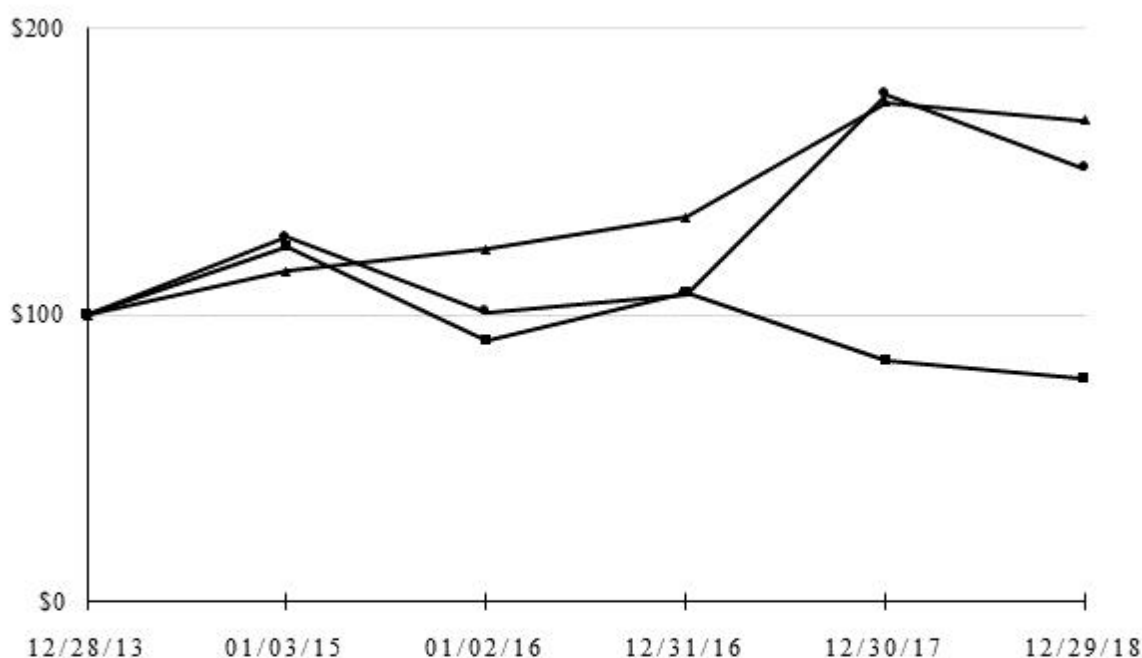
(2) In connection with the vesting of employee restricted stock grants, we also repurchased 3,002 shares of our common stock at a cost of \$104 thousand during the three months ended December 29, 2018.

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

## Comparative Stock Performance

The graph below compares the total cumulative shareholder return on our common stock over the last five years to the total cumulative return on the Standard and Poor's (S&P) 400 Specialty Stores Index and The NASDAQ Stock Market (U.S.) Index assuming a \$100 investment made on December 28, 2013. Each of the three measures of cumulative total return assumes reinvestment of dividends. The stock performance shown on the graph below is not necessarily indicative of future price performance. The information contained in this "Comparative Stock Performance" section shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Securities Exchange Act of 1934, as amended, except to the extent that we specifically request that it be treated as soliciting material or incorporate it by reference into a document filed under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

### COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL RETURN AMONG SLEEP NUMBER CORPORATION, S&P 400 SPECIALTY STORES INDEX, AND THE NASDAQ STOCK MARKET (U.S.) INDEX



	12/28/13	01/03/15	01/02/16	12/31/16	12/30/17	12/29/18
Sleep Number Corporation	\$ 100	\$ 127	\$ 101	\$ 107	\$ 177	\$ 151
S&P 400 Specialty Stores Index	100	124	91	108	84	78
The NASDAQ Stock Market (U.S.) Index	100	115	123	134	174	168

## ITEM 6. SELECTED FINANCIAL DATA

(in thousands, except per share and selected operating data, unless otherwise indicated)

The Consolidated Statements of Operations Data and Consolidated Balance Sheet Data presented below have been derived from our Consolidated Financial Statements and should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our Consolidated Financial Statements and Notes thereto included in this Annual Report on Form 10-K.

	Year				
	2018	2017	2016	2015	2014(1)
<b>Consolidated Statements of Operations Data:</b>					
Net sales	\$ 1,531,575	\$ 1,444,497	\$ 1,311,291	\$ 1,213,699	\$ 1,156,757
Gross profit	927,961	897,347	810,160	740,751	706,850
Operating expenses:					
Sales and marketing	687,380	650,357	595,845	550,475	512,007
General and administrative	119,378	127,269	109,674	99,209	84,864
Research and development	28,775	27,806	27,991	15,971	8,233
Operating income	92,428	91,915	76,650	75,096	101,746
Net income	<u>\$ 69,539</u>	<u>\$ 65,077</u>	<u>\$ 51,417</u>	<u>\$ 50,519</u>	<u>\$ 67,974</u>
Net income per share:					
Basic	<u>\$ 1.97</u>	<u>\$ 1.58</u>	<u>\$ 1.11</u>	<u>\$ 0.99</u>	<u>\$ 1.27</u>
Diluted	<u>\$ 1.92</u>	<u>\$ 1.55</u>	<u>\$ 1.10</u>	<u>\$ 0.97</u>	<u>\$ 1.25</u>
Shares used in calculation of net income per share:					
Basic	<u>35,256</u>	<u>41,212</u>	<u>46,154</u>	<u>51,252</u>	<u>53,452</u>
Diluted	<u>36,165</u>	<u>42,085</u>	<u>46,902</u>	<u>52,101</u>	<u>54,193</u>
<b>Consolidated Balance Sheet Data:</b>					
Cash, cash equivalents and marketable debt securities	\$ 1,612	\$ 3,651	\$ 11,609	\$ 36,114	\$ 166,045
Total assets	470,138	471,834	457,166	500,897	474,187
Total shareholders’ (deficit) equity	(109,550)	89,156	160,320	222,339	256,907
<b>Selected Operating Data:</b>					
Stores open at period-end	579	556	540	488	463
Stores opened during period	53	36	72	38	57
Stores closed during period	30	20	20	13	34
Average sales per store (000’s)(2)	\$ 2,707	\$ 2,618	\$ 2,555	\$ 2,536	\$ 2,512
Percentage of stores with more than \$1.0 million in net sales(3)	98%	98%	98%	99%	98%
Percentage of stores with more than \$2.0 million in net sales(3)	65%	61%	61%	62%	59%
Average revenue per mattress unit - Company-Controlled channel(4)	\$ 4,482	\$ 4,283	\$ 4,046	\$ 4,028	\$ 3,671
Company-Controlled comparable-sales increase(5)	3%	4%	1%	3%	12%
Total retail square footage (at period-end) (000’s)	1,598	1,489	1,399	1,214	1,106
Average square footage per store open during period(3)	2,725	2,647	2,538	2,445	2,302
Average sales per square foot(3)	\$ 998	\$ 995	\$ 1,013	\$ 1,045	\$ 1,107
Average store age (in months at period-end)	95	97	93	99	97
Earnings before interest, depreciation and amortization (Adjusted EBITDA)(6)	\$ 161,588	\$ 169,097	\$ 145,689	\$ 133,057	\$ 148,223
Free cash flows(6)	\$ 86,025	\$ 112,778	\$ 93,793	\$ 22,356	\$ 67,874
Return on invested capital (ROIC)(6)	16.0%	14.3%	12.2%	11.2%	15.1%

(1) Fiscal year 2014 had 53 weeks. All other fiscal years presented had 52 weeks.

(2) Trailing-twelve months Company-Controlled comparable sales per store open at least one year.

(3) For stores open during the entire period indicated (excludes online and phone sales).

(4) Represents Company-Controlled channel total net sales divided by Company-Controlled channel mattress units.

(5) Stores are included in the comparable sales calculation in the 13th full month of operation. Stores that have been remodeled or repositioned within the same shopping center remain in the comparable-store base. The number of comparable stores used to calculate such data was 524, 512, 459, 442 and 396 for 2018, 2017, 2016, 2015 and 2014, respectively. Fiscal 2014 included 53 weeks, as compared to 52 weeks for the other periods presented. Comparable sales have been adjusted and reported as if all years had the same number of weeks.

(6) These non-GAAP measures are not in accordance with, or preferable to, GAAP financial data. However, we are providing this information as we believe it facilitates annual and year-over-year comparisons for investors and financial analysts. See pages 23 and 24 for the reconciliation of these non-GAAP measures to the appropriate GAAP measures.

## Non-GAAP Data Reconciliations

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

(in thousands)

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

	Year				
	2018	2017	2016	2015	2014
Net income	\$ 69,539	\$ 65,077	\$ 51,417	\$ 50,519	\$ 67,974
Income tax expense	16,982	25,961	24,516	24,911	34,134
Interest expense	5,911	975	811	160	53
Depreciation and amortization	61,648	61,077	56,910	46,916	38,767
Stock-based compensation	11,412	15,763	11,961	10,290	6,798
Asset impairments	96	244	74	261	497
Adjusted EBITDA	<u>\$ 165,588</u>	<u>\$ 169,097</u>	<u>\$ 145,689</u>	<u>\$ 133,057</u>	<u>\$ 148,223</u>

### Free Cash Flow

(in thousands)

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

	Year				
	2018	2017	2016	2015	2014
Net cash provided by operating activities	\$ 131,540	\$ 172,607	\$ 151,645	\$ 107,942	\$ 144,468
Less: Purchases of property and equipment	(45,515)	(59,829)	(57,852)	(85,586)	(76,594)
Free cash flow	<u>\$ 86,025</u>	<u>\$ 112,778</u>	<u>\$ 93,793</u>	<u>\$ 22,356</u>	<u>\$ 67,874</u>

## Non-GAAP Data Reconciliations (continued)

### Return on Invested Capital (ROIC)

(in thousands)

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

	Year				
	2018	2017	2016	2015	2014
<b>Net operating profit after taxes (NOPAT)</b>					
Operating income	\$ 92,428	\$ 91,915	\$ 76,650	\$ 75,096	\$ 101,746
Add: Rent expense <sup>(1)</sup>	79,390	74,019	67,416	62,369	57,605
Add: Interest income	4	97	94	494	415
Less: Depreciation on capitalized operating leases <sup>(2)</sup>	(20,392)	(18,865)	(17,185)	(16,203)	(14,265)
Less: Income taxes <sup>(3)</sup>	(36,444)	(48,970)	(41,933)	(40,384)	(48,900)
<b>NOPAT</b>	<b>\$ 114,986</b>	<b>\$ 98,196</b>	<b>\$ 85,042</b>	<b>\$ 81,372</b>	<b>\$ 96,601</b>
<b>Average invested capital</b>					
Total (deficit) equity	\$ (109,550)	\$ 89,156	\$ 160,320	\$ 222,339	\$ 256,907
Less: Cash greater than target <sup>(4)</sup>	—	—	—	—	(37,319)
Add: Long-term debt <sup>(5)</sup>	200,458	—	—	—	—
Add: Capitalized operating lease obligations <sup>(6)</sup>	635,120	592,152	539,328	498,952	460,840
<b>Total invested capital at end of period</b>	<b>\$ 726,028</b>	<b>\$ 681,308</b>	<b>\$ 699,648</b>	<b>\$ 721,291</b>	<b>\$ 680,428</b>
<b>Average invested capital<sup>(7)</sup></b>	<b>\$ 719,055</b>	<b>\$ 686,436</b>	<b>\$ 699,576</b>	<b>\$ 726,756</b>	<b>\$ 639,118</b>
<b>Return on invested capital (ROIC)<sup>(8)</sup></b>	<b>16.0%</b>	<b>14.3%</b>	<b>12.2%</b>	<b>11.2%</b>	<b>15.1%</b>

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

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

(3) Reflects annual effective income tax rates, before discrete adjustments, of 24.1%, 33.3%, 33.0%, 33.2% and 33.6% for 2018, 2017, 2016, 2015 and 2014, respectively.

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

(5) Long-term debt includes capital lease obligations, if applicable.

(6) A multiple of eight times annual rent expense is used as an estimate for capitalizing our operating lease obligations. The methodology utilized aligns with the methodology of a nationally recognized credit rating agency. Our revolving credit facility's leverage covenant computation is based on a multiple of six times annual rent expense.

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

(8) ROIC equals NOPAT divided by average invested capital.

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

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

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Forward-Looking Statements

*The discussion in this Annual Report contains certain forward-looking statements that relate to future plans, events, financial results or performance. You can identify forward-looking statements by those that are not historical in nature, particularly those that use terminology such as "may," "will," "should," "could," "expect," "anticipate," "believe," "estimate," "plan," "project," "predict," "intend," "potential," "continue" or the negative of these or similar terms. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our historical experience and our present expectations or projections. These risks and uncertainties include, among others:*

- *Current and future general and industry economic trends and consumer confidence;*
- *The effectiveness of our marketing messages;*
- *The efficiency of our advertising and promotional efforts;*
- *Our ability to execute our Company-Controlled distribution strategy;*
- *Our ability to achieve and maintain acceptable levels of product and service quality, and acceptable product return and warranty claims rates;*
- *Our ability to continue to improve and expand our product line, and consumer acceptance of our products, product quality, innovation and brand image;*
- *Industry competition, the emergence of additional competitive products and the adequacy of our intellectual property rights to protect our products and brand from competitive or infringing activities;*
- *The potential for claims that our products, processes, advertising, or trademarks infringe the intellectual property rights of others;*
- *Availability of attractive and cost-effective consumer credit options;*
- *Our manufacturing processes with minimal levels of inventory, which may leave us vulnerable to shortages in supply;*
- *Our dependence on significant suppliers and third parties and our ability to maintain relationships with key suppliers or third-parties, including several sole-source suppliers or providers of services;*
- *Rising commodity costs and other inflationary pressures;*
- *Risks inherent in global sourcing activities, including tariffs and the potential for shortages in supply;*
- *Risks of disruption in the operation of either of our three main manufacturing facilities or three assembly facilities;*
- *Increasing government regulation;*
- *Pending or unforeseen litigation and the potential for adverse publicity associated with litigation;*
- *The adequacy of our and third-party information systems to meet the evolving needs of our business and existing and evolving risks and regulatory standards applicable to data privacy and security;*
- *The costs and potential disruptions to our business related to upgrading our information systems;*
- *The vulnerability of our and third-party information systems to attacks by hackers or other cyber threats that could compromise the security of our systems, result in a data breach or disrupt our business;*
- *Our ability to attract, retain and motivate qualified management, executive and other key employees, including qualified retail sales professionals and managers.*

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

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

- Overview
- Results of Operations
- Liquidity and Capital Resources
- Off-Balance-Sheet Arrangements and Contractual Obligations
- Critical Accounting Policies and Estimates
- Recent Accounting Pronouncements



## Overview

### Business Overview

Sleep Number is the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number beds and the leader in sleep innovation. We offer our customers high-quality, individualized sleep solutions and services, including a complete line of Sleep Number beds, bases and bedding accessories. We are also the pioneer and leader in biometric sleep innovation and tracking. Our proprietary SleepIQ technology, the operating system of the 360 smart bed, works with our proprietary algorithms and artificial intelligence to track user's sleep patterns and biometric changes. SleepIQ allows each bed to use the sleeper's own data to automatically and effortlessly adjust the bed's firmness, delivering proven quality sleep.

Our relentless focus on developing winning innovation for our customers is also helping us to deliver superior shareholder value, by: (i) increasing consumer demand; (ii) leveraging our business model; and (iii) deploying capital efficiently.

## Results of Operations

### Fiscal 2018 Summary

Financial highlights for fiscal 2018 were as follows:

- Net sales for 2018 increased 6% to \$1.53 billion, compared with \$1.44 billion in 2017. Company-Controlled comparable sales increased 3% and sales from 23 net new stores opened in the past 12 months added 3 percentage points (ppt.) of growth in 2018.
- Net sales accelerated in the back-half of 2018 after we transitioned to selling all Sleep Number 360 smart beds. In January 2017 at CES, Sleep Number introduced the Sleep Number 360 smart bed line, the most significant innovation in our 30-year history. In May 2017, we began selling our i7 and i10 smart beds. We launched a third smart bed model (the p6) in December 2017. In April 2018, we introduced the Sleep Number 360 p5 and i8 smart beds, our two most popular models. Our c4 and c2 bed models completed the transition in June and July 2018, respectively. The Sleep Number 360 smart bed won 13 awards at CES 2017, including being named the Best of Innovation Honoree in the Home Appliance category. It also received the 2018 Edison Silver Award for breakthrough product design and innovation in the Wellness Technology category. Sleep Number was ranked #1 in Customer Satisfaction with Mattresses by J.D. Power in 2018 and the best in six out of seven categories (support, durability, comfort, features, value and warranty).
- On a trailing twelve-month basis, 2018 net sales per store (for stores open at least one year, including online and phone sales) of \$2.7 million increased 3% from \$2.6 million in 2017.
- 2018 operating income of \$92 million increased 1% compared with the prior year despite significant gross margin costs associated with transitioning to all 360 smart beds, including excess freight, storage, product handling, operating inefficiencies and close-out sales of our prior line of beds. Our 2018 operating income rate decreased to 6.0% of net sales, compared with 6.4% of net sales in 2017. The increase in operating income was attributable to: (i) the 6% increase in net sales; (ii) the operating expense leverage resulting from the 6% increase in net sales and reduced corporate incentive compensation; partially offset by (iii) a 1.5 ppt. decrease in our gross profit rate primarily due to the product transition costs noted above.
- Net income in 2018 increased 7% to \$70 million compared with net income of \$65 million in 2017. Net income per diluted share increased 24% to \$1.92 versus \$1.55 per diluted share in 2017. Net income per diluted share in 2018 benefited from a lower income tax rate (Tax Cuts and Jobs Act) and a reduction in diluted average shares outstanding (share repurchases).
- We achieved a return on invested capital (ROIC) of 16.0% in 2018, compared with our high-single digit weighted average cost of capital.
- Cash provided by operating activities in 2018 decreased to \$132 million, compared with \$173 million for the prior year. Purchases of property and equipment for 2018 decreased to \$46 million, compared with \$60 million in 2017.
- We ended 2018 with \$200 million of borrowings under our revolving credit facility (as planned), compared with \$25 million at the end of 2017. We utilize our credit facility for general corporate purposes, to meet our seasonal working capital requirements and to repurchase our stock. In February 2019, we amended our revolving credit facility to increase our net aggregate availability to \$450 million.
- In 2018, we repurchased 8.3 million shares of our common stock at a cost of \$279 million (\$33.60 per share, based on trade date) under our Board-approved share repurchase program. As of December 29, 2018, the remaining authorization under our Board-approved share repurchase program was \$186 million.

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

	2018		2017		2016	
	\$	% of Net Sales	\$	% of Net Sales	\$	% of Net Sales
Net sales	\$ 1,531.6	100.0%	\$ 1,444.5	100.0%	\$ 1,311.3	100.0%
Cost of sales	603.6	39.4	547.2	37.9	501.1	38.2
Gross profit	928.0	60.6	897.3	62.1	810.2	61.8
Operating expenses:						
Sales and marketing	687.4	44.9	650.4	45.0	595.8	45.4
General and administrative	119.4	7.8	127.3	8.8	109.7	8.4
Research and development	28.8	1.9	27.8	1.9	28.0	2.1
Total operating expenses	835.5	54.6	805.4	55.8	733.5	55.9
Operating income	92.4	6.0	91.9	6.4	76.7	5.8
Other expense, net	5.9	0.4	0.9	0.1	0.7	0.1
Income before income taxes	86.5	5.6	91.0	6.3	75.9	5.8
Income tax expense	17.0	1.1	26.0	1.8	24.5	1.9
Net income	\$ 69.5	4.5%	\$ 65.1	4.5%	\$ 51.4	3.9%
Net income per share:						
Basic	\$ 1.97		\$ 1.58		\$ 1.11	
Diluted	\$ 1.92		\$ 1.55		\$ 1.10	
Weighted-average number of common shares:						
Basic	35.3		41.2		46.2	
Diluted	36.2		42.1		46.9	

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

	2018	2017	2016
Company-Controlled channel	99.1%	98.7%	97.7%
Wholesale/Other channel	0.9%	1.3%	2.3%
Total	100.0%	100.0%	100.0%

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

	Net Sales Increase/(Decrease)		
	2018	2017	2016
Retail comparable-store sales <sup>(1)</sup>	3%	3%	0%
Online and phone <sup>(1)</sup>	15%	16%	25%
Company-Controlled comparable sales change <sup>(1)</sup>	3%	4%	1%
Net opened/closed stores	3%	7%	7%
Total Company-Controlled channel	6%	11%	8%
Wholesale/Other channel	(26%)	(38%)	5%
Total net sales change	6%	10%	8%

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

Other sales metrics were as follows:

	2018	2017	2016
Average sales per store <sup>(1)</sup> (\$ in thousands)	\$ 2,707	\$ 2,618	\$ 2,555
Average sales per square foot <sup>(1)</sup>	\$ 998	\$ 995	\$ 1,013
Stores > \$1 million in net sales <sup>(2)</sup>	98%	98%	98%
Stores > \$2 million in net sales <sup>(2)</sup>	65%	61%	61%
Average revenue per mattress unit – Company-Controlled channel <sup>(3)</sup>	\$ 4,482	\$ 4,283	\$ 4,046

<sup>(1)</sup> Trailing-twelve months Company-Controlled comparable sales per store open at least one year.

<sup>(2)</sup> Trailing-twelve months for stores open at least one year (excludes online and phone sales).

<sup>(3)</sup> Represents Company-Controlled channel total net sales divided by Company-Controlled channel mattress units.

The number of retail stores operating during the last three years was as follows:

	2018	2017	2016
Beginning of period	556	540	488
Opened	53	36	72
Closed	(30)	(20)	(20)
End of period	579	556	540

## Comparison of 2018 and 2017

### *Net sales*

Net sales in 2018 increased 6% to \$1.53 billion, compared with \$1.44 billion in 2017. The sales increase was driven by a 3% comparable sales increase in our Company-Controlled channel and 3 percentage points (ppt.) of growth from sales generated by 23 net new retail stores opened in the past 12 months, partially offset by a decrease in Wholesale/Other channel sales.

The \$87 million net sales increase compared with the same period one year ago was primarily comprised of: (i) a \$47 million increase from Company-Controlled comparable sales; and (ii) a \$45 million increase resulting from net store openings; partially offset by (iii) a \$5 million decrease in Wholesale/Other channel sales. Company-Controlled mattress units increased 2% compared to the prior-year period. Average revenue per mattress unit in our Company-Controlled channel increased by 5%.

Net sales accelerated in the back-half of 2018 after we transitioned to selling all Sleep Number 360 smart beds. In January 2017 at CES, Sleep Number introduced the Sleep Number 360 smart bed line, the most significant innovation in our 30-year history. In May 2017, we began selling our i7 and i10 smart beds. We launched a third smart bed model (the p6) in December 2017. In April 2018, we introduced the Sleep Number 360 p5 and i8 smart beds, our two most popular models. Our c4 and c2 bed models completed the transition in June and July 2018, respectively. The Sleep Number 360 smart bed won 13 awards at CES 2017, including being named the Best of Innovation Honoree in the Home Appliance category. It also received the 2018 Edison Silver Award for breakthrough product design and innovation in the Wellness Technology category. Sleep Number was ranked #1 in Customer Satisfaction with Mattresses by J.D. Power in 2018 and the best in six out of seven categories (support, durability, comfort, features, value and warranty).

### *Gross profit*

Gross profit for 2018 of \$928 million increased by \$31 million, or 3% compared with \$897 million in 2017. The 2018 gross profit rate decreased to 60.6% of net sales, compared with 62.1% for the prior-year period. The 1.5 ppt. decrease in the gross profit rate was primarily due to: (i) significant costs associated with transitioning to all 360 smart beds, including excess freight, storage and product handling; (ii) inefficiencies related to operating two product lines for most of 2018; (iii) close-out sales of our prior line of beds; and (iv) a higher mix of lower-margin products, including our FlexFit adjustable bases. In addition, our gross profit rate can fluctuate from year to year due to a variety of other factors, including warranty expenses, sales return and exchange costs, and performance-based incentive compensation.

### *Sales and marketing expenses*

Sales and marketing expenses in 2018 increased \$37 million to \$687 million, compared with \$650 million last year. The sales and marketing expense rate decreased slightly to 44.9% of net sales compared with 45.0% for the same period one year ago due to: (i) the expense leverage from the 6% increase in net sales; partially offset by (ii) an increase in media and promotional expenses that drove additional customer traffic to our sales channels, including stores, online and phone.

### *General and administrative expenses*

General and administrative (G&A) expenses decreased \$8 million to \$119 million in 2018, compared with \$127 million in the prior year and decreased to 7.8% of net sales, compared with 8.8% of net sales one year ago. The \$8 million decrease in G&A expenses consisted of the following major components: (i) a \$7.0 million reduction in employee compensation resulting from a year-over-year decrease in Company-wide performance-based incentive compensation; and (ii) \$1.0 million decrease in miscellaneous other expenses. The G&A expense rate decreased by 1.0 ppt. in 2018 compared with the same period one year ago due to the decrease in expenses discussed above and the leveraging impact of the 6% net sales increase.

### *Other expense, net*

Other expense, net increased to \$6 million for the year ended December 29, 2018 compared with \$1 million for the same period one year ago. The increase was driven by increased interest expense from a higher average debt balance on our revolving line of credit and an increase in the weighted-average interest rate on borrowings outstanding.

### *Income tax expense*

Income tax expense was \$17 million for the year ended December 29, 2018, compared with \$26 million for the same period one year ago. The effective tax rate for the year ended December 29, 2018 decreased to 19.6% compared with 28.5% for 2017 reflecting the

changes associated with the “Tax Cuts and Jobs Act” (TCJA), including a reduction in the federal income tax rate to 21% from 35%. Tax expense for 2017 included a \$1.7 million provisional tax benefit from revaluing deferred taxes in accordance with the TCJA. Tax expense for 2018 included a \$2.9 million increase in the 2017 provisional tax benefit based on new information, including a tax planning analysis. Both periods' tax expense and effective tax rates included stock-based compensation excess tax benefits. See Note 12, *Income Taxes*, for further information.

## Comparison of 2017 and 2016

### *Net sales*

Net sales in 2017 increased 10% to \$1.44 billion, compared with \$1.31 billion for the same period one year ago. The sales increase was driven by a 4% comparable sales increase in our Company-Controlled channel and 7 percentage points (ppt.) of growth from sales generated by 16 net new retail stores opened in the past 12 months, partially offset by a decrease in Wholesale/Other channel sales.

The \$133 million net sales increase compared with the same period one year ago was primarily comprised of: (i) a \$91 million increase resulting from net store openings; and (ii) a \$54 million sales increase from Company-Controlled comparable sales; partially offset by (iii) a \$12 million decrease in Wholesale/Other channel sales. Company-Controlled mattress units increased 5% compared to the prior-year period. Average revenue per mattress unit in our Company-Controlled channel increased by 6%.

### *Gross profit*

Gross profit of \$897 million increased by \$87 million, or 11%, compared with \$810 million for the same period one year ago. The gross profit rate increased to 62.1% of net sales for 2017, compared with 61.8% for the prior-year period. The prior-year gross profit rate was negatively impacted by actions taken to manage operating issues associated with our ERP implementation during the first six months of 2016. The current-year gross profit rate improvement of 0.3 ppt. benefited from manufacturing and supply chain efficiencies, including lean initiatives, and lower sales return and exchange costs compared with the same period one year ago. In addition, our gross profit rate can fluctuate from year to year due to a variety of other factors, including warranty expenses, product mix changes and performance-based incentive compensation.

### *Sales and marketing expenses*

Sales and marketing expenses in 2017 increased 9% to \$650 million, compared with \$596 million last year. The sales and marketing expense rate decreased to 45.0% of net sales compared with 45.4% for the same period one year ago due to: (i) leveraging our media spending, which increased by 2% compared with the prior year, while net sales increased by 10%; partially offset by (ii) an increase in customer financing expenses, as a larger percentage of our customers took advantage of promotional financing offers; and (iii) an increase in selling compensation expense, including higher performance-based incentive compensation resulting from the strong 2017 net sales growth and financial performance.

### *General and administrative expenses*

General and administrative (G&A) expenses increased \$18 million to \$127 million in 2017, compared with \$110 million in the prior year and increased to 8.8% of net sales, compared with 8.4% of net sales one year ago. The \$18 million increase in G&A expenses consisted of the following major components: (i) a \$12.2 million increase in employee compensation, including a year-over-year increase in Company-wide performance-based incentive compensation, enhanced digital marketing capabilities, and salary and wage rate increases that were in line with inflation; (ii) \$2.6 million of additional depreciation and amortization expense, including incremental depreciation expense from capital expenditures that support the growth of our business; and (iii) a \$2.8 million increase in miscellaneous other expenses. The G&A expense rate increased by 0.4 ppt. in 2017 compared with the same period one year ago due to the increase in expenses discussed above, partially offset by the leveraging impact of the 10% net sales increase.

### *Research and development expenses*

Research and development expenses for the year ended December 30, 2017 were \$28 million, consistent with the same period one year ago. The expense rate for the year ended December 30, 2017 decreased to 1.9% of net sales compared to 2.1% of net sales for the prior year. The spending level is consistent with our long-term consumer innovation strategy.

### *Income tax expense*

Income tax expense was \$26 million for the year ended December 30, 2017, compared with \$25 million for the same period one year ago. The effective tax rate for the year ended December 30, 2017 was 28.5% compared with 32.3% for the prior-year period. The effective tax rates for 2016 reflects tax benefits associated with our acquisition of BAM Labs, Inc. including higher research and development tax credits. The effective tax rate for 2017 benefited from: (i) a provisional tax benefit resulting from revaluing deferred taxes in accordance with the "Tax Cuts and Jobs Act"; (ii) stock-based compensation excess tax benefits in accordance with new Financial Accounting Standards Board (FASB) guidance effective for us beginning in 2017; and (iii) the recognition of additional tax

credits. Under previous FASB guidance, stock-based compensation excess tax benefits or deficiencies were recognized in additional paid-in capital in our consolidated balance sheet.

## Liquidity and Capital Resources

Managing our liquidity and capital resources is an important part of our commitment to deliver superior shareholder value. Our primary sources of liquidity are cash flows provided by operating activities and cash available under our \$450 million revolving credit facility (increased in February 2019 from \$300 million). The cash generated from ongoing operations, and cash available under our revolving credit facility are expected to be adequate to maintain operations and fund anticipated expansion and strategic initiatives for the foreseeable future.

As of December 29, 2018, cash and cash equivalents totaled \$2 million compared with \$4 million as of December 30, 2017. The main components of the \$2 million change in cash and cash equivalents were \$132 million of cash provided by operating activities and \$182 million increase in short-term borrowings, which were more than offset by \$46 million of cash used to purchase property and equipment and \$272 million of cash used to repurchase our common stock (based on settlement, we repurchased \$282 million based on trade date).

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

	2018	2017
Total cash provided by (used in):		
Operating activities	\$ 131.5	\$ 172.6
Investing activities	(45.2)	(59.8)
Financing activities	(88.3)	(123.9)
Net decrease in cash and cash equivalents	<u>\$ (2.0)</u>	<u>\$ (11.1)</u>

Cash provided by operating activities for the fiscal year ended December 29, 2018 was \$132 million compared with \$173 million for the fiscal year ended December 30, 2017. Significant components of the \$41 million year-over-year change in cash from operating activities included: (i) a \$4 million increase in net income in 2018 compared with 2017; (ii) a \$32 million fluctuation in accounts payable with both years impacted by business changes and timing of payments; (iii) a \$22 million fluctuation in the amount accrued and timing of compensation and benefits payments due to year-over-year changes in Company-wide performance-based incentive compensation; and (iv) an \$18 million fluctuation in prepaid expenses and other assets with both years impacted by timing of rent payments and changes in business activities.

Net cash used in investing activities was \$45 million for the fiscal year ended December 29, 2018, compared with \$60 million for the same period one year ago. Investing activities for the current-year period included \$46 million of property and equipment purchases, compared with \$60 million for the same period last year.

Net cash used in financing activities was \$88 million for the fiscal year ended December 29, 2018, compared with net cash used in financing activities of \$124 million for the same period one year ago. During the fiscal year ended December 29, 2018, we repurchased \$272 million of our common stock (based on settlement, \$269 million under our Board-approved share repurchase program and \$3 million in connection with the vesting of employee restricted stock grants) compared with \$155 million during the same period one year ago. Short-term borrowings fluctuated by \$154 million compared with the prior-year period, reflecting \$200 million of borrowings under our revolving credit facility as of December 29, 2018, compared with \$25 million as of December 30, 2017. Changes in book overdrafts are included in the net change in short-term borrowings. Financing activities for both periods reflect the cash proceeds from the exercise of employee stock options.

Under our Board-approved share repurchase program, we repurchased 8.3 million shares at a cost of \$279 million (based on trade date, \$33.60 per share) during the fiscal year ended December 29, 2018. During 2017, we repurchased 5.4 million shares at a cost of \$150 million (\$28.00 per share). As of December 29, 2018, the remaining authorization under our Board-approved share repurchase program was \$186 million. There is no expiration date governing the period over which we can repurchase shares.

In February 2019, we amended our revolving credit facility (Credit Agreement) with a syndicate of banks (Lenders). The Credit Agreement provides a revolving credit facility for general corporate purposes with net aggregate availability of \$450 million. The Credit Agreement contains an accordion feature that allows us to increase the amount of the credit facility from \$450 million up to \$600 million in total availability, subject to Lenders' approval. The Credit Agreement matures in February 2024.

The Credit Agreement provides the Lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio and a minimum interest coverage ratio. Under the terms of the Credit Agreement we pay a variable rate of interest and a commitment fee based on our leverage ratio. As of December 29, 2018, we had \$200 million in outstanding borrowings and \$3 million in outstanding letters of credit. As



of December 29, 2018, the weighted-average interest rate on borrowings outstanding under the credit facility was 4.2%, and we were in compliance with all financial covenants.

We have an agreement with Synchrony Bank to offer qualified customers revolving credit arrangements to finance purchases from us (Synchrony Agreement). The Synchrony Agreement contains certain financial covenants, including a maximum leverage ratio and a minimum interest coverage ratio. As of December 29, 2018, we were in compliance with all financial covenants.

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

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

As of December 29, 2018, we were not involved in any unconsolidated special purpose entity transactions. Other than our operating leases and \$3 million in outstanding letters of credit, we do not have any off-balance-sheet financing. A summary of our operating lease obligations is included in the “Contractual Obligations” section (as follows). Additional information regarding our operating leases is available in Item 2, *Properties*, and Note 6, *Leases*, of the Notes to Consolidated Financial Statements, included in Item 8, *Financial Statements and Supplementary Data*, of this Annual Report on Form 10-K.

#### Contractual Obligations

The following table presents information regarding our contractual obligations as of December 29, 2018 (in thousands):

	Payments Due by Period <sup>(1)</sup>				
	Total	< 1 Year	1 - 3 Years	3 - 5 Years	> 5 Years
Operating leases <sup>(2)</sup>	\$ 478,068	\$ 78,337	\$ 139,822	\$ 110,591	\$ 149,318
Capital leases	1,023	139	278	258	348
Purchase commitments	31,923	31,923	—	—	—
Total	<u>\$ 511,014</u>	<u>\$ 110,399</u>	<u>\$ 140,100</u>	<u>\$ 110,849</u>	<u>\$ 149,666</u>

(1) Our unrecognized tax benefits, including interest and penalties, of \$4 million have not been included in the Contractual Obligations table as we are not able to determine a reasonable estimate of timing of the cash settlement with the respective taxing authorities.

(2) These amounts include the payments related to 46 lease commitments for future retail store locations. These lease commitments provide for minimum rentals over the next five to ten years, which if consummated based on current cost estimates, would approximate \$62 million over the initial lease term.

### Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). In connection with the preparation of our financial statements, we are required to make estimates and assumptions about future events and apply judgments that affect the reported amounts of assets, liabilities, sales, expenses and the related disclosure. Predicting future events is inherently an imprecise activity and as such requires the use of judgment. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Our significant accounting policies are discussed in Note 1, *Business and Summary of Significant Accounting Policies*, of the Notes to Consolidated Financial Statements, included in Item 8, *Financial Statements and Supplementary Data*, of this Annual Report on Form 10-K. Management believes the accounting policies discussed below are the most critical because they require management’s most difficult, subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain. Management has reviewed these critical accounting policies and estimates, and related disclosures with the Audit Committee of our Board.

Our critical accounting policies and estimates relate to stock-based compensation, goodwill and indefinite-lived intangible assets, warranty liabilities and revenue recognition.

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Stock-Based Compensation</b>		
<p>We have stock-based compensation plans, which include non-qualified stock options and stock awards.</p> <p>See Note 1, <i>Business and Summary of Significant Accounting Policies</i>, and Note 8, <i>Shareholders' Equity</i>, to the Notes to Consolidated Financial Statements, included in Item 8, <i>Financial Statements and Supplementary Data</i>, of this Annual Report on Form 10-K, for a complete discussion of our stock-based compensation programs.</p>	<p>Option-pricing models and generally accepted valuation techniques require management to make assumptions and to apply judgment to determine the fair value of our awards. These assumptions and judgments include estimating the volatility of our stock price, future employee forfeiture rates and future employee stock option exercise behaviors. Changes in these assumptions can materially affect the fair value estimates or future earnings adjustments.</p> <p>Performance-based stock awards require management to make assumptions regarding the likelihood of achieving performance targets.</p>	<p>We do not believe there is a reasonable likelihood that there will be a material change in the future estimates or assumptions we use to determine stock-based compensation expense. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to changes in stock-based compensation expense that could be material.</p> <p>In addition, if actual results are not consistent with the assumptions used, the stock-based compensation expense reported in our financial statements may not be representative of the actual economic cost of the stock-based compensation. Finally, if the actual forfeiture rates, or the actual achievement of performance targets, are not consistent with the assumptions used, we could experience future earnings adjustments.</p> <p>A 10% change in our stock-based compensation expense for the year ended December 29, 2018, would have affected net income by approximately \$0.9 million in 2018.</p>
<b>Goodwill and Indefinite-Lived Intangible Assets</b>		
<p>Goodwill represents the excess of cost over the fair value of identifiable net assets of businesses acquired. Our indefinite-lived intangible assets include trade names/trademarks.</p> <p>See Note 1, <i>Business and Summary of Significant Accounting Policies</i>, and Note 5, <i>Goodwill and Intangible Assets, Net</i>, to the Notes to Consolidated Financial Statements, included in Item 8, <i>Financial Statements and Supplementary Data</i>, of this Annual Report on Form 10-K, for a complete discussion of our goodwill and indefinite-lived intangible assets.</p>	<p>The determination of fair value involves uncertainties because it requires management to make assumptions and to apply judgment to estimate industry and economic factors and the profitability of future business strategies. Management's assumptions also include projected revenues, operating profit levels and discount rates, as well as consideration of any other factors that may indicate potential impairment.</p>	<p>In the fourth quarter of fiscal 2018, management completed its annual goodwill and other indefinite-lived intangible asset impairment tests and determined there was no impairment. We believe our assumptions and judgments used in estimating cash flows and determining fair value were reasonable. However, unexpected changes to such assumptions and judgments could affect our impairment analyses and future results of operations, including an impairment charge that could be material.</p>

Description	Judgments and Uncertainties	Effect if Actual Results Differ from Assumptions
<b>Warranty Liabilities</b>		
<p>We provide a limited warranty on most of the products we sell.</p> <p>See Note 1, <i>Business and Summary of Significant Accounting Policies</i>, to the Notes to Consolidated Financial Statements, included in Item 8, <i>Financial Statements and Supplementary Data</i>, of this Annual Report on Form 10-K, for a complete discussion of our warranty program and liabilities.</p>	<p>The majority of our warranty claims are incurred within the first year. However, our warranty liability contains uncertainties because our warranty obligations cover an extended period of time. A revision of estimated claim rates or the projected cost of materials and freight associated with sending replacement parts to customers could have a material adverse effect on future results of operations.</p>	<p>We have not made any material changes in our warranty liability assessment methodology during the past three fiscal years. We do not believe there is a reasonable likelihood that there will be a material change in the estimates or assumptions we use to calculate our warranty liability. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to losses or gains that could be material.</p> <p>A 10% change in our warranty liability at December 29, 2018, would have affected net income by approximately \$0.8 million in 2018.</p>
<b>Revenue Recognition</b>		
<p>Certain accounting estimates relating to revenue recognition contain uncertainty because they require management to make assumptions and to apply judgment regarding the effects of future events.</p> <p>See Note 1, <i>Business and Summary of Significant Accounting Policies</i>, and Note 9, <i>Revenue Recognition</i>, to the Notes to Consolidated Financial Statements, included in Item 8, <i>Financial Statements and Supplementary Data</i>, of this Annual Report on Form 10-K, for a complete discussion of our revenue recognition policies.</p>	<p>Our estimates of sales returns contain uncertainties as actual sales return rates may vary from expected rates, resulting in adjustments to net sales in future periods. These adjustments could have an adverse effect on future results of operations.</p>	<p>We have not made any material changes in the accounting methodology used to establish our sales returns allowance during the past three fiscal years. We do not believe there is a reasonable likelihood that there will be a material change in the estimates or assumptions we use to calculate our sales returns allowance. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to additional losses or gains in future periods.</p> <p>A 10% change in our sales returns allowance at December 29, 2018 would have affected net income by approximately \$1.5 million in 2018.</p>

**Recent Accounting Pronouncements**

See “Part II, Item 8. *Financial Statements and Supplementary Data – Notes to Consolidated Financial Statements – Note 1 – Business and Summary of Significant Accounting Policies - New Accounting Pronouncements*” for recent accounting pronouncements that may affect our financial reporting.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to changes in short-term market interest rates that will impact our net interest expense. If overall interest rates were one percentage point higher than current rates, our annual net income would decrease by \$1.5 million based on the \$200 million of borrowings under our revolving credit facility at December 29, 2018. We do not manage our interest-rate volatility risk through the use of derivative instruments.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of  
Sleep Number Corporation

#### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Sleep Number Corporation and subsidiaries (the “Company”, formerly Select Comfort Corporation) as of December 29, 2018 and December 30, 2017, the related consolidated statements of income, comprehensive income, shareholders’ equity, and cash flows for each of the three years in the period ended December 29, 2018, and the related notes and the schedule listed in the Index at Item 15 (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 29, 2018 and December 30, 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 29, 2018, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company’s internal control over financial reporting as of December 29, 2018, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2019, expressed an unqualified opinion on the Company’s internal control over financial reporting.

#### Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ DELOITTE & TOUCHE LLP

Minneapolis, MN  
February 26, 2019

We have served as the Company’s auditor since 2010

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of  
Sleep Number Corporation

### Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Sleep Number Corporation and subsidiaries (the “Company”, formerly Select Comfort Corporation) as of December 29, 2018, based on the criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 29, 2018, based on criteria established in Internal Control — Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements and financial statement schedule as of and for the year ended December 29, 2018, of the Company and our report dated February 26, 2019 expressed an unqualified opinion on those financial statements and financial statement schedule.

### Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management’s Report on Internal Control Over Financial Reporting*. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ DELOITTE & TOUCHE LLP

Minneapolis, Minnesota  
February 26, 2019

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Consolidated Balance Sheets  
December 29, 2018 and December 30, 2017  
(in thousands, except per share amounts)**

	2018	2017
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 1,612	\$ 3,651
Accounts receivable, net of allowance for doubtful accounts of \$699 and \$714, respectively	24,795	19,312
Inventories	84,882	84,298
Prepaid expenses	8,009	17,565
Other current assets	31,559	27,665
Total current assets	150,857	152,491
Non-current assets:		
Property and equipment, net	205,631	208,646
Goodwill and intangible assets, net	75,407	77,588
Deferred income taxes	-	2,625
Other non-current assets	38,243	30,484
Total assets	\$ 470,138	\$ 471,834
<b>Liabilities and Shareholders' (Deficit) Equity</b>		
Current liabilities:		
Borrowings under revolving credit facility	\$ 199,600	\$ 24,500
Accounts payable	144,781	129,194
Customer prepayments	27,066	27,767
Accrued sales returns	19,907	19,270
Compensation and benefits	27,700	34,602
Taxes and withholding	18,380	24,234
Other current liabilities	51,234	46,822
Total current liabilities	488,668	306,389
Non-current liabilities:		
Deferred income taxes	4,822	—
Other non-current liabilities	86,198	76,289
Total liabilities	579,688	382,678
Shareholders' (deficit) equity:		
Undesignated preferred stock; 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$0.01 par value; 142,500 shares authorized, 30,868 and 38,813 shares issued and outstanding, respectively	309	388
Additional paid-in capital	—	—
(Accumulated deficit) retained earnings	(109,859)	88,768
Total shareholders' (deficit) equity	(109,550)	89,156
Total liabilities and shareholders' (deficit) equity	\$ 470,138	\$ 471,834

See accompanying notes to consolidated financial statements.



**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Consolidated Statements of Operations**  
**Years ended December 29, 2018, December 30, 2017 and December 31, 2016**  
**(in thousands, except per share amounts)**

	2018	2017	2016
Net sales	\$ 1,531,575	\$ 1,444,497	\$ 1,311,291
Cost of sales	603,614	547,150	501,131
Gross profit	<u>927,961</u>	<u>897,347</u>	<u>810,160</u>
<b>Operating expenses:</b>			
Sales and marketing	687,380	650,357	595,845
General and administrative	119,378	127,269	109,674
Research and development	28,775	27,806	27,991
Total operating expenses	<u>835,533</u>	<u>805,432</u>	<u>733,510</u>
Operating income	92,428	91,915	76,650
Other expense, net	5,907	877	717
Income before income taxes	86,521	91,038	75,933
Income tax expense	16,982	25,961	24,516
Net income	<u>\$ 69,539</u>	<u>\$ 65,077</u>	<u>\$ 51,417</u>
<b>Basic net income per share:</b>			
Net income per share – basic	<u>\$ 1.97</u>	<u>\$ 1.58</u>	<u>\$ 1.11</u>
Weighted-average shares – basic	<u>35,256</u>	<u>41,212</u>	<u>46,154</u>
<b>Diluted net income per share:</b>			
Net income per share – diluted	<u>\$ 1.92</u>	<u>\$ 1.55</u>	<u>\$ 1.10</u>
Weighted-average shares – diluted	<u>36,165</u>	<u>42,085</u>	<u>46,902</u>

See accompanying notes to consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Consolidated Statements of Comprehensive Income**  
**Years ended December 29, 2018, December 30, 2017 and December 31, 2016**  
**(in thousands)**

	<u>2018</u>	<u>2017</u>	<u>2016</u>
Net income	\$ 69,539	\$ 65,077	\$ 51,417
Other comprehensive income – unrealized gain on available-for-sale marketable debt securities, net of income tax	—	—	14
Comprehensive income	<u>\$ 69,539</u>	<u>\$ 65,077</u>	<u>\$ 51,431</u>

See accompanying notes to consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Consolidated Statements of Shareholders' (Deficit) Equity  
Years ended December 29, 2018, December 30, 2017 and December 31, 2016  
(in thousands)**

	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income/(Loss)	Total
	Shares	Amount				
Balance at January 2, 2016	49,402	\$ 494	\$ —	\$ 221,859	\$ (14)	\$ 222,339
Net income	—	—	—	51,417	—	51,417
Other comprehensive income:						
Unrealized gain on available-for-sale marketable debt securities, net of tax	—	—	—	—	14	14
Exercise of common stock options	188	2	2,296	—	—	2,298
Tax effect from stock-based compensation	—	—	(1,016)	—	—	(1,016)
Stock-based compensation	11	—	11,961	—	—	11,961
Repurchases of common stock	(6,032)	(60)	(13,241)	(113,392)	—	(126,693)
Balance at December 31, 2016	43,569	\$ 436	\$ —	\$ 159,884	\$ —	\$ 160,320
Net income	—	—	—	65,077	—	65,077
Exercise of common stock options	222	2	3,239	—	—	3,241
Stock-based compensation	594	6	15,757	—	—	15,763
Repurchases of common stock	(5,572)	(56)	(18,996)	(136,193)	—	(155,245)
Balance at December 30, 2017	38,813	\$ 388	\$ —	\$ 88,768	\$ —	\$ 89,156
Net income	—	—	—	69,539	—	69,539
Exercise of common stock options	186	2	2,786	—	—	2,788
Stock-based compensation	271	3	11,409	—	—	11,412
Repurchases of common stock	(8,402)	(84)	(14,195)	(268,166)	—	(282,445)
Balance at December 29, 2018	30,868	\$ 309	\$ —	\$ (109,859)	\$ —	\$ (109,550)

See accompanying notes to consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Consolidated Statements of Cash Flows**  
**Years ended December 29, 2018, December 30, 2017 and December 31, 2016**  
**(in thousands)**

	2018	2017	2016
<b>Cash flows from operating activities:</b>			
Net income	\$ 69,539	\$ 65,077	\$ 51,417
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	61,966	61,291	57,172
Stock-based compensation	11,412	15,763	11,961
Net (gain) loss on disposals and impairments of assets	(51)	249	27
Excess tax benefits from stock-based compensation	—	—	(517)
Deferred income taxes	7,447	2,042	(1,640)
Changes in operating assets and liabilities:			
Accounts receivable	(5,483)	393	9,297
Inventories	(584)	(9,272)	11,574
Income taxes	(6,561)	1,697	25,119
Prepaid expenses and other assets	5,551	(12,405)	(2,195)
Accounts payable	(9,894)	21,779	(4,965)
Customer prepayments	(701)	1,560	(25,266)
Accrued compensation and benefits	(6,872)	15,398	2,808
Other taxes and withholding	707	(893)	2,723
Other accruals and liabilities	5,064	9,928	14,130
Net cash provided by operating activities	<u>131,540</u>	<u>172,607</u>	<u>151,645</u>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(45,515)	(59,829)	(57,852)
Proceeds from sales of property and equipment	272	36	92
Proceeds from marketable debt securities	—	—	21,053
Investments in marketable debt securities	—	—	(5,968)
Net cash used in investing activities	<u>(45,243)</u>	<u>(59,793)</u>	<u>(42,675)</u>
<b>Cash flows from financing activities:</b>			
Repurchases of common stock	(272,446)	(155,245)	(126,693)
Net increase in short-term borrowings	182,336	28,094	5,932
Proceeds from issuance of common stock	2,788	3,241	2,298
Debt issuance costs	(1,014)	(12)	(409)
Excess tax benefits from stock-based compensation	—	—	517
Net cash used in financing activities	<u>(88,336)</u>	<u>(123,922)</u>	<u>(118,355)</u>
Net decrease in cash, cash equivalents and restricted cash	(2,039)	(11,108)	(9,385)
Cash, cash equivalents and restricted cash, at beginning of period	3,651	14,759	24,144
Cash, cash equivalents and restricted cash, at end of period	<u>\$ 1,612</u>	<u>\$ 3,651</u>	<u>\$ 14,759</u>
<b>Non-cash financing transactions:</b>			
Change in unsettled repurchases of common stock	\$ 9,999	\$ —	\$ —
<b>Supplemental Disclosure of Cash Flow Information</b>			
Income taxes paid (received)	\$ 15,031	\$ 22,807	\$ (653)
Interest paid	\$ 5,086	\$ 753	\$ 608
Capital lease obligations incurred	\$ 943	\$ —	\$ —
Purchases of property and equipment included in accounts payable	\$ 12,123	\$ 3,964	\$ 5,517

See accompanying notes to consolidated financial statements.



**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**(1) Business and Summary of Significant Accounting Policies**

*Business & Basis of Presentation*

Sleep Number Corporation and our 100%-owned subsidiaries (Sleep Number or the Company) have a vertically integrated business model and are the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number beds which allows us to offer consumers high-quality, individualized sleep solutions and services. Sleep Number also offers FlexFit adjustable bases, and Sleep Number pillows, sheets and other bedding products.

We generate revenue by marketing our innovations to new and existing customers, and by selling products through two distribution channels. Our Company-Controlled channel, which includes retail, online and phone, sells directly to consumers. Our Wholesale/Other channel sells to and through selected retail and wholesale customers in the United States.

The consolidated financial statements include the accounts of Sleep Number Corporation and our subsidiaries. All significant intra-entity balances and transactions have been eliminated in consolidation.

*Fiscal Year*

Our fiscal year ends on the Saturday closest to December 31. Fiscal years and their respective fiscal year ends were as follows: fiscal 2018 ended December 29, 2018; fiscal 2017 ended December 30, 2017; and fiscal 2016 ended December 31, 2016. Fiscal years 2018, 2017 and 2016 each had 52 weeks.

*Use of Estimates in the Preparation of Financial Statements*

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

*Cash and Cash Equivalents*

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. The carrying value of these investments approximates fair value due to their short-term maturity. Our banking arrangements allow us to fund outstanding checks when presented to the financial institution for payment, resulting in book overdrafts. Book overdrafts are included in accounts payable in our consolidated balance sheets and in net increase in short-term borrowings in the financing activities section of our consolidated statements of cash flows. Book overdrafts totaled \$38 million and \$30 million at December 29, 2018 and December 30, 2017, respectively.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

*Accounts Receivable*

Accounts receivable are recorded net of an allowance for expected losses and consist primarily of receivables from third-party financiers for customer credit card purchases and receivables from wholesale customers. The allowance is recognized in an amount equal to anticipated future write-offs. We estimate future write-offs based on delinquencies, aging trends, industry risk trends, our historical experience and current trends. Account balances are charged off against the allowance when we believe it is probable the receivable will not be recovered.

*Inventories*

Inventories include materials, labor and overhead and are stated at the lower of cost or net realizable value. Cost is determined by the first-in, first-out method. We review inventory quantities on hand and record reserves for obsolescence based on historical selling prices, current market conditions and forecasted product demand, to reduce inventory to net realizable value.

*Property and Equipment*

Property and equipment, carried at cost, is depreciated using the straight-line method over the estimated useful lives of the assets. The cost and related accumulated depreciation of assets sold or retired is removed from the accounts with any resulting gain or loss included in net income in our consolidated statements of operations. Maintenance and repairs are charged to expense as incurred. Major renewals and betterments that extend useful life are capitalized.

Leasehold improvements are depreciated over the shorter of the estimated useful lives of the assets or the contractual term of the lease, with consideration of lease renewal options if renewal appears probable.

Estimated useful lives of our property and equipment by major asset category are as follows:

Leasehold improvements	5 to 15 years
Furniture and equipment	3 to 15 years
Production machinery	3 to 7 years
Computer equipment and software	3 to 12 years

*Goodwill and Intangible Assets, Net*

Goodwill is the difference between the purchase price of a company and the fair market value of the acquired company's net identifiable assets. Our intangible assets include developed technologies and trade names/trademarks. Definite-lived intangible assets are being amortized using the straight-line method over their estimated lives, ranging from 8-10 years.

*Asset Impairment Charges*

Long-lived Assets and Definite-lived Intangible Assets - we review our long-lived assets and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When evaluating long-lived assets for potential impairment, we first compare the carrying value of the asset to the estimated future cash flows (undiscounted and without interest charges - plus proceeds expected from disposition, if any). If the estimated undiscounted cash flows are less than the carrying value of the asset, we calculate an impairment loss. The impairment loss calculation compares the carrying value of the asset to the asset's estimated fair value. When we recognize an impairment loss, the carrying amount of the asset is reduced to estimated fair value based on discounted cash flows, quoted market prices or other valuation techniques. Assets to be disposed of are reported at the lower of the carrying amount of the asset or fair value less costs to sell. We review retail store assets for potential impairment based on historical cash flows, lease termination provisions and expected future retail store operating results. If we recognize an impairment loss for a depreciable long-lived asset, the adjusted carrying amount of the asset becomes its new cost basis and will be depreciated (amortized) over the remaining useful life of that asset.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

Goodwill and Indefinite-lived Intangible Assets - goodwill and indefinite-lived intangible assets are not amortized but are tested for impairment annually or when there are indicators of impairment using a fair value approach. The Financial Accounting Standards Board's (FASB) guidance allows us to perform either a quantitative assessment or a qualitative assessment before calculating the fair value of a reporting unit. We have elected to perform the quantitative assessment. The quantitative goodwill impairment test is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step reflects impairment, then the loss would be measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of fair value of the reporting unit over the fair value of all identified assets and liabilities. Fair value is determined using a market-based approach utilizing widely accepted valuation techniques, including quoted market prices and our market capitalization. Indefinite-lived intangible assets are assessed for impairment by comparing the carrying value of an asset with its fair value. If the carrying value exceeds fair value, an impairment loss is recognized in an amount equal to the excess. Based on our 2018 assessments, we determined there was no impairment.

*Warranty Liabilities*

We provide a limited warranty on most of the products we sell. The estimated warranty costs, which are expensed at the time of sale and included in cost of sales, are based on historical trends and warranty claim rates incurred by us and are adjusted for any current trends as appropriate. The majority of our warranty claims are incurred within the first year. Our warranty liability contains uncertainties because our warranty obligations cover an extended period of time and require management to make estimates for claim rates and the projected cost of materials and freight associated with sending replacement parts to customers. We regularly assess and adjust the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs.

We classify as non-current those estimated warranty costs expected to be paid out in greater than one year. The activity in the accrued warranty liabilities account was as follows (in thousands):

	2018	2017	2016
Balance at beginning of period	\$ 9,320	\$ 8,633	\$ 10,028
Additions charged to costs and expenses for current-year sales	12,385	12,214	9,034
Deductions from reserves	(11,743)	(10,752)	(10,016)
Changes in liability for pre-existing warranties during the current year, including expirations	427	(775)	(413)
Balance at end of period	<u>\$ 10,389</u>	<u>\$ 9,320</u>	<u>\$ 8,633</u>

*Fair Value Measurements*

Fair value measurements are reported in one of three levels based on the lowest level of significant input used:

- Level 1 – observable inputs such as quoted prices in active markets;
- Level 2 – inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
- Level 3 – unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

We generally estimate fair value of long-lived assets, including our retail stores, using the income approach, which we base on estimated future cash flows (discounted and with interest charges). The inputs used to determine fair value relate primarily to future assumptions regarding sales volumes, gross profit rates, retail store operating expenses and applicable probability weightings regarding future alternative uses. These inputs are categorized as Level 3 inputs under the fair value measurements guidance. The inputs used represent management's assumptions about what information market participants would use in pricing the assets and are based upon the best information available at the balance sheet date.

*Dividends*

We are not restricted from paying cash dividends under our credit agreement so long as we are not in default under the credit agreement, our leverage ratio (as defined in our credit agreement) after giving effect to such restricted payments (as defined in our credit agreement) would not exceed 3.75:1.00 and no default or event of default (as defined in our credit agreement) would result therefrom. However, we have not historically paid, and have no current plans to pay, cash dividends on our common stock.



**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

*Revenue Recognition*

We recognize revenue when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Revenue recognized excludes sales taxes. Amounts billed to customers for delivery and setup are included in net sales. For most products, we receive payment before or promptly after, the products or services are delivered to the customer.

Our beds sold with SleepIQ technology contain multiple performance obligations including the bed and SleepIQ hardware and software. We analyze our multiple performance obligation(s) to determine whether they are distinct and can be separated or whether they must be accounted for as a single performance obligation. We determined that the beds sold with the SleepIQ technology have two performance obligations consisting of: (i) the bed; and (ii) SleepIQ hardware and software. SleepIQ hardware and software are not separable as the hardware and related software are not sold separately and the software is integral to the hardware's functionality. We determine the transaction price for multiple performance obligations based on their relative standalone selling prices. The performance obligation related to the bed is satisfied at a point in time. The performance obligation related to SleepIQ technology is satisfied over time based on the ongoing access and usage by the customer of software essential to the functionality of SleepIQ technology. The deferred revenue and costs related to SleepIQ technology are recognized on a straight-line basis over the product's estimated life of four years because our inputs are generally expended evenly throughout the performance period.

See Note 9, *Revenue Recognition*, for additional information on revenue recognition.

*Cost of Sales, Sales and Marketing, General and Administrative (G&A) and Research & Development (R&D) Expenses*

The following tables summarize the primary costs classified in each major expense category (the classification of which may vary within our industry):

**Cost of Sales**

- Costs associated with purchasing, manufacturing, shipping, handling and delivering our products to our retail stores and customers;
- Physical inventory losses, scrap and obsolescence;
- Related occupancy and depreciation expenses;
- Costs associated with returns and exchanges; and
- Estimated costs to service customer warranty claims.

**Sales & Marketing**

- Advertising, marketing and media production;
- Marketing and selling materials such as brochures, videos, websites, customer mailings and in-store signage;
- Payroll and benefits for sales and customer service staff;
- Store occupancy costs;
- Store depreciation expense;
- Credit card processing fees; and
- Promotional financing costs.

**G&A**

- Payroll and benefit costs for corporate employees, including information technology, legal, human resources, finance, sales and marketing administration, investor relations and risk management;
- Occupancy costs of corporate facilities;
- Depreciation related to corporate assets;
- Information hardware, software and maintenance;
- Insurance;
- Investor relations costs; and
- Other overhead costs.

**R&D(1)**

- Internal labor and benefits related to research and development activities;
- Outside consulting services related to research and development activities; and
- Testing equipment related to research and development activities.

(1) Costs incurred in connection with R&D are charged to expense as incurred.

*Operating Leases*

We lease our retail, office and manufacturing space under operating leases which, in addition to the minimum lease payments, may require payment of a proportionate share of the real estate taxes and certain building operating expenses. Our retail store leases generally provide for an initial lease term of five to 10 years. In addition, our mall-based retail store leases may require payment of

contingent rent based on net sales in excess of certain thresholds. Certain retail store leases may contain options to extend the term of the original lease.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

Minimum rent expense, which excludes contingent rents, is recognized on a straight-line basis over the lease term, after consideration of rent escalations and rent holidays. We record any difference between the straight-line rent amounts and amounts payable under the leases as part of deferred rent, in other current liabilities or other non-current liabilities, as appropriate. The lease term for purposes of the calculation begins on the earlier of the lease commencement date or the date we take possession of the property. During lease renewal negotiations that extend beyond the original lease term, we estimate straight-line rent expense based on current market conditions. Deferred rent is included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred rent included in:		
Other current liabilities	\$ 1,408	\$ 1,447
Other non-current liabilities	11,452	9,555
	<u>\$ 12,860</u>	<u>\$ 11,002</u>

Contingent rent expense is recorded when it is probable the expense has been incurred and the amount is reasonably estimable. Future payments for real estate taxes and certain building operating expenses for which we are obligated are not included in minimum lease payments.

Leasehold improvements that are funded by landlord incentives or allowances under an operating lease are recorded as deferred lease incentives, in other current liabilities or other non-current liabilities, as appropriate and amortized as reductions to rent expense over the lease term. Deferred lease incentives are included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred lease incentives included in:		
Other current liabilities	\$ 2,842	\$ 2,784
Other non-current liabilities	11,930	9,688
	<u>\$ 14,772</u>	<u>\$ 12,472</u>

*Pre-Opening Costs*

Costs associated with the start-up and promotion of new retail store openings are expensed as incurred.

*Advertising Costs*

We incur advertising costs associated with print, digital and broadcast advertisements. Advertising costs are charged to expense when the ad first runs. Advertising expense was \$210 million, \$194 million and \$190 million in 2018, 2017 and 2016, respectively. Advertising costs deferred and included in prepaid expenses in our consolidated balance sheets were \$2 million and \$2 million as of December 29, 2018 and December 30, 2017, respectively.

*Insurance*

We are self-insured for certain losses related to health and workers' compensation claims, although we obtain third-party insurance coverage to limit exposure to these claims. We estimate our self-insured liabilities using a number of factors including historical claims experience and analysis of incurred but not reported claims. Our self-insurance liability was \$8 million and \$9 million at December 29, 2018 and December 30, 2017, respectively. At December 29, 2018, and December 30, 2017, \$5 million and \$6 million, respectively, were included in compensation and benefits in our consolidated balance sheets and \$3 million and \$3 million, respectively, were included in other non-current liabilities in our consolidated balance sheets.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

*Software Capitalization*

For software developed or obtained for internal use, we capitalize direct external costs associated with developing or obtaining internal-use software. In addition, we capitalize certain payroll and payroll-related costs for employees who are directly involved with the development of such applications. Capitalized costs related to internal-use software under development are treated as construction-in-progress until the program, feature or functionality is ready for its intended use, at which time depreciation commences. We expense any data conversion or training costs as incurred.

We capitalize costs incurred with the implementation of a cloud computing arrangement, that is a service contract, consistent with our policy for software developed or obtained for internal use. The capitalized implementation costs of cloud computing arrangements are expensed over the term of the cloud computing arrangement in the same line item in the statement of operations as the associated fees.

*Stock-Based Compensation*

We compensate officers, directors and key employees with stock-based compensation under stock plans approved by our shareholders and administered under the supervision of our Board of Directors (Board). At December 29, 2018, a total of 2.3 million shares were available for future grant. These plans include non-qualified stock options and stock awards.

We record stock-based compensation expense based on the award's fair value at the grant date and the awards that are expected to vest. We recognize stock-based compensation expense over the period during which an employee is required to provide services in exchange for the award. We reduce compensation expense by estimated forfeitures. Forfeitures are estimated using historical experience and projected employee turnover. Beginning in 2017, we include, as part of cash flows from operating activities, the benefit of tax deductions in excess of recognized stock-based compensation expense. In addition, excess tax benefits or deficiencies that in prior years were recorded in additional paid-in capital are now recorded as discrete adjustments to income tax expense.

Stock Options - stock option awards are granted at exercise prices equal to the closing price of our stock on the grant date. Generally, options vest proportionally over three years and expire after 10 years. Compensation expense is recognized ratably over the vesting period.

We determine the fair value of stock options granted and the resulting compensation expense at the date-of-grant using the Black-Scholes-Merton option-pricing model. Descriptions of significant assumptions used to estimate the expected volatility, risk-free interest rate and expected term are as follows:

*Expected Volatility* – expected volatility was determined based on implied volatility of our traded options and historical volatility of our stock price.

*Risk-Free Interest Rate* – the risk-free interest rate was based on the implied yield available on U.S. Treasury zero-coupon issues at the date of grant with a term equal to the expected term.

*Expected Term* – expected term represents the period that our stock-based awards are expected to be outstanding and was determined based on historical experience and anticipated future exercise patterns, giving consideration to the contractual terms of unexercised stock-based awards.

Stock Awards - we issue stock awards to certain employees in conjunction with our stock-based compensation plan. The stock awards generally vest over three years based on continued employment (time-based). Compensation expense related to stock awards, except for stock awards with a market condition, is determined on the grant date based on the publicly quoted closing price of our common stock and is charged to earnings on a straight-line basis over the vesting period. Stock awards with a market condition are valued using a Monte Carlo simulation model. The significant assumptions used to estimate the expected volatility and risk-free interest rate are similar to those described above in *Stock Options*.

Certain time-based stock awards have a performance condition (performance-based). The final number of shares earned for performance-based stock awards and the related compensation expense is adjusted up or down to the extent the performance target is met as of the last day of the performance period. The actual number of shares that will ultimately be awarded range from 0% - 200% of the targeted amount for the 2018, 2017 and 2016 awards. We evaluate the likelihood of meeting the performance targets at each reporting period and adjust compensation expense, on a cumulative basis, based on the expected achievement of each of the performance targets. For performance-based stock awards granted in 2018, 2017 and 2016, the performance targets are based on





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growth in net sales and in operating profit, and the performance periods are fiscal 2018 through 2020, 2017 through 2019, and fiscal 2016 through 2018, respectively.

See Note 8, *Shareholders' Equity*, for additional information on stock-based compensation.

*Income Taxes*

We recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is established for any portion of deferred tax assets that are not considered more likely than not to be realized. We evaluate all available positive and negative evidence, including our forecast of future taxable income, to assess the need for a valuation allowance on our deferred tax assets.

We record a liability for unrecognized tax benefits from uncertain tax positions taken, or expected to be taken, in our tax returns. We follow a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely of being realized upon ultimate settlement. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments, and may not accurately forecast actual outcomes.

We classify net interest and penalties related to income taxes as a component of income tax expense in our consolidated statements of operations.

*Net Income Per Share*

We calculate basic net income per share by dividing net income by the weighted-average number of common shares outstanding during the period. We calculate diluted net income per share based on the weighted-average number of common shares outstanding adjusted by the number of potentially dilutive common shares as determined by the treasury stock method. Potentially dilutive shares consist of stock options and stock awards.

*Sources of Supply*

We currently obtain materials and components used to produce our beds from outside sources. As a result, we are dependent upon suppliers that in some instances, are our sole source of supply. We are continuing our efforts to dual-source key components. The failure of one or more of our suppliers to provide us with materials or components on a timely basis could significantly impact our consolidated results of operations and net income per share. We believe we can obtain these raw materials and components from other sources of supply in the ordinary course of business, although an unexpected loss of supply over a short period of time may not allow us to replace these sources in the ordinary course of business.

*New Accounting Pronouncements*

Recently Adopted Accounting Guidance

*Adoption of ASC Topic 230, Restricted Cash*

Effective December 31, 2017, we adopted ASC Topic 230, *Restricted Cash*, which requires amounts generally described as restricted cash and restricted cash equivalents be included with cash and cash equivalents when reconciling the total beginning and ending amounts for the periods shown on the statement of cash flows. Amounts for prior periods have been retrospectively adjusted to conform to the current period presentation.



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*Adoption of ASC Topic 606, Revenue from Contracts with Customers*

On December 31, 2017, we adopted ASC Topic 606, *Revenue from Contracts with Customers*, using the modified retrospective method applied to those contracts which were not completed as of December 30, 2017. Results for reporting periods beginning after December 30, 2017 are presented under the new guidance, while prior period amounts are not restated.

The cumulative effect of the changes made to our consolidated balance sheet as of December 31, 2017 resulting from the adoption of the new revenue guidance was not material and did not impact opening retained earnings. The impact on the timing of net sales for 2018, as a result of applying the new guidance, was not material.

Practical expedients and exemptions permissible under ASC Topic 606 that we elected are as follows: we do not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less; and (ii) contracts for which we recognize revenue at the amount to which we have the right to invoice for services performed.

See Note 9, *Revenue Recognition*, for further details regarding our revenue recognition policy.

Accounting Guidance Issued but Not Yet Adopted as of December 29, 2018

We are the lessee under various agreements for facilities, equipment and vehicles that are currently accounted for as operating leases. In February 2016, the FASB issued ASC Topic 842, *Leases*, that requires most leases to be recognized on the balance sheet and expands disclosure requirements. Leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement.

This new guidance is effective for us beginning December 30, 2018 (fiscal 2019). The provisions of this new guidance require a modified-retrospective approach, with elective reliefs. The new guidance will apply to all leases existing at the date of initial application. We have the option to choose either (1) the effective date, or (2) the beginning of the earliest comparative period presented in the financial statements as the date of initial application. We expect to adopt the new standard using the effective date option.

The new guidance establishes a right-of-use model (ROU) that requires a lessee to recognize a ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. On adoption, we expect to recognize additional lease liabilities and corresponding ROU assets of approximately \$300 million based on the present value of the remaining minimum rental payments for existing operating leases.

The new guidance provides a number of optional practical expedients in transition. We expect to elect the package of practical expedients, which permits us to not reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We do not expect to elect the use of hindsight. The new guidance also provides practical expedients for an entity's ongoing accounting. We expect to elect the short-term lease recognition exemption for all leases that qualify, primarily small equipment leases. This means, for those leases that qualify, we will not recognize ROU assets or lease liabilities, and this includes not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also expect to elect the practical expedient option to not separate lease and non-lease components for all of our leases.

We will be providing significant new disclosures about our leasing activities and have implemented a new lease accounting system in connection with the adoption. We also expect that adoption of the new guidance will require changes to our internal controls over financial reporting. We continue to evaluate the effect of the new standard on our consolidated financial statements and related disclosures.

**(2) Fair Value Measurements**

At December 29, 2018 and December 30, 2017, we had \$6 million and \$4 million, respectively, of debt and equity securities that fund our deferred compensation plan and are classified in other non-current assets. We also had corresponding deferred compensation plan liabilities of \$6 million and \$4 million at December 29, 2018 and December 30, 2017, respectively, which are included in other non-current liabilities. The majority of the debt and equity securities are Level 1 as they trade with sufficient frequency and volume to enable us to obtain pricing information on an ongoing basis. Unrealized gains/(losses) on the debt and equity securities offset those associated with the corresponding deferred compensation plan liabilities.



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**(3) Inventories**

Inventories consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Raw materials	\$ 4,549	\$ 6,577
Work in progress	3	170
Finished goods	80,330	77,551
	<u>\$ 84,882</u>	<u>\$ 84,298</u>

Finished goods inventories consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Finished beds, including retail display beds and deliveries in-transit to those customers who have utilized home delivery services	\$ 25,313	\$ 24,825
Finished components that were ready for assembly for the completion of beds	38,665	34,709
Retail accessories	16,352	18,017
	<u>\$ 80,330</u>	<u>\$ 77,551</u>

**(4) Property and Equipment**

Property and equipment consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Land	\$ 1,999	\$ 1,999
Leasehold improvements	109,722	102,495
Furniture and equipment	108,841	94,265
Production machinery, computer equipment and software	238,659	224,758
Construction in progress	10,385	5,661
Less: Accumulated depreciation and amortization	(263,975)	(220,532)
	<u>\$ 205,631</u>	<u>\$ 208,646</u>

**(5) Goodwill and Intangible Assets, Net**

*Goodwill and Indefinite-Lived Intangible Assets*

Goodwill was \$64 million at December 29, 2018 and December 30, 2017. Indefinite-lived trade name/trademarks totaled \$1.4 million at December 29, 2018 and December 30, 2017.

*Definite-Lived Intangible Assets*

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

	<b>December 29, 2018</b>		<b>December 30, 2017</b>	
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>
Developed technologies	\$ 18,851	\$ 8,886	\$ 18,851	\$ 6,705
Trade names/trademarks	101	101	101	101
	<u>\$ 18,952</u>	<u>\$ 8,987</u>	<u>\$ 18,952</u>	<u>\$ 6,806</u>



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Amortization expense in 2018, 2017 and 2016 for definite-lived intangible assets was \$2 million, \$3 million and \$2 million, respectively. Annual amortization for definite-lived intangible assets for subsequent years are as follows (in thousands):

2019	\$	2,180
2020		2,213
2021		2,181
2022		2,181
2023		1,210
Thereafter		—
Total future amortization for definite-lived intangible assets	<u>\$</u>	<u>9,965</u>

**(6) Leases**

Rent expense was as follows (in thousands):

Facility Rents:	<u>2018</u>	<u>2017</u>	<u>2016</u>
Minimum rents	\$ 71,851	\$ 66,239	\$ 59,002
Contingent rents	1,847	2,845	3,099
Total	<u>\$ 73,698</u>	<u>\$ 69,084</u>	<u>\$ 62,101</u>
Equipment Rents	<u>\$ 5,692</u>	<u>\$ 4,935</u>	<u>\$ 5,316</u>

The aggregate minimum rental commitments under operating leases for subsequent years are as follows (in thousands):

2019	\$	78,337
2020		73,331
2021		66,491
2022		59,515
2023		51,076
Thereafter		149,318
Total future minimum lease payments	<u>\$</u>	<u>478,068</u>

We also had \$0.9 million in capital lease commitments at December 29, 2018.



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**Notes to Consolidated Financial Statements - (continued)**

**(7) Credit Agreement**

Our revolving credit facility as of December 29, 2018, had a net aggregate availability of \$300 million. The credit facility is for general corporate purposes, to meet our seasonal working capital requirements and to repurchase our stock. The credit agreement provides the lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio and a minimum interest coverage ratio. Under the terms of the credit agreement we pay a variable rate of interest and a commitment fee based on our leverage ratio. We were in compliance with all financial covenants as of December 29, 2018.

The following tables summarizes our borrowings under the credit facility (\$ in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Outstanding borrowings	\$ 199,600	\$ 24,500
Outstanding letters of credit	\$ 3,497	\$ 3,150
Additional borrowing capacity	\$ 96,903	\$ 125,500
Weighted-average interest rate	4.2%	3.1%

In February 2019, we amended our revolving credit facility (Credit Agreement, as amended) to increase our net aggregate availability from \$300 million to \$450 million. We maintained the accordion feature which allows us to increase the amount of the credit facility from \$450 million to \$600 million, subject to Lenders' approval. The Credit Agreement, as amended, matures in February 2024. There were no other significant changes to the credit facility's terms and conditions.

**(8) Shareholders' Equity**

**Stock-Based Compensation Expense**

Total stock-based compensation expense was as follows (in thousands):

	<b>2018</b>	<b>2017</b>	<b>2016</b>
Stock options	\$ 2,482	\$ 2,344	\$ 2,281
Stock awards	8,930	13,419	9,680
Total stock-based compensation expense <sup>(1)</sup>	11,412	15,763	11,961
Income tax benefit	2,750	5,249	3,947
Total stock-based compensation expense, net of tax	<u>\$ 8,662</u>	<u>\$ 10,514</u>	<u>\$ 8,014</u>

<sup>(1)</sup> Decrease in 2018 stock-based compensation expense reflects the cumulative impact of the change in the expected achievements of certain performance targets.

*Stock Options*

A summary of our stock option activity was as follows (in thousands, except per share amounts and years):

	<b>Stock Options</b>	<b>Weighted- Average Exercise Price per Share</b>	<b>Weighted- Average Remaining Contractual Term (years)</b>	<b>Aggregate Intrinsic Value <sup>(1)</sup></b>
Balance at December 30, 2017	1,355	\$ 20.23	6.2	\$ 23,515
Granted	170	33.72		
Exercised	(186)	14.96		
Canceled/Forfeited	(17)	26.43		
Outstanding at December 29, 2018	<u>1,322</u>	\$ 22.64	5.9	\$ 13,009
Exercisable at December 29, 2018	898	\$ 20.76	4.8	\$ 10,332
Vested and expected to vest at December 29, 2018	1,295	\$ 22.55	5.9	\$ 12,841

<sup>(1)</sup> Aggregate intrinsic value includes only those options where the current share price is equal to or greater than the share price on the date of grant.



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Other information pertaining to options was as follows (in thousands, except per share amounts):

	2018	2017	2016
Weighted-average grant date fair value of stock options granted	\$ 13.96	\$ 10.33	\$ 8.85
Total intrinsic value (at exercise) of stock options exercised	\$ 3,459	\$ 3,586	\$ 2,088

Cash received from the exercise of stock options for the fiscal year ended December 29, 2018 was \$2.8 million. Our tax benefit related to the exercise of stock options for the fiscal year ended December 29, 2018 was \$0.8 million.

At December 29, 2018, there was \$2.7 million of total stock option compensation expense related to non-vested stock options not yet recognized, which is expected to be recognized over a weighted-average period of 1.7 years.

During 2016, 30,500 market-based stock options were granted and had a weighted-average grant date fair value of \$10.25 per option. These options are reflected in the stock option activity table above. There were no market-based stock options granted in 2018 or 2017. The assumptions used to calculate the fair value of market-based stock options granted using the Monte Carlo simulation model were as follows:

<b>Valuation Assumptions</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Expected dividend yield	NA	NA	0%
Expected volatility	NA	NA	50%
Risk-free interest rate	NA	NA	1.8%

Except for the market-based stock options discussed above, the fair value of options granted was calculated using the Black-Scholes-Merton option-pricing model.

The assumptions used to calculate the fair value of options granted using the Black-Scholes-Merton option-pricing model were as follows:

<b>Valuation Assumptions</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Expected dividend yield	0%	0%	0%
Expected volatility	43%	46%	50%
Risk-free interest rate	2.7%	2.0%	1.4%
Expected term (in years)	5.0	5.1	5.2

*Stock Awards*

Stock award activity was as follows (in thousands, except per share amounts):

	<b>Time- Based Stock Awards</b>	<b>Weighted- Average Grant Date Fair Value</b>	<b>Performance- and Market- Based Stock Awards</b>	<b>Weighted- Average Grant Date Fair Value</b>
Outstanding at December 30, 2017	395	\$ 23.77	1,063	\$ 23.41
Granted	222	33.53	200	34.46
Vested	(172)	24.28	(151)	33.34
Canceled/Forfeited	(62)	26.76	(51)	27.44
Outstanding at December 29, 2018	<u>383</u>	<u>\$ 28.66</u>	<u>1,061</u>	<u>\$ 23.91</u>

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At December 29, 2018, there was \$4.2 million of unrecognized compensation expense related to non-vested time-based stock awards, which is expected to be recognized over a weighted-average period of 1.8 years and \$12.4 million of unrecognized compensation expense related to non-vested performance-based and market-based stock awards, which is expected to be recognized over a weighted-average period of 1.9 years.

During 2018, 5,027 performance-based stock awards with a market condition were granted and had a weighted-average grant date fair value of \$35.97 per award. These stock awards are reflected in the "Performance- and Market-Based Stock Awards" column in the stock award activity table above. During 2017, 270,895 performance-based stock awards with a market condition were granted and had a weighted-average grant date fair value of \$22.40 per award. There were no market-based stock awards granted in 2016.

The assumptions used to calculate the fair value of the 2018 and 2017 performance-based stock awards with a market condition, using the Monte Carlo simulation model, were as follows:

<b>Valuation Assumptions</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Expected dividend yield	0%	0%	NA
Expected volatility	43%	46%	NA
Risk-free interest rate	2.6%	1.5%	NA

**Repurchases of Common Stock**

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

	<b>2018</b>	<b>2017</b>	<b>2016</b>
Amount repurchased under Board-approved share repurchase program	\$ 279,101	\$ 150,000	\$ 125,000
Amount repurchased in connection with the vesting of employee restricted stock grants	3,344	5,245	1,693
<b>Total amount repurchased</b>	<b>\$ 282,445</b>	<b>\$ 155,245</b>	<b>\$ 126,693</b>

As of December 29, 2018, the remaining authorization under our Board-approved share repurchase program was \$186 million. There is no expiration date governing the period over which we can repurchase shares. Any repurchased shares are constructively retired and returned to an unissued status. The cost of stock repurchases is first charged to additional paid-in-capital. Once additional paid-in capital is reduced to zero, any additional amounts are charged to retained earnings.

**Net Income per Common Share**

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

	<b>2018</b>	<b>2017</b>	<b>2016</b>
Net income	\$ 69,539	\$ 65,077	\$ 51,417
<b>Reconciliation of weighted-average shares outstanding:</b>			
Basic weighted-average shares outstanding	35,256	41,212	46,154
Dilutive effect of stock-based awards	909	873	748
Diluted weighted-average shares outstanding	36,165	42,085	46,902
Net income per share – basic	\$ 1.97	\$ 1.58	\$ 1.11
Net income per share – diluted	\$ 1.92	\$ 1.55	\$ 1.10

Additional potential dilutive stock options totaling 0.2 million, 0.4 million and 0.6 million for 2018, 2017 and 2016, respectively, have been excluded from our diluted net income per share calculations because these securities' exercise prices were anti-dilutive (e.g., greater than the average market price of our common stock).



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**Notes to Consolidated Financial Statements - (continued)**

**(9) Revenue Recognition**

Deferred contract liabilities and deferred contract assets are included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
<b>Deferred Contract Liabilities included in:</b>		
Other current liabilities	\$ 32,395	\$ 29,534
Other non-current liabilities	42,194	43,159
	\$ 74,589	\$ 72,693
	<b>December 29, 2018</b>	<b>December 30, 2017</b>
<b>Deferred Contract Assets included in:</b>		
Other current assets	\$ 20,553	\$ 17,208
Other non-current assets	29,456	25,772
	\$ 50,009	\$ 42,980

During the year ended December 29, 2018, we recognized revenue of \$30 million that was included in the deferred contract liability balance at the beginning of the year.

Revenue from goods and services transferred to customers at a point in time accounted for approximately 98% of our revenues for 2018 and 2017.

Net sales from each of our channels was as follows (in thousands):

	<b>2018</b>	<b>2017</b>
Retail	\$ 1,401,991	\$ 1,324,690
Online and phone	115,831	101,145
Company-Controlled channel	1,517,822	1,425,835
Wholesale/Other channel	13,753	18,662
Total	\$ 1,531,575	\$ 1,444,497

*Obligation for Sales Returns*

We accept sales returns during a 100-night trial period. Accrued sales returns represent a refund liability for the amount of consideration that we do not expect to be entitled to because it will be refunded to customers. The refund liability estimate is based on historical return rates and is adjusted for any current trends as appropriate. Each reporting period we remeasure the liability to reflect changes in the estimate, with a corresponding adjustment to net sales. The activity in the sales returns liability account for 2018 and 2017 was as follows (in thousands):

	<b>2018</b>	<b>2017</b>
Balance at beginning of year	\$ 19,270	\$ 15,222
Additions that reduce net sales	79,326	77,226
Deduction from reserves	(78,689)	(73,178)
Balance at end of period	\$ 19,907	\$ 19,270

**(10) Profit Sharing and 401(k) Plan**

Under our profit sharing and 401(k) plan, eligible employees may defer up to 50% of their compensation on a pre-tax basis, subject to Internal Revenue Service limitations. Each year, we may make a discretionary contribution equal to a percentage of the employee's contribution. During 2018, 2017 and 2016, our contributions, net of forfeitures, were \$5 million, \$5 million and \$5 million, respectively.



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**(11) Other Expense, Net**

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

	2018	2017	2016
Interest expense	\$ 5,911	\$ 975	\$ 811
Interest income	(4)	(98)	(94)
Other expense, net	<u>\$ 5,907</u>	<u>\$ 877</u>	<u>\$ 717</u>

**(12) Income Taxes**

Income tax expense consisted of the following (in thousands):

	2018	2017	2016
<b>Current:</b>			
Federal	\$ 12,483	\$ 19,153	\$ 21,634
State	2,871	4,046	5,289
	<u>15,354</u>	<u>23,199</u>	<u>26,923</u>
<b>Deferred:</b>			
Federal	708	2,734	(105)
State	920	28	(2,302)
	<u>1,628</u>	<u>2,762</u>	<u>(2,407)</u>
Income tax expense	<u>\$ 16,982</u>	<u>\$ 25,961</u>	<u>\$ 24,516</u>

The following table provides a reconciliation between the statutory federal income tax rate and our effective income tax rate:

	2018	2017	2016
Statutory federal income tax	21.0%	35.0%	35.0%
State income taxes, net of federal benefit	3.3	2.5	2.6
Manufacturing deduction	—	(3.5)	(3.3)
Tax Cuts and Jobs Act effects	(3.9)	(1.9)	—
Changes in unrecognized tax benefits	1.2	(0.6)	1.2
R&D tax credits	(2.0)	(1.1)	(1.4)
Other	—	(1.9)	(1.8)
Effective income tax rate	<u>19.6%</u>	<u>28.5%</u>	<u>32.3%</u>

We file income tax returns with the U.S. federal government and various state jurisdictions. In the normal course of business, we are subject to examination by federal and state taxing authorities. We are no longer subject to federal income tax examinations for years prior to 2015 or state income tax examinations prior to 2014.

On December 22, 2017, the Tax Cuts and Jobs Act (TCJA) was enacted. The TCJA reduced the statutory federal tax rate from 35% to 21% starting in 2018. In addition, there were various other tax law changes that impacted us. In connection with the reduction of the federal tax rate, we recognized a provisional tax benefit of \$1.7 million for the year ended December 30, 2017. This provisional tax benefit was related to the re-measurement of U.S. deferred tax assets and liabilities using a federal tax rate of 21%, which, under the TCJA, is expected to be in place when such deferred assets and liabilities reverse in future periods. During 2018, we updated our provisional tax benefit based on new information, including a tax planning analysis, and recorded an additional \$2.9 million tax benefit.

The TCJA has significant complexity and our 2018 tax liability may differ from these estimates, due to, among other things, guidance that may be issued by the U.S. Treasury Department, the Internal Revenue Service, state tax jurisdictions, and related interpretations and clarifications of tax law.



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**Deferred Income Taxes**

The tax effects of temporary differences that give rise to deferred income taxes were as follows (in thousands):

	2018	2017
<b>Deferred tax assets:</b>		
Stock-based compensation	\$ 7,633	\$ 6,940
Deferred rent and lease incentives	6,994	6,007
Warranty and returns liabilities	6,857	6,602
Net operating loss carryforwards and credits	2,324	3,240
Compensation and benefits	3,699	3,315
Other	3,406	3,321
Total gross deferred tax assets	30,913	29,425
Valuation allowance	(615)	(615)
Total gross deferred tax assets after valuation allowance	30,298	28,810
<b>Deferred tax liabilities:</b>		
Property and equipment	29,912	21,475
Deferred revenue	1,749	723
Other	3,459	3,987
Total gross deferred tax liabilities	35,120	26,185
Net deferred tax (liabilities) assets	\$ (4,822)	\$ 2,625

At December 29, 2018, we had net operating loss carryforwards for federal purposes of \$1 million, which will expire between 2025 and 2027, and for state income tax purposes of \$6 million, which will expire between 2028 and 2038.

We evaluate our deferred income taxes quarterly to determine if valuation allowances are required. As part of this evaluation, we assess whether valuation allowances should be established for any deferred tax assets that are not considered more likely than not to be realized, using all available evidence, both positive and negative. This assessment considers, among other matters, the nature, frequency, and severity of historical losses, forecasts of future profitability, taxable income in available carryback periods and tax planning strategies. In making such judgments, significant weight is given to evidence that can be objectively verified. We have provided a \$0.6 million valuation allowance resulting primarily from our inability to utilize certain foreign net operating losses, and federal net operating losses associated with our 2015 acquisition of BAM Labs, Inc.

**Unrecognized Tax Benefits**

Reconciliations of the beginning and ending amounts of unrecognized tax benefits were as follows (in thousands):

	<b>Federal and State Tax</b>		
	2018	2017	2016
Beginning balance	\$ 2,839	\$ 3,460	\$ 2,077
Increases related to current-year tax positions	778	330	326
Increases related to prior-year tax positions	595	87	1,594
Decreases related to prior-year tax positions	—	(1,038)	—
Lapse of statute of limitations	(333)	—	(333)
Settlements with taxing authorities	(13)	—	(204)
Ending balance	\$ 3,866	\$ 2,839	\$ 3,460

As of December 29, 2018 and December 30, 2017, we had \$4 million and \$3 million, respectively, of unrecognized tax benefits, which if recognized, would affect our effective tax rate. The amount of unrecognized tax benefits is not expected to change materially within the next 12 months.



**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

**(13) Commitments and Contingencies**

*Legal Proceedings*

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

On January 12, 2015, Plaintiffs David and Katina Spade commenced a purported class action lawsuit in New Jersey state court against Sleep Number alleging that Sleep Number violated New Jersey consumer statutes by failing to provide to purchasing consumers certain disclosures required by the New Jersey Furniture Regulations. It is undisputed that plaintiffs suffered no actual damages or in any way relied upon or were impacted by the alleged omissions. Nonetheless, on behalf of a purported class of New Jersey purchasers of Sleep Number beds and bases, plaintiffs seek to recover a \$100 statutory fine for each alleged omission, along with attorneys' fees and costs. Sleep Number removed the case to the United States District Court for the District of New Jersey, which subsequently granted Sleep Number's motion to dismiss. Plaintiffs appealed to the United States Court of Appeals for the Third Circuit, which certified two questions of law to the New Jersey Supreme Court relating to whether plaintiffs who have suffered no actual injury may bring claims. The New Jersey Supreme Court accepted the certified questions and on April 16, 2018, ruled in our favor on one of the two questions, holding that a consumer only has standing to bring a claim under the relevant statute if the consumer has been harmed by the defendant's conduct. The Third Circuit remanded the case to the federal district court, which initially allowed the plaintiffs to file its proposed amended complaint, but thereafter rescinded its order and then denied Plaintiffs' request to file the amended complaint. We plan to ask the Court to dismiss the case.

On September 18, 2018, former Home Delivery Technician, Donald Cassels, and former Field Services Delivery Assistant, Jose Cadenas, filed suit in Superior Court in San Francisco County, California alleging representative claims on a purported class action basis under the California Labor Code Private Attorney General Act. While the two representative plaintiffs were in the Home Delivery workforce, the Complaint does not limit the purported plaintiff class to that group. The plaintiffs allege that Sleep Number failed or refused to adopt adequate practices, policies and procedures relating to wage payments, record keeping, employment disclosures, meal and rest breaks, among other claims, under California law. The plaintiffs purport to represent all former and current Sleep Number employees in the State of California aggrieved by the alleged practices. The Complaint seeks damages in the form of civil penalties and plaintiffs' attorneys' fees, and expressly disclaims the recovery of any purported individual specific relief or underpaid wages. After Sleep Number raised issues with the plaintiffs' choice of venue, the Court transferred venue from the Superior Court in San Francisco County to Superior Court in Fresno County. We intend to vigorously defend this matter.

*Consumer Credit Arrangements*

We refer customers seeking extended financing to certain third-party financiers (Card Servicers). The Card Servicers, if credit is granted, establish the interest rates, fees, and all other terms and conditions of the customer's account based on their evaluation of the creditworthiness of the customer. As the receivables are owned by the Card Servicers, at no time are the receivables purchased or acquired from us. We are not liable to the Card Servicers for our customers' credit defaults.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements - (continued)**

*Commitments*

As of December 29, 2018, we had \$32 million of inventory purchase commitments. As part of the normal course of business, there are a limited number of inventory supply contracts that contain penalty provisions for failure to purchase contracted quantities. We do not currently expect any payments under these provisions. At December 29, 2018, we had entered into 46 lease commitments for future retail store locations. These lease commitments provide for minimum rentals over the next five to 10 years, which if consummated based on current cost estimates, would approximate \$62 million over the initial lease term. The minimum rentals for these lease commitments have been included in the future minimum lease payments in Note 6, *Leases*.

**(14) Summary of Quarterly Financial Data (unaudited)**

The following is a condensed summary of our quarterly results (in thousands, except net income (loss) per share amounts). Quarterly diluted net income (loss) per share amounts may not total to the respective annual amount due to changes in weighted-average shares outstanding during the year.

<b>2018</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales	\$ 388,633	\$ 316,338	\$ 414,779	\$ 411,825	\$ 1,531,575
Gross profit	237,477	188,888	250,517	251,079	927,961
Operating income	26,901	2,086	25,321	38,120	92,428
Net income	20,548	3,744	18,257	26,990	69,539
Net income per share – diluted	\$ 0.52	\$ 0.10	\$ 0.52	\$ 0.81	\$ 1.92

<b>2017</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales	\$ 393,899	\$ 284,673	\$ 402,646	\$ 363,279	\$ 1,444,497
Gross profit	246,459	176,619	253,465	220,804	897,347
Operating income (loss)	35,828	(3,061)	39,029	20,119	91,915
Net income (loss)	24,461	(778)	25,603	15,791	65,077
Net income (loss) per share – diluted	\$ 0.56	\$ (0.02)	\$ 0.62	\$ 0.39	\$ 1.55

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None

### ITEM 9A. CONTROLS AND PROCEDURES

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

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

#### Management's Report on Internal Control Over Financial Reporting

Sleep Number's management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Sleep Number's management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our internal control over financial reporting based on the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation under these criteria, management concluded that our internal control over financial reporting was effective as of December 29, 2018. The report of Deloitte & Touche LLP, our independent registered public accounting firm, regarding the effectiveness of our internal control over financial reporting is included in this report in "Part II, Item 8, Financial Statements and Supplementary Data" under "Report of Independent Registered Public Accounting Firm."

#### Fourth Quarter Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended December 29, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### ITEM 9B. OTHER INFORMATION

Not applicable.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information under the captions “Election of Directors,” “Corporate Governance” and “Section 16(a) Beneficial Ownership Reporting Compliance” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference. Information concerning our executive officers is included in Part I of this report under the caption “Executive Officers of the Registrant.”

We have adopted a Code of Business Conduct applicable to our directors, officers and employees (including our principal executive officer, principal financial officer and principal accounting officer). The Code of Business Conduct is available on the Investor Relations section of our website at [www.SleepNumber.com](http://www.SleepNumber.com). Select the "Investors" link, the “Governance” link and then the "Documents & Charters" link. In the event that we amend or waive any of the provisions of the Code of Business Conduct applicable to our principal executive officer, principal financial officer and principal accounting officer, we intend to disclose the same on our website at [www.SleepNumber.com](http://www.SleepNumber.com).

### ITEM 11. EXECUTIVE COMPENSATION

The information under the caption “Executive Compensation” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference.

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

#### Stock Ownership

The information under the caption “Stock Ownership of Management and Certain Beneficial Owners” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference.

#### Securities Authorized for Issuance under Equity Compensation Plans

The information under the caption “Equity Compensation Plan Information” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information under the caption “Corporate Governance” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference.

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information under the caption “Ratification of Selection of Independent Registered Public Accounting Firm” in our Proxy Statement for our 2019 Annual Meeting of Shareholders is incorporated herein by reference.

## PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

#### (a) Consolidated Financial Statements and Schedule

##### (1) Financial Statements

All financial statements as set forth under Item 8 of this report.

##### (2) Consolidated Financial Statement Schedule

The following Report and financial statement schedule are included in this Part IV:

Schedule II - Valuation and Qualifying Accounts

All other schedules are omitted because they are not applicable or the required information is included in the consolidated financial statements or notes thereto.

##### (3) Exhibits

The exhibits to this Report are listed in the Exhibit Index below.

We will furnish a copy of the exhibits referred to above at a reasonable cost to any shareholder upon receipt of a written request. Requests should be sent to: Sleep Number Corporation, Investor Relations Department, 1001 Third Avenue South, Minneapolis, MN 55404.

The following is a list of each management contract or compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c):

1. Sleep Number Corporation 2004 Stock Incentive Plan (Amended and Restated as of January 1, 2007)
2. Form of Nonstatutory Stock Option Award Agreement under the 2004 Stock Incentive Plan
3. Form of Restricted Stock Award Agreement under the 2004 Stock Incentive Plan
4. Form of Performance Stock Award Agreement under the 2004 Stock Incentive Plan
5. Form of Nonstatutory Stock Option Award Agreement (Subject to Performance Adjustment) under the 2004 Stock Incentive Plan
6. Sleep Number Corporation Amended and Restated 2010 Omnibus Incentive Plan
7. Form of Nonstatutory Stock Option Award Agreement under the 2010 Omnibus Incentive Plan
8. Form of Restricted Stock Award Agreement under the 2010 Omnibus Incentive Plan
9. Form of Performance Stock Award Agreement under the 2010 Omnibus Incentive Plan
10. Sleep Number Executive Investment Plan (December 1, 2014 Restatement)
11. Employment Offer Letter from Sleep Number Corporation to Shelly R. Ibach dated February 9, 2007
12. Sleep Number Corporation Executive Physical Plan
13. Summary of Executive Tax and Financial Planning Program
14. Amended and Restated Sleep Number Corporation Executive Severance Pay Plan

15. First Amendment to Amended and Restated Sleep Number Corporation Executive Severance Pay Plan

16. Summary of Non-Employee Director Compensation



**ITEM 16. FORM 10-K SUMMARY**

Not applicable.

**SLEEP NUMBER CORPORATION**  
**EXHIBIT INDEX TO ANNUAL REPORT ON FORM 10-K**  
**FOR THE YEAR ENDED December 29, 2018**

<b>Exhibit No.</b>	<b>Description</b>	<b>Method of Filing</b>
3.1	Third Restated Articles of Incorporation of the Company, as amended	<a href="#">Incorporated by reference to Exhibit 3.1 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 1, 2000 (File No. 0-25121)</a>
3.2	Articles of Amendment to Third Restated Articles of Incorporation of the Company	<a href="#">Incorporated by reference to Exhibit 3.1 contained in Sleep Number's Current Report on Form 8-K filed May 16, 2006 (File No. 0-25121)</a>
3.3	Articles of Amendment to Third Restated Articles of Incorporation of the Company	<a href="#">Incorporated by reference to Exhibit 3.1 contained in Sleep Number's Current Report on Form 8-K filed May 25, 2010 (File No. 0-25121)</a>
3.4	Restated Bylaws of the Company	<a href="#">Incorporated by reference to Exhibit 3.1 contained in Sleep Number's Current Report on Form 8-K filed May 22, 2017 (File No. 0-25121)</a>
10.1	Lease Agreement dated September 9, 2015 between the Company and Truluck Industries, Inc.	<a href="#">Incorporated by reference to Exhibit 10.3 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended October 3, 2015 (File No. 0-25121)</a>
10.2	Lease Agreement dated September 30, 1998 between the Company and ProLogis Development Services Incorporated	<a href="#">Incorporated by reference to Exhibit 10.28 contained in Sleep Number's Registration Statement on Form S-1, as amended, filed October 29, 1998 (Reg. No. 333-62793)</a>
10.3	Second Amendment to Lease Agreement dated June 15, 2015 between the Company and CLFP - SLIC 8, L.P. (successor in interest to ProLogis Development Services Incorporated)	<a href="#">Incorporated by reference to Exhibit 10.4 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended October 3, 2015 (File No. 0-25121)</a>
10.4	Lease Agreement between DCI 1001 Minneapolis Venture, LLC, as Landlord, and Sleep Number Corporation, as Tenant, dated October 21, 2016	<a href="#">Incorporated by reference to Exhibit 10.12 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (File No. 0-25121)</a>
10.5	First Amendment, dated June 22, 2017, to Lease Agreement between DCI 1001 Minneapolis Venture, LLC, as Landlord, and Sleep Number Corporation, as Tenant, dated October 21, 2016	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended July 1, 2017 (File No. 0-25121)</a>
10.6	Sleep Number Corporation 2004 Stock Incentive Plan (Amended and Restated as of January 1, 2007)	<a href="#">Incorporated by reference to Exhibit 10.16 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 30, 2006 (File No. 0-25121)</a>
10.7	Form of Nonstatutory Stock Option Award Agreement under the Sleep Number Corporation 2004 Stock Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.28 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 (File No. 0-25121)</a>
10.8	Form of Restricted Stock Award Agreement under the Sleep Number Corporation 2004 Stock Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.29 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 (File No. 0-25121)</a>
10.9	Form of Performance Stock Award Agreement under the Sleep Number Corporation 2004 Stock Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.30 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 (File No. 0-25121)</a>

10.10 Form of Nonstatutory Stock Option Award Agreement  
(Subject to Performance Adjustment) under the Sleep  
Number Corporation 2004 Stock Incentive Plan

[Incorporated by reference to Exhibit 10.20 contained in  
Sleep Number's Annual Report on Form 10-K for the fiscal  
year ended December 30, 2006 \(File No. 0-25121\)](#)

<b>Exhibit No.</b>	<b>Description</b>	<b>Method of Filing</b>
10.11	Sleep Number Corporation Amended and Restated 2010 Omnibus Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Current Report on Form 8-K filed May 15, 2013 (File No. 0-25121)</a>
10.12	Form of Nonstatutory Stock Option Award Agreement under the 2010 Omnibus Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.20 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 1, 2011 (File No. 0-25121)</a>
10.13	Form of Restricted Stock Award Agreement under the 2010 Omnibus Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.21 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 1, 2011 (File No. 0-25121)</a>
10.14	Form of Performance Stock Award Agreement under the 2010 Omnibus Incentive Plan	<a href="#">Incorporated by reference to Exhibit 10.22 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 1, 2011 (File No. 0-25121)</a>
10.15	Form of Performance-Based Restricted Stock Unit Award Agreement - EPS Target	<a href="#">Incorporated by reference to Exhibit 10.2 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended April 1, 2017 (File No. 0-25121)</a>
10.16	Sleep Number Executive Investment Plan (December 1, 2014 Restatement)	<a href="#">Incorporated by reference to Exhibit 10.21 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 3, 2015 (File No. 0-25121)</a>
10.17	Employment Offer Letter from Sleep Number Corporation to Shelly R. Ibach dated February 9, 2007	<a href="#">Incorporated by reference to Exhibit 10.30 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 29, 2012 (File No. 0-25121)</a>
10.18	Sleep Number Corporation Executive Physical Plan	<a href="#">Incorporated by reference to Exhibit 10.27 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 3, 2015 (File No. 0-25121)</a>
10.19	Summary of Executive Tax and Financial Planning Program	<a href="#">Incorporated by reference to Exhibit 10.27 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (File No. 0-25121)</a>
10.20	Amended and Restated Sleep Number Corporation Executive Severance Pay Plan	<a href="#">Incorporated by reference to Exhibit 10.2 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended July 1, 2017 (File No. 0-25121)</a>
10.21	Summary of Non-Employee Director Compensation	<a href="#">Incorporated by reference to Exhibit 10.30 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended January 2, 2016 (File No. 0-25121)</a>
10.22	Master Supply Agreement dated July 16, 2013 between the Company and Supplier (1)	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended September 28, 2013 (File No. 0-25121)</a>
10.23	Retailer Program Agreement effective as of January 1, 2014 by and between Synchrony Bank, Sleep Number Corporation and Select Comfort Retail Corporation (1)	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended June 28, 2014 (File No. 0-25121)</a>
10.24	First Amendment to Retailer Program Agreement, dated effective as of October 1, 2014 by and between Synchrony Bank, Sleep Number Corporation and Select Comfort Retail Corporation	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Current Report on Form 8-K filed October 1, 2014 (File No. 0-25121)</a>
10.25	Second Amendment to Retailer Program Agreement, dated November 4, 2015 by and between Synchrony Bank, Sleep Number Corporation and Select Comfort Retail Corporation (1)	<a href="#">Incorporated by reference to Exhibit 10.5 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended October 3, 2015 (File No. 0-25121)</a>



<b>Exhibit No.</b>	<b>Description</b>	<b>Method of Filing</b>
10.26	Third Amendment to Retailer Program Agreement, dated June 26, 2018 by and between Synchrony Bank, Sleep Number Corporation and Select Comfort Retail Corporation (1)	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 (File No. 0-25121)</a>
10.27	Sleep Number Corporation Non-Employee Director Deferral Plan	<a href="#">Incorporated by reference to Exhibit 10.1 contained in Sleep Number's Current Report on Form 8-K filed September 16, 2011 (File No. 0-25121)</a>
10.28	Amended and Restated Credit and Security Agreement, dated as of February 14, 2018 among Sleep Number Corporation, U.S. Bank National Association and the several banks and other financial institutions from time to time party thereto	<a href="#">Incorporated by reference to Exhibit 10.29 contained in Sleep Number's Annual Report on Form 10-K filed for the fiscal year ended December 30, 2017 (File No. 0-25121)</a>
10.29	First Amendment to Amended and Restated Credit and Security Agreement, dated as of February 11, 2019 among Sleep Number Corporation, U.S. Bank National Association and the several banks and other financial institutions from time to time party thereto	<a href="#">Filed herewith</a>
21.1	Subsidiaries of the Company	<a href="#">Incorporated by reference to Exhibit 21.1 contained in Sleep Number's Annual Report on Form 10-K for the fiscal year ended December 30, 2017 (File No. -25121)</a>
23.1	Consent of Independent Registered Public Accounting Firm	<a href="#">Filed herewith</a>
24.1	Power of Attorney	<a href="#">Included on signature page</a>
31.1	Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	<a href="#">Filed herewith</a>
31.2	Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	<a href="#">Filed herewith</a>
32.1	Certification of CEO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350	<a href="#">Furnished herewith(2)</a>
32.2	Certification of CFO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350	<a href="#">Furnished herewith(2)</a>
101	The following financial information from the Company's Annual Report on Form 10-K for the period ended December 29, 2018, filed with the SEC on February 26, 2019, formatted in eXtensible Business Reporting Language: (i) Consolidated Balance Sheets as of December 29, 2018 and December 30, 2017; (ii) Consolidated Statements of Operations for the years ended December 29, 2018, December 30, 2017 and December 31, 2016; (iii) Consolidated Statements of Comprehensive Income for the years ended December 29, 2018, December 30, 2017 and December 31, 2016; (iv) Consolidated Statements of Shareholders' Equity for the years ended December 29, 2018, December 30, 2017 and December 31, 2016; (v) Consolidated Statements of Cash Flows for the years ended December 29, 2018, December 30, 2017 and December 31, 2016; and (vi) Notes to Consolidated Financial Statements.	Filed herewith

- (1) Confidential treatment has been requested by the issuer with respect to designated portions contained within document. Such portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities and Exchange Act of 1934, as amended.
- (2) This exhibit shall not be deemed “filed” for purposes of Section 18 of the Securities Act of 1934, as amended, (15 U.S.C. 78r) or otherwise subject to the liability of that section. Such exhibit will not be deemed to be incorporated by reference into any document filed under the Securities Act of 1933, as amended, or under the Securities Exchange Act of 1934, as amended, except as otherwise expressly stated in any such filing.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**SLEEP NUMBER CORPORATION**  
(Registrant)

Dated: February 26, 2019

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

By: /s/ David R. Callen  
David R. Callen  
Chief Financial Officer  
(principal financial officer)

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



## POWER OF ATTORNEY

Know all persons by these presents, that each person whose signature appears below constitutes and appoints Shelly R. Ibach, David R. Callen and Sam R. Hellfeld, and each of them, as such person's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to this Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or any of them or their or such person's substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date or dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Jean-Michel Valette</u> Jean-Michel Valette	Chairman of the Board	February 21, 2019
<u>/s/ Shelly R. Ibach</u> Shelly R. Ibach	Director	February 26, 2019
<u>/s/ Daniel I. Alegre</u> Daniel I. Alegre	Director	February 25, 2019
<u>/s/ Stephen L. Gulis, Jr.</u> Stephen L. Gulis, Jr.	Director	February 24, 2019
<u>/s/ Michael J. Harrison</u> Michael J. Harrison	Director	February 21, 2019
<u>/s/ Deborah L. Kilpatrick</u> Deborah L. Kilpatrick	Director	February 25, 2019
<u>/s/ Brenda J. Lauderback</u> Brenda J. Lauderback	Director	February 25, 2019
<u>/s/ Barbara R. Matas</u> Barbara R. Matas	Director	February 25, 2019
<u>/s/ Kathleen L. Nedorostek</u> Kathleen L. Nedorostek	Director	February 25, 2019
<u>/s/ Vicki A. O'Meara</u> Vicki A. O'Meara	Director	February 22, 2019
<u>/s/ Michael A. Peel</u> Michael A. Peel	Director	February 26, 2019

**SLEEP NUMBER CORPORATION AND SUBSIDIARIES**  
**Schedule II - Valuation and Qualifying Accounts**  
(in thousands)

<b>Description</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Allowance for doubtful accounts			
Balance at beginning of period	\$ 714	\$ 884	\$ 1,039
Additions charged to costs and expenses	815	915	1,224
Deductions from reserves	(830)	(1,085)	(1,379)
Balance at end of period	<u>\$ 699</u>	<u>\$ 714</u>	<u>\$ 884</u>

## EXECUTION VERSION

## FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

HIS FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (this "Amendment") is made as of February 11, 2019 (the "Amendment Effective Date") by and among SLEEP NUMBER CORPORATION, a Minnesota corporation (the "Borrower"), the lenders listed on the signature pages hereto (the "Lenders") and U.S. BANK NATIONAL ASSOCIATION, as Issuing Lender (in such capacity, the "Issuing Lender"), Swing Line Lender (in such capacity, the "Swing Line Lender") and Administrative Agent (in such capacity, the "Administrative Agent"), under that certain Credit and Security Agreement, dated as of February 14, 2018 (as amended, supplemented or otherwise modified from time to time, including by this Amendment, the "Credit Agreement"), by and among the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement.

WHEREAS, the Borrower has requested that the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent agree to make certain modifications to the Credit Agreement; and

WHEREAS, the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent have so agreed on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent hereby agree as follows.

**ARTICLE I**

## AMENDMENTS

1.1 Amendments to Credit Agreement. Effective as of the Amendment Effective Date but subject to the satisfaction of the conditions precedent set forth in Article III below, the Credit Agreement (including Schedules 1, 5.3, 5.8 and 5.9, but excluding all other Schedules and Exhibits, which shall remain in the original form delivered) is hereby amended as set forth in the marked terms on Exhibit A-1 attached hereto. In Exhibit A-1 hereto, deletions of text in the Credit Agreement as amended hereby are indicated by struck-through text, and insertions of text are indicated by bold, double-underlined text. Exhibit A-2 attached hereto sets forth a clean copy of the Credit Agreement as amended hereby, after giving effect to such amendments. This Amendment shall constitute a Loan Document.

**ARTICLE II**

## REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants as follows:

2.1 This Amendment and the Credit Agreement, as amended hereby, constitute legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

2.2 As of the date hereof and after giving effect to the terms of this Amendment, (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties of the Borrower set forth in Article VI of the Credit Agreement, as amended hereby, are true and correct in all material respects, except to the extent any such representation or warranty is stated to relate solely to an earlier date.

### **ARTICLE III**

#### **CONDITIONS PRECEDENT**

This Amendment shall become effective on the Amendment Effective Date, *provided, however*, that the effectiveness of this Amendment is subject to the satisfaction of each of the following conditions precedent:

3.1 The Administrative Agent shall have received counterparts of (i) this Amendment duly executed by the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and each of the Lenders and (ii) a Reaffirmation Agreement and Amendment to Guaranty of Payment duly executed by the Credit Parties and the Administrative Agent.

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

3.3 The Borrower shall have delivered to the Administrative Agent opinions of counsel for the Borrower and each other Credit Party, in form and substance satisfactory to the Administrative Agent and the Lenders.

3.4 The Administrative Agent shall have received certificates of the Secretary or an Assistant Secretary of each Credit Party certifying (i) that there have been no changes in the Organizational Documents of such Credit Party since the Closing Date, (ii) resolutions of the Board of Directors or other governing body of such Credit Party authorizing the execution, delivery and performance of this Amendment, (iii) the Good Standing Certificate (or analogous documentation if applicable) for such Credit Party from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, to the extent generally available in such jurisdiction and (iv) the names and true signatures of the incumbent officers of each Credit Party authorized to sign the Amendment.

3.5 No material adverse change, in the opinion of the Administrative Agent, shall have occurred in the financial condition, operations or prospects of the Companies since December 31, 2017.

3.6 All of the Administrative Agent's fees due and payable under the Credit Agreement prior to the date hereof, and all fees as set forth in the Administrative Agent Fee Letter due and payable prior to the date hereof, shall be fully paid, and, to the extent invoiced prior to the date hereof, all reasonable out-of-pocket costs and expenses of the Administrative Agent required to be reimbursed or paid by the Borrower hereunder or under the Credit Agreement shall be fully reimbursed or paid.

3.7 With respect to the property owned or leased by the Borrower and each Guarantor of Payment, and any other property securing the Obligations, the Borrower shall have caused to be delivered to the Administrative Agent (i) the results of Uniform Commercial Code lien searches, satisfactory to the

Administrative Agent and the Lenders, (ii) the results of federal and state tax lien and judicial lien searches, satisfactory to the Administrative Agent and the Lenders and (iii) search reports naming the Credit Parties from the United States Patent and Trademark Office and the United States Copyright Office.

3.8 Upon the reasonable request of any Lender, the Borrower must have provided to such Lender the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least five days prior to the Amendment Effective Date.

3.9 At least five (5) days prior to the Amendment Effective Date, if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation (as defined in the Credit Agreement), the Borrower must deliver a Beneficial Ownership Certification (as defined in the Credit Agreement) in relation to the Borrower.

3.10 The Borrower shall have delivered to the Administrative Agent certificates of insurance on ACORD 25 and 27 or 28 form and satisfactory to the Administrative Agent and the Lenders, providing for adequate real property, personal property and liability insurance for each Company, with the Administrative Agent, on behalf of the Lenders, noted as lender’s loss payee and additional insured, as appropriate.

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

#### **ARTICLE IV**

##### **DEPARTING LENDERS**

4.1 Departing Lenders. Certain Lenders have agreed that they shall no longer constitute Lenders under the Credit Agreement as of the Amendment Effective Date (each, a “Departing Lender”). Each Lender that executes and delivers a signature page hereto that identifies it as a Departing Lender shall constitute a Departing Lender as of the Amendment Effective Date. No Departing Lender shall have a Commitment on and after the Amendment Effective Date. Each Departing Lender shall cease to be a party to the Credit Agreement as of the Amendment Effective Date, with no rights, duties or obligations thereunder. All amounts owing to a Departing Lender shall be paid by the Borrower to such Departing Lender as of the Amendment Effective Date, subject to Section 6.8 below, and each Departing Lender shall thereupon return to Borrower all Notes heretofore received by it. The consent of a Departing Lender is not required to give effect to the changes contemplated by this Amendment. The Administrative Agent is hereby authorized to take such steps under the Credit Agreement as reasonably required to give effect to the departure of the Departing Lenders. The Borrower and each Lender agrees with and consents to the foregoing.

#### **ARTICLE V**

##### **RELEASE**

In further consideration of the execution by the Administrative Agent and the Lenders of this Amendment, the Borrower, on behalf of itself and each of its affiliates, and all of the successors and

assigns of each of the foregoing (collectively, the “Releasers”), hereby completely, voluntarily, knowingly, and unconditionally releases and forever discharges the Administrative Agent, the Issuing Lender, the Swing Line Lender, the Lenders, each of their advisors, professionals and employees, each affiliate of the foregoing and all of their respective successors and assigns (collectively, the “Releasees”), from any and all claims, actions, suits, and other liabilities, including, without limitation, any so-called “lender liability” claims or defenses (collectively, “Claims”), whether arising in law or in equity, which any of the Releasers ever had, now has or hereinafter can, shall or may have against any of the Releasees for, upon or by reason of any matter, cause or thing whatsoever from time to time occurred on or prior to the date hereof, in any way concerning, relating to, or arising from (i) any of the Releasers, (ii) the Obligations, (iii) all collateral securing the Obligations, (iv) the Credit Agreement or any of the other Loan Documents, and (v) the financial condition, business operations, business plans, prospects or creditworthiness of the Borrower or any affiliate thereof. The Releasers hereby acknowledge that they have been advised by legal counsel of the meaning and consequences of this release.

## ARTICLE VI

### GENERAL

6.1 Expenses. The Borrower agrees to reimburse the Administrative Agent upon demand for all reasonable out-of-pocket expenses paid or incurred by the Administrative Agent, including, without limitation, reasonable fees, charges and disbursements of outside counsel to the Administrative Agent, incurred in connection with preparation, negotiation and execution of this Amendment and any other document required to be furnished herewith.

6.2 Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or electronically shall be effective as delivery of a manually executed counterpart of this Amendment.

6.3 Severability. Any provision in this Amendment that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Amendment are declared to be severable.

6.4 **GOVERNING LAW. THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

6.5 Successors; Enforceability. The terms and provisions of this Amendment shall be binding upon the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders and their respective successors and assigns, and shall inure to the benefit of the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders and their respective successors and assigns.

6.6 Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness of this Amendment, on and after the date hereof, each reference

in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import shall mean and be a reference to the Credit Agreement, as amended and modified hereby.

(b) Except as specifically amended above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith (including, without limitation, all of the Loan Documents) shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

6.7 Headings. Section headings in this Amendment are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Amendment.

6.8 Addition of New Lenders. By its execution hereof, each of the following is becoming a party to the Credit Agreement as a Lender as of the Amendment Effective Date: Citibank, N.A. and PNC Bank, National Association (each a “New Lender”). Each New Lender shall evidence its entry into the Credit Agreement by its execution and delivery of signature pages to this Amendment. This Amendment shall not be given effect prior to receipt of the New Lenders’ executed pages hereto. Each New Lender agrees that it constitutes a Lender under the Credit Agreement and the other Loan Documents and shall be bound by the provisions of this Amendment, the Credit Agreement and the other Loan Documents. Each New Lender’s Revolving Credit Commitment appears in Schedule 1 to the Credit Agreement. Each New Lender acknowledges and agrees that it has received a copy of the Credit Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment and to become a Lender, which analysis and decision has been made independently of and without reliance upon the Administrative Agent or any other Lender. Each New Lender confirms it will, independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement and the Loan Documents, and it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender. The Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender’s credit exposure under the Credit Agreement (prior to giving effect to the Amendment) as are necessary in order that each such Lender’s credit exposure and outstanding Loans reflects such Lender’s ratable share of the outstanding aggregate credit exposure on the Amendment Effective Date. Notwithstanding anything to the contrary in Section 3.3 of the Credit Agreement or otherwise in the Credit Agreement, each Lender, including any Departing Lender, agrees to waive, and will not request, reimbursement or indemnification to which it may otherwise be entitled, for any losses, costs and expenses incurred by such Lender in connection with the sale and assignment of any Eurocurrency and such reallocation described above or in the case of any Departing Lender, payment as provided under Section 4.1 above. The Borrower agrees with and consents to the foregoing.

*(signature pages follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first written above.

SLEEP NUMBER CORPORATION, as the Borrower

By: /s/ Robert Poirier

Name: Robert Poirier

Title: Vice President and Chief Accounting Officer

Signature Page to  
Sleep Number Corporation  
First Amendment to Amended and Restated Credit and Security Agreement

---



U.S. BANK NATIONAL ASSOCIATION,  
as a Lender and as Issuing Lender, Swing Line Lender  
and Administrative Agent

By: /s/ Conan Schleicher  
Name: Conan Schleicher  
Title: Senior Vice President

Signature Page to  
Sleep Number Corporation  
First Amendment to Amended and Restated Credit and Security Agreement

---

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Marianne T. Meil

Name: Marianne T. Meil

Title: Senior Vice President

Signature Page to  
Sleep Number  
First Amendment to Amended and Restated Credit and Security Agreement

---

BMO HARRIS BANK N.A., as a Lender

By: /s/ Wesley M. Anderson

Name: Wesley M. Anderson

Title: Director

Signature Page to  
Sleep Number  
First Amendment to Amended and Restated Credit and Security Agreement

---

BANK OF AMERICA, N.A, as a Lender

By: /s/ Chad Kardash

Name: Chad Kardash

Title: Vice President

Signature Page to  
Sleep Number  
First Amendment to Amended and Restated Credit and Security Agreement

---

CITIBANK, N.A., as a Lender

By: /s/ Gordon Dekuyper

Name: Gordon Dekuyper

Title: Managing Director

Signature Page to  
Sleep Number

First Amendment to Amended and Restated Credit and Security Agreement

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PNC BANK, NATIONAL ASSOCIATION, as a  
Lender

By: /s/ Bridget Anderson  
Name: Bridget Anderson  
Title: Assistant Vice President

Signature Page to  
Sleep Number  
First Amendment to Amended and Restated Credit and Security Agreement

---

FIFTH THIRD BANK, as a Departing Lender

By: /s/ Miranda C. Stokes

Name: Miranda C. Stokes

Title: Managing Director

Signature Page to

Sleep Number

First Amendment to Amended and Restated Credit and Security Agreement

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EXHIBIT A-1  
Credit and Security Agreement, as amended

Attached

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~~EXECUTION VERSION~~

EXHIBIT A-1 TO FIRST AMENDMENT  
TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

Deal CUSIP Number: 83125PAA8  
Revolving Loan CUSIP Number: 83125PAB6

AMENDED AND RESTATED  
CREDIT AND SECURITY AGREEMENT

among

SLEEP NUMBER CORPORATION  
*as Borrower*

THE LENDERS NAMED HEREIN  
*as Lenders*

**and**

U.S. BANK NATIONAL ASSOCIATION  
*as Administrative Agent, Swing Line Lender and Issuing Lender*

BANK OF AMERICA, N.A.

and

BMO HARRIS BANK N.A.  
*as Co-Syndication Agents*

CITIBANK, N.A.  
*as Documentation Agent*

U.S. BANK NATIONAL ASSOCIATION,  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED  
BMO CAPITAL MARKETS CORP.

and

CITIBANK, N.A.  
*as Joint Lead Arrangers*

and

U.S. BANK NATIONAL ASSOCIATION,  
*as Sole ~~Lead Arranger~~ and ~~Sole Book Runner~~<sup>1</sup>*

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dated as of  
February 14, 2018

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<sup>1</sup> Arranger and agency titles effective as of the First Amendment Effective Date.



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This AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this “Agreement”) is made effective as of the 14th day of February, 2018 among:

- (a) SLEEP NUMBER CORPORATION, a Minnesota corporation (the “Borrower”);
- (b) the lenders listed on Schedule 1 hereto and each other Eligible Transferee, as hereinafter defined, that from time to time becomes a party hereto pursuant to Section 2.9(b) or 11.10 hereof (collectively, the “Lenders” and, individually, each a “Lender”); and
- (c) U.S. BANK NATIONAL ASSOCIATION, a national banking association, as the administrative agent for the Lenders under this Agreement (the “Administrative Agent”).

WITNESSETH:

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

NOW, THEREFORE, it is mutually agreed as follows:

## ARTICLE I

### DEFINITIONS

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

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

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

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person (other than a Company), or any business unit or division of any Person (other than a Company), (b) the acquisition of in excess of fifty percent (50%) of the outstanding capital stock (or other equity interest) of any Person (other than a Company), or (c) the acquisition of another Person (other than a Company) by a merger, amalgamation or consolidation or any other combination with such Person, including pursuant to any merger or consolidation with, or as a Division Successor pursuant to the Division of, any Person that was not a Domestic Subsidiary prior to such merger or consolidation or Division.

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



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

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

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

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

“Administrative Agent Fee Letter” means that certain Amended and Restated Administrative Agent Fee Letter, dated as of February ~~1411~~, ~~2018~~2019, between the Borrower and the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

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

“Affected Lender” means a Defaulting Lender or a Downgraded Lender.

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

“Agreed Currencies” means (i) Dollars, (ii) so long as such currencies remain Eligible Currencies, Canadian Dollars, euro, and Pounds Sterling, and (iii) any other Eligible Currency which the Borrower requests the Administrative Agent to include as an Agreed Currency hereunder and which is acceptable to all of the Lenders.

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

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

“Applicable Commitment Fee Rate” means:

(a) for the period from the Closing Date through March 31, 2018, twenty (20.00) basis points; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number

of basis points set forth in the following matrix, based upon the result of the computation of the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Commitment Fee Rate
Greater than or equal to 3.50 to 1.00	40.00 basis points
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	35.00 basis points
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	30.00 basis points
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	25.00 basis points
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	20.00 basis points
Less than 1.50 to 1.00	15.00 basis points

The first date on which the Applicable Commitment Fee Rate is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Commitment Fee Rate shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Commitment Fee Rate shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Commitment Fee Rate for any period (an “Applicable Commitment Fee Period”) than the Applicable Commitment Fee Rate applied for such Applicable Commitment Fee Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Commitment Fee Period, (B) the Applicable Commitment Fee Rate shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional fees owing as a result of such increased Applicable Commitment Fee Rate for such Applicable Commitment Fee Period.

“Applicable Margin” means:

(a) for the period from the Closing Date through March 31, 2018, one hundred thirty-seven and one-half (137.5) basis points for Eurocurrency Loans and thirty-seven and one-half (37.5) basis points for Base Rate Loans; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number of basis points (depending upon whether Loans are Eurocurrency Loans or Base Rate Loans) set forth in the following matrix, based upon the result of the computation of the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Basis Points for Eurocurrency Loans	Applicable Basis Points for Base Rate Loans
Greater than or equal to 3.50 to 1.00	225.00	125.00
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	200.00	100.00
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	175.00	75.00
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	150.00	50.00
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	137.50	37.50
Less than 1.50 to 1.00	125.00	25.00

The first date on which the Applicable Margin is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Margin shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Margin shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid for Loans of that type, regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this

Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Margin Period”) than the Applicable Margin applied for such Applicable Margin Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Margin Period, (B) the Applicable Margin shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Margin Period.

“Approved Fund” means any Person (other than a natural Person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender, or (c) an entity or an affiliate of an entity that administers or manages a Lender.

“Approximate Equivalent Amount” of any currency with respect to any amount of Dollars means the Equivalent Amount of such currency with respect to such amount of Dollars on or as of such date, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time.

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

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

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

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

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

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

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

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

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

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) zero percent (0.0%), (b) the Prime Rate, (c) one-half of one percent (.50%) in excess of the Federal Funds Effective Rate, and (d) one percent (1.00%) in excess of the Eurocurrency Rate for a Dollar-denominated Loan for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the Base Rate shall be effective immediately from and after such change in the Base Rate.

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

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

“Business Day” means (i) with respect to any borrowing, payment or rate selection of Eurocurrency Loans, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York and London, England for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in the applicable Agreed Currency are carried on in the London interbank market or the principal financial center of such Agreed Currency and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“Canadian Dollar” means the lawful currency of Canada.

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

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

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

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

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

“CDOR Rate” means, with respect to the relevant Interest Period, the greater of (a) zero percent (0.0%) and (b) the per annum rate equal to the arithmetic average of the annual yield rates applicable to Canadian dollar bankers’ acceptances for such Interest Period (or if such Interest Period is not equal to a number of months, for a term equivalent to the number of months closest to such Interest Period) on the “CDOR Page” (or any display substituted therefor) of Reuters Monitor Money Rates Services (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian dollar bankers’ acceptances as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) two (2) Business Days prior to the commencement of such Interest Period plus the Applicable Margin for Eurocurrency Rate Loans; provided, that if such Canadian dollar CDOR rate is unavailable at any time pursuant to the foregoing methodology, the Administrative Agent may select, using its reasonable judgment, an alternative published interest rate in order to determine such rate.

“Change in Control” means:

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

(b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) directors of the Borrower on the date on this Agreement nor (ii) nominated or appointed by the board of directors of the Borrower; or

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

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

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

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

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

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

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

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

“Commitment Period” means the period from the Closing Date to February ~~14~~11, ~~2023~~2024, or such earlier date on which the Commitment shall have been terminated pursuant to Article IX hereof.

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

“Companies” means the Borrower and all Subsidiaries.

“Company” means the Borrower or a Subsidiary.

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

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

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

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

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

“Consolidated EBITDA” means, for any period, as determined on a Consolidated basis, (a) Consolidated Net Earnings for such period plus, without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Charges, (iv) reasonable non-recurring non-cash losses not incurred in the ordinary course of business, (v) non-cash expenses incurred in connection with stock-based compensation, (vi) non-cash impairment expenses relating to store closures or remodeling during such period, and (vii) amortization of fees payable in connection with the incurrence of Indebtedness during such period; minus (b) to the extent included in Consolidated Net Earnings for such period, non-recurring non-cash gains not incurred in the ordinary course of business.

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

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

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



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

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

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

“Consolidated Total Assets” means, for any Fiscal Year, total assets of the Companies, calculated in accordance with GAAP on a Consolidated basis as of the last day of such Fiscal Year.

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

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

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

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

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

“Daily Eurodollar Rate” means, with respect to a Swing Loan accruing interest at such rate, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) zero percent (0.0%) and (2) the applicable interest settlement rate for deposits in Dollars administered

by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month appearing on Reuters Screen LIBOR01 (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on a Business Day, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if Reuters Screen LIBOR01 (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Daily Eurodollar Rate for one month shall instead be the applicable interest settlement rate for deposits in Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on a Business Day; provided, further, that, if no such interest settlement rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) is available to the Administrative Agent, the applicable Daily Eurodollar Rate for one month shall instead be the rate determined by the Administrative Agent to be the rate at which U.S. Bank or one of its Affiliate banks offers to place deposits in Dollars with first-class banks in the interbank market at approximately 11:00 a.m. (London time) on a Business Day in the approximate amount of the Swing Line Lender's relevant Swing Loan and having a maturity equal to one month. For purposes of determining any interest rate hereunder or under any other Loan Document which is based on the Daily Eurodollar Rate, such interest rate shall change as and when the Daily Eurodollar Rate shall change. Notwithstanding the foregoing, in the event the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the interest rate applicable to advances hereunder is not ascertainable or does not adequately and fairly reflect the cost of making or maintaining such advances and such circumstances are unlikely to be temporary, (ii) ICE Benchmark Administration (or any Person that takes over the administration of such rate) discontinues its administration and publication of interest settlement rates for deposits in Dollars, or (iii) the supervisor for the administrator of such interest settlement rate or a Governmental Authority having jurisdiction over the Administrative Agent or the Swing Line Lender has made a public statement identifying a specific date after which such interest settlement rate shall no longer be used for determining interest rates for loans, then the Administrative Agent shall determine an alternate rate of interest to the one-month Eurocurrency Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for comparable bank-originated commercial loans in the United States at such time, and, if necessary, the Administrative Agent, the Swing Line Lender and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Such alternate rate shall be adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. Until an alternate rate of interest shall be determined in accordance herewith, interest on each Swing Line Loan shall accrue at the Base Rate. If the alternate rate of interest determined pursuant hereto shall be less than zero, such rate shall be deemed to be zero for purposes hereof.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

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

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

“Defaulting Lender” means a Lender, as reasonably determined by the Administrative Agent, that (a) has failed (which failure has not been cured) to fund any Loan or any participation interest in Letters of Credit or Swing Loans required to be made hereunder in accordance with the terms hereof (unless such Lender shall have notified the Administrative Agent and the Borrower in writing of its good faith determination that a condition under Section 4.1 hereof to its obligation to fund any Loan shall not have been satisfied); (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit; (c) has failed, within three Business Days after receipt of a written request from the Administrative Agent or the Borrower to confirm that it will comply with the terms of this Agreement relating to its obligation to fund prospective Loans or participations in Letters of Credit or Swing Loans, and such request states that the requesting party has reason to believe that the Lender receiving such request may fail to comply with such obligation, and states such reason; (d) has failed to pay to the Administrative Agent or any other Lender when due an amount owed by such Lender to the Administrative Agent or any other Lender pursuant to the terms of this Agreement, unless such amount is subject to a good faith dispute or such failure has been cured; or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (other than an Undisclosed Administration), including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action. Any Defaulting Lender shall cease to be a Defaulting Lender when the Administrative Agent determines, in its reasonable discretion, that such Defaulting Lender is no longer a Defaulting Lender based upon the characteristics set forth in this definition.

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

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

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

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

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of equity interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

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

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

“Dollar Amount” means, on any date of determination, (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in an Agreed Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent pursuant to Section 2.5(g) using the Exchange Rate with respect to such Agreed Currency at the time in effect.

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

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

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

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

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

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

“Eligible Currency” means any currency other than Dollars that is readily available, freely traded, in which deposits are customarily offered to banks in the London interbank market, convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Amount may be readily calculated; provided, that Canadian Dollars shall constitute an Eligible Currency even if not customarily offered on the London interbank market so long as the CDOR Rate may be determined for Canadian Dollar Loans pursuant to the definition of CDOR Rate, and Canadian Dollars otherwise satisfy the requirements of this definition of Eligible Currency. If, after the designation by the Lenders of any currency as an Agreed Currency, currency control or other exchange regulations are imposed in the country in which such currency is issued, or any other event occurs, in each case with the result that different types of such currency are introduced, such country’s currency is, (i) in the determination of the Administrative Agent, no longer readily available or freely traded, (ii) as to which, in the determination of the Administrative Agent, a Dollar Amount is not readily calculable, or (iii) no longer a currency in which the Required Lenders are willing to make Loans (each of (i), (ii) and (iii), a “Disqualifying Event”), then the Administrative Agent shall promptly notify the Lenders and the Borrower, and such country’s currency shall no longer be an Agreed Currency until such time as the Disqualifying Event(s) no longer exist, but in any event within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrower shall repay all Loans made in the currency to which the Disqualifying Event applies in Dollars or convert such Loans into the Dollar Amount of Loans in Dollars, subject to the other terms contained in Article II.

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

“Environmental Laws” means all provisions of law (including the common law), statutes, ordinances, codes, rules, guidelines, policies, procedures, orders-in-council, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by a

Governmental Authority or by any court, agency, instrumentality, regulatory authority or commission of any of the foregoing concerning environmental health or safety and protection of, or regulation of the discharge of substances into, the environment.

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

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

“Equivalent Amount” of any currency at any date means the equivalent in Dollars of such currency, calculated on the basis of the arithmetic mean of the buy and sell spot rates of exchange of the Administrative Agent in the London interbank market (or other market where the Administrative Agent’s foreign exchange operations in respect of such currency are then being conducted) for such other currency at or about 11:00 a.m. (Central time) on the date on which such amount is to be determined, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time; *provided, however*, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such amount, and such determination shall be conclusive absent manifest error.

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

“ERISA Event” means (a) the existence of a condition or event with respect to an ERISA Plan that would reasonably be expected to result in the imposition of a material excise tax under Chapter 43 of the Code or any other material liability under ERISA on a Company or of the imposition of a Lien on the assets of a Company pursuant to Section 430(k) of the Code or Section 4068 of ERISA; (b) the engagement by a Company in a non-exempt “prohibited transaction” (as defined under ERISA Section 406 or Code Section 4975) or a breach of a fiduciary duty under ERISA with respect to an ERISA Plan that, in each case could reasonably be expected to result in material liability to a Company; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Pension Plan is subject to funding based limitations pursuant to Code Section 401(a)(29) or 436; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” (as such terms are defined in ERISA Sections 4203 and 4205, respectively) that could reasonably be expected to result in material liability to a Company; (f) the failure of an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 to be so qualified or the failure of any “cash or deferred arrangement” under any such ERISA Plan to meet the requirements of Code Section 401(k) that, in each case, could reasonably be expected to result in material liability to a Company; (g) the taking by the PBGC of any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan that would reasonably be expected to result in material liability to a Company; (h) the failure by a

Controlled Group member or an ERISA Plan to satisfy any requirements of law applicable to an ERISA Plan that would reasonably be expected to result in material liability to a Company; (i) the commencement, existence or, to the knowledge of a Company, threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits that would reasonably be expected to result in material liability to a Company; or (j) any incurrence by or any expectation of the incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, et. seq. or Code Section 4980B or other applicable law that would reasonably be expected to result in material liability to a Company. As used in this definition of “ERISA Event”, “material” means the measure of a matter of significance that shall be determined as being an amount equal to Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

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

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

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

“Eurocurrency” means an Agreed Currency denominated deposit in a bank or branch outside of the United States.

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

“Eurocurrency Rate” means (i) for a Eurocurrency Loan denominated in Canadian Dollars, the CDOR Rate, and (ii) with respect to a Eurocurrency Loan in an Agreed Currency other than Canadian Dollars, for any Interest Period, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) zero percent (0.0%) and (2) the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) appearing on the applicable Reuters Screen (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if the applicable Reuters Screen (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Eurocurrency Rate for the relevant Interest Period shall instead be the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period; provided, further, that, if no such interest settlement rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such

rate) is available to the Administrative Agent, the applicable Eurocurrency Rate for the relevant Interest Period shall instead be the rate determined by the Administrative Agent to be the rate at which U.S. Bank or one of its Affiliate banks offers to place deposits in the applicable Agreed Currency with first-class banks in the interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of U.S. Bank's relevant Eurocurrency Loan and having a maturity equal to such Interest Period.

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

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

“euro” and/or “EUR” means the single currency of the participating member states of the EU.

“Exchange Rate” means on any day, for purposes of determining the Dollar Amount of any other currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Reuters WRLD Page for such currency. In the event that such rate does not appear on any Reuters WRLD Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two (2) Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Collateral” means (a) any intent-to-use trademark application filed with the United States Patent and Trademark Office in Washington D.C. pursuant to 15 U.S.C. § 1051(b) to the extent such application would be deemed to be transferred in violation of 15 U.S.C. § 1060(a) as a result of the security interest granted herein, or otherwise invalidated or made unenforceable as a result of the execution or performance of this Agreement, until such time as the circumstances that would give rise to such violation, invalidation or unenforceability no longer exist, (b) any item of equipment or general intangibles to the extent that such item is subject to a written agreement or a law or regulation which prohibits, or requires a consent of any Person other than the Borrower or any Affiliate of the Borrower (which consent has not been obtained or waived) to, the security interest granted by this Agreement and such prohibition or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law, including, without limitation, Sections 9-406, 9-407, 9-408 or 9-409 of the UCC, (c) any deposit or other account used with respect to the funds or property held in the Sleep Number Executive Investment Plan Trust, and (d) any Deposit Account that is a



trust or “special account” on the records of the financial institution where such Deposit Account is located that is exclusively comprised of funds for payroll (and related payroll taxes).

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

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

“Existing Credit Agreement” means the Credit and Security Agreement, dated as of September 9, 2015, by and among the Borrower, the lenders party thereto, and KeyBank National Association, as amended or modified prior to the date hereof.

“Existing Letters of Credit” has the meaning set forth in Section 2.2(b)(i).

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

“Federal Funds Effective Rate” means, for any day, the greater of (a) zero percent (0.0%) and (b) the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Central time) on such day on such transactions received by the Administrative Agent from three (3) Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

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

“First Amendment Effective Date” means February 11, 2019.

“Fiscal Year” means each fiscal year of the Borrower ending on the date corresponding with such fiscal year as set forth on Schedule 5.3.

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

“Foreign Subsidiary Borrower” has the meaning set forth in Section 2.13.

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

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

“Governmental Authority” means any nation or government, any state, province or territory or local or other political subdivision thereof, any governmental agency, department, authority, instrumentality, regulatory body, court, central bank or other governmental entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization exercising such functions, and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Letter of Credit” means a commercial documentary letter of credit or standby letter of credit that shall be issued by the Issuing Lender for the account of the Borrower or a Guarantor

of Payment, including amendments thereto, if any, and shall have an expiration date no later than the earlier of (a) three hundred sixty-four (364) days after its date of issuance (provided that such Letter of Credit may provide for the renewal thereof for additional one year periods), or (b) ten (10) days prior to the last day of the Commitment Period.

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

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

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

“Leverage Ratio” means, as determined on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Indebtedness (as of the end of the most recently completed Quarterly Reporting Period), plus (ii) six multiplied by Consolidated Rent Expense (for the most recently completed four Quarterly Reporting Periods), minus (iii) the aggregate amount of unrestricted cash-on-hand and Cash Equivalents of the Borrower located in the United States in excess of Forty Million Dollars (\$40,000,000); to (b) Consolidated EBITDAR (for the most recently completed four Quarterly Reporting Periods).

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

“LLC” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

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

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

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

obligations under any Loan Document to which it is a party, or (d) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

“Material Indebtedness Agreement” means any debt instrument, lease (capital, operating or otherwise), guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of any Company or the Companies equal to or in excess of the principal amount of Ten Million Dollars (\$10,000,000).

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

“Maximum Foreign Currency Amount” means \$25,000,000.

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

“Maximum Revolving Amount” means Three Hundred Million Dollars (\$300,000,000) until the First Amendment Effective Date, and from and after the First Amendment Effective Date, Four Hundred Fifty Million Dollars (\$450,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

“Moody’s” means Moody’s Investors Service, Inc.

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

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

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

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

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

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

now or hereafter owing to the Administrative Agent or any Lender by any Company pursuant to this Agreement or any other Loan Document; and (f) all Related Expenses.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

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

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate) of Incorporation, operating agreement or equivalent formation documents, and Regulations (Bylaws), or equivalent governing documents, and any amendments to any of the foregoing.

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

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

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

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

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

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

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

“Pledge Agreement” means each of the Pledge Agreements, relating to the Pledged Securities, executed and delivered by the Borrower or a Guarantor of Payment, as applicable, in

favor of the Administrative Agent, for the benefit of the Lenders, dated on or after the Closing Date, as any of the foregoing may from time to time be amended, restated or otherwise modified.

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

“Pledged Securities” means all of the shares of capital stock or other equity interest of a Subsidiary of a Credit Party, whether now owned or hereafter acquired or created, and all proceeds thereof; provided that Pledged Securities shall exclude (a) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, (b) shares of capital stock of any first-tier Foreign Subsidiary that is a Dormant Subsidiary, and (c) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary. (Schedule 3 hereto lists, as of the Closing Date, all of the Pledged Securities.)

“Pounds Sterling” means the lawful currency of the United Kingdom.

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

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

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

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



“Quotation Date” means, in relation to any Interest Period for which an interest rate is to be determined, (a) if the related extension of credit is denominated in Dollars, two (2) Business Days before the first day of that period, (b) if the related extension of credit is denominated in euro, two (2) TARGET Days and two (2) London Business Days (to the extent the two are not the same) before the first day of such period, (c) if the related credit extension is denominated in Pounds Sterling, the first day of such period, and (d) for any Agreed Currency not covered in clause (a), (b) or (c), such number of days agreed to by the Borrower, the Administrative Agent and the Lenders.

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

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

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

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

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

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

“Requirement of Law” means, as to any Person, any law, treaty, rule or regulation or determination or policy statement or interpretation of an arbitrator or a court or other

Governmental Authority, in each case applicable to or binding upon such Person or any of its property.

“Reserve Percentage” means, for any day, that percentage (expressed as a decimal) that is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, all basic, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) for a member bank of the Federal Reserve System, in respect of Eurocurrency Liabilities. The Eurocurrency Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, with respect to the CDOR Rate, such percentage shall include any other maximum reserve, liquid asset, fee or similar requirement established by any central bank, monetary authority, or other governmental authority for any category of deposits or liabilities customarily used to fund loans in Canadian Dollars.

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

“Revolving Credit Commitment” means the obligation hereunder, during the Commitment Period, of (a) the Lenders (and each Lender) to make Revolving Loans, (b) the Issuing Lender to issue, and each Lender to participate in, Letters of Credit pursuant to the Letter of Credit Commitment, and (c) the Swing Line Lender to make, and each Lender to participate in, Swing Loans pursuant to the Swing Line Commitment; up to an aggregate principal amount outstanding at any time equal to the Maximum Revolving Amount.

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

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

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

“Risk-Based Capital Guidelines” means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States, including transition rules, and, in each case, any amendments to such regulations.

“Sanctions” means sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United

Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

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

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

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

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

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

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

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

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

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

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

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

“Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc.

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

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

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

“Swing Line Commitment” means the commitment of the Swing Line Lender to make Swing Loans to the Borrower, on a discretionary basis, up to the aggregate amount at any time outstanding of ~~Twenty-Five~~Forty Million Dollars (~~\$25,000,000~~40,000,000).

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

“Swing Line Lender” means U.S. Bank, as holder of the Swing Line Commitment.

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

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

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (a) the date selected by the Administrative Agent, or (b) the last day of the Commitment Period.

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

“Total Commitment Amount” means the principal amount of ~~Three~~Four Hundred Fifty Million Dollars (~~\$300,000,000~~450,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

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

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

“Undisclosed Administration” means in relation to a Lender the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“United States” means the United States of America.

“U.S. Bank” means U.S. Bank National Association, and its successors and assigns.

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

of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

“Welfare Plan” means an ERISA Plan that is a “welfare plan” within the meaning of ERISA Section 3(1).

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2.        Accounting Terms.

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

(b)        If any change in the rules, regulations, pronouncements, opinions or other requirements of the Financial Accounting Standards Board (or any successor thereto or agency with similar function) with respect to GAAP, or if the Borrower adopts the International Financial Reporting Standards, and such change or adoption results in a change in the calculation of any component (or components in the aggregate) of the financial covenants set forth in Section 5.7 hereof or the related financial definitions, at the option of the Administrative Agent, the Required Lenders or the Borrower, the parties hereto will enter into good faith negotiations to amend such financial covenants and financial definitions in such manner as the parties shall agree, each acting reasonably, in order to reflect fairly such change or adoption so that the criteria for evaluating the financial condition of the Borrower shall be the same in commercial effect after, as well as before, such change or adoption is made (in which case the method and calculating such financial covenants and definitions hereunder shall be determined in the manner so agreed); provided that, until so amended, such calculations shall continue to be computed in accordance with GAAP as in effect prior to such change or adoption. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification Section 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower, any other Company or any of their respective Subsidiaries at “fair value”, as defined therein, or (ii) any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Codification Subtopic 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, notwithstanding any other provision contained herein, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

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

Section 1.4. Foreign Exchange. For purposes of any determination of whether any borrowing, investment, payment, Lien, or other transaction is permitted under this Agreement, all amounts in currencies other than Dollars shall be translated into Dollars at the Exchange Rate (as determined by the Administrative Agent) as of the date of determination; provided that (a) if Indebtedness denominated in currencies other than Dollars is incurred to refinance other Indebtedness denominated in the same foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency Exchange Rate in effect on the date of such refinancing, such Dollar denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced, and (b) determinations of whether additional borrowings, investments, payments, Liens, or other transactions are permitted under this Agreement shall account for changes in any Exchange Rate with respect to other then existing borrowings, investments, payments, Liens, or other transactions in currencies other than Dollars.

## ARTICLE II

### AMOUNT AND TERMS OF CREDIT

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

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

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

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

(ii) the aggregate outstanding principal amount of Loans (other than Swing Loans) made by such Lender shall represent that percentage of the aggregate principal

amount then outstanding on all Loans (other than Swing Loans) that shall be such Lender's Commitment Percentage.

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

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

Section 2.2. Revolving Credit Commitment.

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

(b) Letters of Credit.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Issuing Lender shall, in its own name, on behalf of the Lenders, issue such Letters of Credit for the account of the Borrower or a Guarantor of Payment, as the Borrower may from time to time request. All Letters of Credit shall be denominated in Dollars, and all reimbursement amounts in respect of Letters of Credit, as well as fees and expenses owing in respect of Letters of Credit, shall be paid in Dollars. The Borrower shall not request any Letter of Credit (and the Issuing Lender shall not be obligated to issue any Letter of Credit) if, after giving effect thereto, (A) the Letter of Credit Exposure would exceed the Letter of Credit Commitment, or (B) the Revolving Credit Exposure would exceed the Revolving Credit Commitment. The issuance of each Letter of Credit shall confer upon each Lender the benefits and liabilities of a participation consisting of an undivided pro rata interest in the Letter of Credit to the extent of such Lender's Commitment Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, the letters of credit issued pursuant to the Existing Credit Agreement and identified on Schedule 2.2(b) (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" for all purposes of the Loan Documents.



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

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

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

issuance and administration of similar letters of credit under its fee schedule as in effect from time to time.

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

(vi) Participation in Letters of Credit. If, for any reason, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall be unable to or, in the opinion of the Administrative Agent, it shall be impracticable to, convert any amount drawn under a Letter of Credit to a Revolving Loan pursuant to the preceding subsection, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall have the right to request that each Lender fund a participation in the amount due with respect to such Letter of Credit, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Issuing Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Issuing Lender, an undivided participation interest in the amount due with respect to such Letter of Credit in an amount equal to such Lender's Commitment Percentage of the principal amount due with respect to such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees,

upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's ratable share of the amount due with respect to such Letter of Credit (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in the amount due under any Letter of Credit that is drawn but not reimbursed by the Borrower pursuant to this Section 2.2(b)(vi) shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(b)(vi) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans. Each Lender is hereby authorized to record on its records such Lender's pro rata share of the amounts paid and not reimbursed on the Letters of Credit.

(vii) Auto-Renewal Letters of Credit. If the Borrower so requests, a Letter of Credit shall have an automatic renewal provision; provided that any Letter of Credit that has an automatic renewal provision must permit the Administrative Agent (or the applicable Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) to prevent any such renewal by giving prior notice to the beneficiary thereof at least thirty (30) days prior to the renewal date of such Letter of Credit (or such other period as agreed to by the Administrative Agent and the Issuing Lender). Once any such Letter of Credit that has automatic renewal provisions has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Administrative Agent (and the Issuing Lender) to permit at any time the renewal of such Letter of Credit to an expiry date not later than one year after the last day of the Commitment Period.

(viii) Letters of Credit Outstanding Beyond the Commitment Period. If any Letter of Credit is outstanding upon the termination of the Commitment, then, upon such termination, the Borrower shall deposit with the Administrative Agent, for the benefit of the Issuing Lender, with respect to all outstanding Letters of Credit, cash denominated in Dollars in an amount equal to one hundred five percent (105%) of the undrawn amount of the outstanding Letters of Credit, which cash shall be free and clear of all rights and claims of third parties. The cash shall be deposited in an escrow account at a financial institution designated by the Issuing Lender. The Issuing Lender shall be entitled to withdraw amounts necessary to reimburse the Issuing Lender for payments to be made under the Letters of Credit and any fees and expenses associated with such Letters of Credit, or incurred pursuant to the reimbursement agreements with respect to such Letters of Credit. The Borrower shall also execute such documentation as the Administrative Agent or the Issuing Lender may reasonably require in connection with the survival of the Letters of Credit beyond the Commitment or this Agreement. After expiration of all undrawn Letters of Credit, the remainder of the cash, if any, shall promptly be returned to the Borrower.

(c) Swing Loans.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Swing Line Lender may, but shall not be required to, make a

Swing Loan or Swing Loans to the Borrower in such amount or amounts as the Borrower, through an Authorized Officer, may from time to time request and to which the Swing Line Lender may agree; provided that the Borrower shall not request any Swing Loan if, after giving effect thereto, (A) the Revolving Credit Exposure would exceed the Revolving Credit Commitment, or (B) the Swing Line Exposure would exceed the Swing Line Commitment. Each Swing Loan shall be due and payable on the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall be made in Dollars. All amounts due and payable in respect of Swing Loans (including principal, interest and fees) shall be paid in Dollars.

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

(iii) Participation in Swing Loans. If, for any reason, the Swing Line Lender is unable to or, in the opinion of the Administrative Agent, it is impracticable to, convert any Swing Loan to a Revolving Loan pursuant to the preceding Section 2.2(c)(ii), then on any day that a Swing Loan is outstanding (whether before or after the maturity thereof), the Administrative Agent shall have the right to request that each Lender fund a participation in such Swing Loan, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Swing Line Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Swing Line Lender, an undivided participation interest in the right to share in the payment of such Swing Loan in an amount equal to such Lender's Commitment Percentage of the principal amount of such Swing Loan. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative

Agent, for the benefit of the Swing Line Lender, such Lender's ratable share of such Swing Loan (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in Swing Loans pursuant to this Section 2.2(c)(iii) is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(c)(iii) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans to be made by such Lender.

Section 2.3. Interest.

(a) Revolving Loans.

(i) Base Rate Loan. The Borrower shall pay interest on the unpaid principal amount of a Revolving Loan that is a Base Rate Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on such Base Rate Loan shall be payable, commencing March 31, 2018, and continuing on each Regularly Scheduled Payment Date thereafter and at the maturity thereof.

(ii) Eurocurrency Loans. The Borrower shall pay interest on the unpaid principal amount of each Revolving Loan that is a Eurocurrency Loan outstanding from time to time, with the interest rate to be fixed in advance on the first day of the Interest Period applicable thereto through the last day of the Interest Period applicable thereto (but subject to changes in the Applicable Margin for Eurocurrency Loans), at the Derived Eurocurrency Rate. Interest on such Eurocurrency Loan shall be payable on each Interest Adjustment Date with respect to an Interest Period (provided that, if an Interest Period shall exceed three months, the interest must also be paid every three months, commencing three months from the beginning of such Interest Period).

(b) Swing Loans. The Borrower shall pay interest to the Administrative Agent, for the sole benefit of the Swing Line Lender (and any Lender that shall have funded a participation in such Swing Loan), on the unpaid principal amount of each Swing Loan outstanding from time to time from the date thereof until paid at either (i) the Derived Base Rate from time to time in effect or (ii) the Daily Eurodollar Rate plus the Applicable Margin for Eurocurrency Loans, in each case as selected by the Borrower (with such election being made by the Borrower together with the request for such Swing Loan). Interest on each Swing Loan shall be payable on each Regularly Scheduled Payment Date and on the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall bear interest for a minimum of one day.

(c) Default Rate. Anything herein to the contrary notwithstanding, if an Event of Default shall occur and be continuing, upon the election of the Administrative Agent or the Required Lenders (i) the principal of each Loan and the unpaid interest thereon shall bear interest, until paid, at the Default Rate, (ii) the fee for the aggregate undrawn amount of all issued and outstanding Letters of Credit shall be increased by two percent (2%) in excess of the

rate otherwise applicable thereto, and (iii) in the case of any other amount not paid when due from the Borrower hereunder or under any other Loan Document, such amount shall bear interest at the Default Rate; provided that, during an Event of Default under Section 8.1 or 8.11 hereof, the applicable Default Rate shall apply without any election or action on the part of the Administrative Agent or any Lender, and shall no longer apply when no Event of Default is continuing.

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

Section 2.4. Noteless Agreement; Evidence of Indebtedness.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Agreed Currency for such Loan and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the original stated amount of each Letter of Credit and the amount of obligations in respect thereof outstanding at any time, and (iv) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender’s share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall be rebuttably presumptive evidence of the existence and amounts of the Obligations therein recorded; *provided, however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender (including the Swing Line Lender) may request that its Loans be evidenced by a Note. Notes related to Revolving Loans shall be substantially in the form of Exhibit A hereto, and Notes related to Swing Loans shall be substantially in the form of Exhibit B hereto. The Borrower shall prepare, execute and deliver to such Lender such Note or Notes in favor of such Lender as supplied by the Administrative Agent. Thereafter, the Loans evidenced

by such Note and interest thereon shall at all times (prior to any assignment pursuant to Section 12.3) be represented by one or more Notes in favor of the payee named therein, except to the extent that any such Lender subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in clauses (b) (i) and (ii) above.

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

(a)        Notice of Loans and Credit Events. The Borrower, through an Authorized Officer, shall provide to the Administrative Agent a Notice of Loan prior to (i) 12:00 P.M. (Eastern time) on the proposed date of borrowing of, or conversion of a Loan to, a Base Rate Loan, (ii) 12:00 P.M. (Eastern time) three Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in Dollars, (iii) 12:00 P.M. (Eastern time) four Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in an Agreed Currency other than Dollars, and (iii) 4:30 P.M. (Eastern time) on the proposed date of borrowing of a Swing Loan (or such later time as agreed to from time to time by the Swing Line Lender). An Authorized Officer of the Borrower may verbally request a Loan, so long as a Notice of Loan is received by the end of the same Business Day, and, if the Administrative Agent or any Lender provides funds or initiates funding based upon such verbal request, the Borrower shall bear the risk with respect to any information regarding such funding that is later determined to have been incorrect. The Borrower shall comply with the notice provisions set forth in Section 2.2(b) hereof with respect to Letters of Credit.

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

(c)        Conversion and Continuation of Loans.

(i)        At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall convert a Base Rate Loan to one or more Eurocurrency Loans at any time and shall convert a Eurocurrency Loan to a Base Rate Loan on any Interest Adjustment Date applicable thereto; provided, that any Loan denominated in an Agreed Currency other than Dollars shall be converted into a Loan denominated in Dollars (using the then applicable Exchange Rate as determined by the

Administrative Agent) prior to such Loan becoming a Base Rate Loan. Swing Loans may be converted by the Swing Line Lender to Revolving Loans in accordance with Section 2.2(c)(ii) hereof.

(ii) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall continue one or more Eurocurrency Loans as of the end of the applicable Interest Period as a new Eurocurrency Loan with a new Interest Period; provided, that any such Loan shall be continued in the same Agreed Currency in which it was initially made.

Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or roll over all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

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

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

(ii) a Eurocurrency Loan shall be in an amount of not less than Five Hundred Thousand Dollars (\$500,000), increased by increments of One Hundred Thousand Dollars (\$100,000) (or the Approximate Equivalent Amount thereof, as applicable); and

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

(e) Interest Periods. The Borrower shall not request that Eurocurrency Loans be outstanding for more than ~~ten~~fifteen (~~10~~15) different Interest Periods at the same time.

(f) Additional Provisions with Respect to Affected Lenders.

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

(ii) Reallocation of Participations; Cash Collateralization and Repayment. Notwithstanding anything in this Agreement to the contrary, if any Lender becomes an Affected Lender, then, until such time as such Lender is no longer an Affected Lender, to the



extent permitted by applicable law, (A) all or any part of such Affected Lender's participation interest in Letters of Credit (pursuant to Section 2.2(b)(vi) hereof) and Swing Loans (pursuant to Section 2.2(c)(iii) hereof) shall be reallocated among the non-Affected Lenders in accordance with their respective Commitment Percentages (calculated as if such Affected Lender did not have a Commitment Percentage of the Commitment) but only to the extent that such reallocation does not cause the aggregate Lender Credit Exposure of any non-Affected Lender to exceed the Maximum Amount of such non-Affected Lender; provided that no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against an Affected Lender arising from that Lender having become an Affected Lender, including any claim of a non-Affected Lender as a result of such non-Affected Lender's increased exposure following such reallocation, and (B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the Borrower shall, within one Business Day following the written request of the Administrative Agent (or the Swing Line Lender or Issuing Lender), and without prejudice to any right or remedy available to it hereunder or under law, (1) first, prepay Swing Loans in an amount equal to the Swing Line Lender's exposure with respect to such Affected Lender's Commitment Percentage of outstanding Swing Loans (other than Swing Loans as to which such Affected Lender's participation obligation has been reallocated to other Lenders) and (2) second, cash collateralize the Issuing Lender's exposure with respect to issued Letters of Credit (other than those Letter of Credit obligations as to which such Affected Lender's participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof).

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

(g) Determination of Dollar Amounts. The Administrative Agent will determine the Dollar Amount of: (a) each Loan as of the date three (3) Business Days prior to the date on which such Loan is to be made or, if applicable, date of conversion/continuation of such Loan, and (b) all outstanding Loans on and as of the last Business Day of each calendar quarter and on any other Business Day elected by the Administrative Agent in its discretion or upon instruction by the Required Lenders. Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in the preceding clauses (a) and (b) is herein described as a "Computation Date" with respect to each Loan for which a Dollar Amount is determined on or as of such day. If at any time the Dollar Amount of (i) the aggregate principal amount of outstanding Loans exceeds the Total Commitment Amount, or (ii) the aggregate outstanding principal Dollar Amount of all Loans in Agreed Currencies other than Dollars exceeds the Maximum Foreign Currency Amount, the Borrower shall immediately make a payment on the Loans sufficient to eliminate such excess.

Section 2.6. Payment on Loans and Other Obligations.

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

(b) Payments from Borrower. All payments (including prepayments) to the Administrative Agent of the principal of or interest on each Loan or other payment, including but not limited to principal, interest, fees or any other amount owed by the Borrower under this Agreement, shall be made in Dollars unless otherwise specified herein. All payments described in this subsection (b) shall be remitted to the Administrative Agent, at the address of the Administrative Agent for notices referred to in Section 11.4 hereof for the account of the Lenders (or the Issuing Lender or the Swing Line Lender, as appropriate) not later than 3:00 P.M. (Eastern time) on the due date thereof with respect to payments other than for application to Swing Line Loans, and not later than 4:30 P.M. (Eastern time) on the due date thereof with respect to payments for application to Swing Line Loans, in each case in immediately available funds. Any such payments received by the Administrative Agent (or the Issuing Lender or the Swing Line Lender) after the time required above shall be deemed to have been made and received on the next Business Day.

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

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

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

(f) Payment of Non Pro-Rata Loans and Letters of Credit. Notwithstanding anything in this Agreement to the contrary, at the sole discretion of the Administrative Agent, any payment of principal, interest, fees or other amounts hereunder may first be applied to such Loans, Letters of Credit and other obligations that were not advanced or participated pro rata hereunder.

(g) Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan in any currency other than Dollars, currency control or exchange regulations are imposed in the country which issues such currency, or any other event occurs, in each case with the result that the type of currency in which the Loan was made (the "Original Currency") no longer exists or would no longer be an Eligible Currency or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower take all risks of the imposition of any such currency control or exchange regulations.

Section 2.7. Prepayment.

(a) Right to Prepay.

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

(ii) The Borrower shall have the right, at any time or from time to time, to prepay, for the benefit of the Swing Line Lender (and any Lender that has funded a participation in such Swing Loan), all or any part of the principal amount of the Swing Loans

then outstanding, as designated by the Borrower, plus interest accrued on the amount so prepaid to the date of such prepayment.

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

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

(c) Minimum Amount for Eurocurrency Loans. Each prepayment of a Eurocurrency Loan shall be in the principal amount of not less than the lesser of Two Hundred Fifty Thousand Dollars (\$250,000) (or the Approximate Equivalent Amount thereof, if applicable), or the principal amount of such Loan, or, with respect to a Swing Loan, the principal balance of such Swing Loan, except in the case of a mandatory payment pursuant to Section 2.11 or Article III hereof.

Section 2.8. Commitment and Other Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders, as a consideration for the Revolving Credit Commitment, a commitment fee, for each day from the Closing Date through the last day of the Commitment Period, in an amount equal to (i) (A) the Maximum Revolving Amount at the end of such day, minus (B) the Revolving Credit Exposure (exclusive of the Swing Line Exposure) at the end of such day, multiplied by (ii) the Applicable Commitment Fee Rate in effect on such day divided by three hundred sixty (360). The commitment fee shall be payable quarterly in arrears, commencing on March 31, 2018 and continuing on each Regularly Scheduled Payment Date thereafter, and on the last day of the Commitment Period.

(b) Other Fees. The Borrower shall pay the fees set forth in the Administrative Agent Fee Letter.

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

Section 2.9. Modifications to Commitment.

(a) Optional Reduction of Revolving Credit Commitment. The Borrower may at any time and from time to time permanently reduce in whole or ratably in part the Maximum

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

(b) Increase in Commitment.

(i) At any time during the Commitment Increase Period, the Borrower may request that the Administrative Agent increase the Total Commitment Amount by increasing the Maximum Revolving Amount; provided that the aggregate amount of all such increases made pursuant to this Section 2.9(b) shall not exceed One Hundred Fifty Million Dollars (\$150,000,000). Each such request for an increase shall be in an amount of at least Ten Million Dollars (\$10,000,000), and may be made by either (A) increasing, for one or more Lenders, with their prior written consent, their respective Revolving Credit Commitments, or (B) including one or more Additional Lenders, each with a new commitment under the Revolving Credit Commitment, as a party to this Agreement (each an "Additional Commitment" and, collectively, the "Additional Commitments").

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

(iii) On each Additional Lender Assumption Effective Date, the Lenders shall make adjustments among themselves with respect to the Loans then outstanding and amounts

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

Section 2.10. Computation of Interest and Fees. Interest on Loans (other than Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention does not follow a 360-day year), Letter of Credit fees, Related Expenses and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed. Interest on Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention is to follow a 365/366 day year shall be computed on the basis of a year having three hundred sixty-five (365) days or three hundred sixty-six (366) days, as the case may be, and calculated for the actual number of days elapsed.

Section 2.11. Mandatory Payments.

(a) Revolving Credit Exposure. If, at any time, the Revolving Credit Exposure shall exceed the Revolving Credit Commitment, the Borrower shall, as promptly as practicable, but in no event later than the next Business Day, pay an aggregate principal amount of the Revolving Loans sufficient to bring the Revolving Credit Exposure within the Revolving Credit Commitment. Prepayments resulting from foreign currency exchange rate fluctuations shall be made as contemplated by Section 2.5(g).

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

(c) Application of Mandatory Payments. Unless otherwise designated by the Borrower, each prepayment pursuant to Section 2.11 hereof shall be applied in the following order (i) first, on a pro rata basis for the Lenders, to outstanding Base Rate Loans, and (ii) second, on a pro rata basis for the Lenders, to outstanding Eurocurrency Loans; provided

that, if the outstanding principal amount of any Eurocurrency Loan shall be reduced to an amount less than the minimum amount set forth in Section 2.5(d) hereof as a result of such prepayment,

then such Eurocurrency Loan shall be converted into a Base Rate Loan on the date of such prepayment. Any prepayment of a Eurocurrency Loan or Swing Loan pursuant to this Section 2.11 shall be subject to the prepayment provisions set forth in Article III hereof.

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

Section 2.13. Market Disruption. Notwithstanding the satisfaction of all conditions referred to in Article II and Article IV with respect to any Loan in any Agreed Currency other than Dollars, if there shall occur on or prior to the date of such Loan any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls, or any other event, in each case, which would in the reasonable opinion of the Administrative Agent or the Required Lenders make it impracticable for such Loan to be denominated in the Agreed Currency specified by the Borrower, then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, and such Loan shall not be denominated in such Agreed Currency but shall be made in Dollars on the requested date for such Loan to be extended, with such Loan being made in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be, as a Base Rate Loan, unless the Borrower notifies the Administrative Agent at least one (1) Business Day before such date that (i) it elects not to borrow on such date or (ii) it elects to borrow on such date in a different Agreed Currency, as the case may be, in which the denomination of such Loans would in the opinion of the Administrative Agent and the Required Lenders be practicable and in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be.

Section 2.14. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the “specified currency”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent’s offices on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Borrower in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other

currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under the requirements of this Agreement, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the Borrower.

Section 2.15. Foreign Subsidiary Borrowers. The Borrower from time to time may request in writing that one or more of its Foreign Subsidiaries become borrowers hereunder with the ability to request and receive Loans and Letters of Credit (each, a “Foreign Subsidiary Borrower”). Each such request shall be delivered to the Administrative Agent. The Administrative Agent shall promptly circulate each such request to the Lenders. Each Lender shall notify the Administrative Agent and the Borrower no later than 20 days after its receipt of such request as to whether the applicable Foreign Subsidiary may become a party hereto as a Foreign Subsidiary Borrower. No Foreign Subsidiary shall become a Foreign Subsidiary Borrower unless approved in writing by all of the Lenders and the Administrative Agent. Any Lender that fails to respond to such a request shall be deemed to have rejected the joinder of such Foreign Subsidiary Borrower hereto. Each of the Administrative Agent and each Lender may request from the Borrower certain information in respect of such a Foreign Subsidiary in order to make such decision, including, without limitation, such Foreign Subsidiary’s jurisdiction of organization. Loans and Letters of Credit requested by a Foreign Subsidiary Borrower shall be made or issued from the United States. If the Lenders and the Administrative Agent agree with the Borrower to add a Foreign Subsidiary Borrower hereto, this Agreement (and the other Loan Documents, as relevant) shall be amended to give effect to such addition. All Lenders shall be required to make Loans to each Foreign Subsidiary Borrower, subject to any borrowing sublimits agreed to by the Borrower, the applicable Foreign Subsidiary Borrower, the Administrative Agent, and the Lenders. Each such Foreign Subsidiary Borrower shall be required to deliver, among other things (and in each case in form, scope and substance acceptable to the Administrative Agent and the Lenders), (a) amendments, joinders and other documents required by the Administrative Agent and the Lenders to give such Foreign Subsidiary Borrower the ability to receive extensions of credit hereunder, (b) collateral documents made by such Foreign Subsidiary Borrower in favor of the Administrative Agent, (c) resolutions, charter documents, incumbency certificates, opinions of counsel and other documents or information, as may be required by the Administrative Agent and the Lenders (including without limitation, information necessary to evaluate (i) any withholding tax that may arise in respect of any Loans made to or Letters of Credit issued on behalf of such Foreign Subsidiary, and (ii) the manner in which Loans may be made available to such Foreign Subsidiary, including in Dollars or the requested Agreed Currency), (d) promissory notes signed by such Foreign Subsidiary Borrower to the extent any Lender so requires, and (e) information required under “know your customer”, anti-money laundering or similar regulations to which such Lender is subject. No Foreign Subsidiary Borrower shall be joined hereto if (x) a violation of applicable law would result therefrom or (y)





any Lender or the Administrative Agent objects to any adverse change in tax treatment that would result therefrom (including, without limitation, the payment of any tax gross-up or the accrual of any withholding tax). In addition, extensions of credit and other financial accommodations from the United States into the applicable jurisdiction must be permitted under applicable law. The Borrower and each Guarantor of Payment shall guaranty the Obligations of each such Foreign Subsidiary Borrower on terms and conditions acceptable to the Administrative Agent and the Lenders. Each Foreign Subsidiary that is or becomes a Foreign Subsidiary Borrower hereby irrevocably appoints the Borrower as its agent for all purposes relevant to this Agreement and each related document, including service of process.

### ARTICLE III

#### ADDITIONAL PROVISIONS RELATING TO EUROCURRENCY LOANS; INCREASED CAPITAL; TAXES

Section 3.1. Requirements of Law.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

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

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

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

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

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

(c) For purposes of this Section 3.1 and Section 3.5(a) hereof, the Dodd-Frank Act, any requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), and any rules, regulations, orders, requests, guidelines and directives adopted, issued, promulgated or implemented in connection with any of the foregoing, regardless of the date adopted, issued, promulgated or implemented, are deemed to have been introduced and adopted after the Closing Date.

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

Section 3.2. Taxes.

- (a) All payments made by any Credit Party under any Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes or Other Taxes. If any Taxes or Other Taxes are required to be deducted or withheld from any amounts payable to the Administrative Agent or any Lender hereunder, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent

necessary to yield to the Administrative Agent or such Lender (after deducting, withholding and payment of all Taxes

and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in the Loan Documents.

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

(c) If any Lender shall be so indemnified by a Credit Party, such Lender shall use reasonable efforts to obtain the benefits of any refund, deduction or credit for any taxes or other amounts with respect to the amount paid by such Credit Party and shall reimburse such Credit Party to the extent, but only to the extent, that such Lender shall receive a refund with respect to the amount paid by such Credit Party or an effective net reduction in taxes or other governmental charges (including any taxes imposed on or measured by the total net income of such Lender) of the United States or any state or subdivision or any other Governmental Authority thereof by virtue of any such deduction or credit, after first giving effect to all other deductions and credits otherwise available to such Lender. If, at the time any audit of such Lender's income tax return is completed, such Lender determines, based on such audit, that it shall not have been entitled to the full amount of any refund reimbursed to such Credit Party as aforesaid or that its net income taxes shall not have been reduced by a credit or deduction for the full amount reimbursed to such Credit Party as aforesaid, such Credit Party, upon request of such Lender, shall promptly pay to such Lender the amount so refunded to which such Lender shall not have been so entitled, or the amount by which the net income taxes of such Lender shall not have been so reduced, as the case may be.

(d) Each Lender that is not (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States (or any jurisdiction thereof), or (iii) an estate or trust that is subject to federal income taxation regardless of the source of its income (any such Person, a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent two copies of either U.S. Internal Revenue Service Form W-8BEN, Form W-8BEN-E, Form W-8IMY or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement with respect to such interest and two copies of a Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Credit Parties under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement or such other Loan Document. In addition, each Non-U.S. Lender shall deliver such

forms or appropriate replacements promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that such Lender is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this subsection (c), a Non-U.S. Lender shall not be required to deliver any form pursuant to this subsection (c) that such Non-U.S. Lender is not legally able to deliver.

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

(f) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under any Loan Document shall use reasonable efforts to deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided that (i) such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender, and (ii) to the extent that such Lender fails to comply with the requirements of this subpart (f), such Lender shall not be entitled to additional compensation otherwise payable under this Section 3.2 if such additional compensation would not have been required had such Lender so complied.

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

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

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

(j) For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans and the Letters of Credit as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 3.3. Funding Losses. The Borrower agrees to indemnify each Lender, promptly after receipt of a written request therefor, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurocurrency Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurocurrency Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of a Eurocurrency Loan on a day that is not the last day of an Interest Period applicable thereto, (d) any conversion of a Eurocurrency Loan to a Base Rate Loan on a day that is not the last day of an Interest Period applicable thereto, or (e) any compulsory assignment of such Lender’s interests, rights and obligations under this Agreement pursuant to Section 11.3(c) or 11.12 hereof. Such indemnification shall be in an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amounts so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the appropriate London interbank market, along with any administration fee charged by such Lender. A certificate as to any amounts payable pursuant to this Section 3.3 submitted to the Borrower (with a copy to the Administrative Agent) by any Lender together with a reasonably detailed calculation and description of such amounts, shall be conclusive absent manifest error. The obligations of the Borrower pursuant to this Section 3.3 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

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

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

(b) If the Administrative Agent or the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain such Eurocurrency Loan shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of such Eurocurrency Loan or, failing that, will be deemed to have converted such request into a request for a borrowing of a Base Rate Loan in the amount specified therein. Notwithstanding the foregoing, in the event the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in this Section 3.5(b) have arisen and such circumstances are unlikely to be temporary, (ii) ICE Benchmark Administration (or any Person that takes over the administration of such rate) discontinues its administration and publication of interest settlement rates for deposits in Dollars, or (iii) the supervisor for the administrator of the interest settlement rate described above in this Section 3.5(b) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which such interest settlement rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall seek to jointly agree upon an alternate rate of interest to the Eurocurrency Base Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 11.3, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice

from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this Section 3.5(b), (x) any request pursuant to this Agreement that requests the conversion of any Loan to, or continuation of any Loan as, a Loan accruing interest at the Eurocurrency Rate shall be ineffective and any such Loan shall be continued as or converted to, as the case may be, a Base Rate Loan, and (y) if any request pursuant to this Agreement requests a Loan accruing interest at the Eurocurrency Rate, such Loan shall be made as a Base Rate Loan. If the alternate rate of interest determined pursuant to this Section 3.5(b) shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

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

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



## ARTICLE IV

### CONDITIONS PRECEDENT

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

- (a) all conditions precedent as listed in Section 4.2 hereof required to be satisfied prior to the first Credit Event shall have been satisfied prior to or as of the first Credit Event;
- (b) the Borrower shall have submitted a Notice of Loan (or with respect to a Letter of Credit, complied with the provisions of Section 2.2(b)(ii) hereof) and otherwise complied with Section 2.5 hereof;
- (c) no Default or Event of Default shall then exist or immediately after such Credit Event would exist; and
- (d) each of the representations and warranties contained in Article VI hereof shall be true in all material respects as if made on and as of the date of such Credit Event, except to the extent that any thereof expressly relate to an earlier date.

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

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

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

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

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

Administrative Agent, for the benefit of the Lenders, appropriate transfer powers for each of the Pledged Securities that are certificated, and (iii) delivered to the Administrative Agent, for the benefit of the Lenders, the Pledged Securities (to the extent such Pledged Securities are certificated).

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

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

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

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

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

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

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

(k) Pro-Forma Projections. The Borrower shall have delivered to the Administrative Agent annual pro-forma projections of financial statements (which report shall include balance sheets and statements of income (loss) and cash-flow) of the Borrower through and including the Fiscal Year ending December 30, 2023, prepared on a Consolidated basis, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Borrower shall have (i) paid all fees required to be paid to the Administrative Agent on the Closing Date, including as set forth in the Administrative Agent Fee Letter, and (ii) paid all legal fees and expenses of the Administrative Agent in connection with the preparation and negotiation of the Loan Documents.

(m) Mortgage Releases. The Administrative Agent shall have received evidence reasonably satisfactory to it that all mortgages securing obligations under the Existing Credit Agreement have been or contemporaneously with the effectiveness hereof shall be terminated.

(n) Closing Certificate. The Borrower shall have delivered to the Administrative Agent and the Lenders an officer's certificate certifying that, as of the Closing Date, (i) all conditions precedent set forth in Sections 4.1 and 4.2 have been satisfied, (ii) no Default or Event of Default exists or immediately after the first Credit Event will exist, and (iii) each of the representations and warranties contained in Article VI hereof are true and correct as of the Closing Date.

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

(p) No Material Adverse Change. No material adverse change, in the opinion of the Administrative Agent, shall have occurred in the financial condition, operations or prospects of the Companies since December 31, 2016.

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

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

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

(b) Control Agreements. No later than forty-five (45) days after the Closing Date, the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent an executed Control Agreement, in form and substance satisfactory to the Administrative Agent, for each Deposit Account and each Securities Account maintained by a Credit Party; provided that the Borrower shall not be required to deliver a Control Agreement with respect to any Deposit Account or Securities Account if it would not be required to deliver a Control Agreement pursuant to Section 5.21(d) hereof.

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

## ARTICLE V

### COVENANTS

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

Section 5.1. Insurance. Each Company (other than a Dormant Subsidiary) shall at all times maintain insurance upon its Inventory, Equipment and other personal and real property (including, if applicable, insurance required by the National Flood Insurance Reform Act of 1994) in such form, written by such companies, in such amounts, for such periods, and against such risks as may be reasonably acceptable to the Administrative Agent, with provisions satisfactory to the Administrative Agent for, with respect to Credit Parties, payment of all losses thereunder to the Administrative Agent, for the benefit of the Lenders, and such Company as their interests may appear (with lender's loss payable and additional insured endorsements, as appropriate, in favor of the Administrative Agent, for the benefit of the Lenders), and, if required by the Administrative Agent, the Borrower shall deposit the policies with the Administrative Agent. Any such policies of insurance shall provide for no fewer than thirty (30) days prior written notice of cancellation to the Administrative Agent and the Lenders. If any Event of Default then exists, any sums received by the Administrative Agent, for the benefit of the Lenders, in payment of insurance losses, returns, or unearned premiums under the policies may, at the option of the Administrative Agent or the Required Lenders, be applied upon the Obligations whether or not the same is then due and payable, or may be delivered to the Companies for the purpose of replacing, repairing, or restoring the insured property; provided that if an Event of Default does not then exist, any such sums received by the Administrative Agent shall be delivered to the Borrower. The Administrative Agent is hereby authorized to act

as attorney-in-fact for the Companies, after the occurrence and during the continuance of an Event of Default, in obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. In the event of failure to provide such insurance as herein provided, the Administrative Agent may, at its option, provide such insurance and the Borrower shall pay to the Administrative Agent, upon demand, the cost thereof. Should the Borrower fail to pay such sum to the Administrative Agent upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the Default Rate. Within ten days of the Administrative Agent's written request, the Borrower shall furnish to the Administrative Agent such information about the insurance of the Companies as the Administrative Agent may from time to time reasonably request, which information shall be prepared in form and detail satisfactory to the Administrative Agent and certified by a Financial Officer.

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

Section 5.3. Financial Statements and Information.

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

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

Borrower for such period filed with the SEC shall be deemed to satisfy the requirements of this subsection (b).

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

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

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

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

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

(h) Beneficial Ownership Certification. On or promptly after any time at which the Borrower or any Subsidiary becomes subject to the Beneficial Ownership Regulation, a completed Beneficial Ownership Certification in form and substance acceptable to the Administrative Agent.

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

Section 5.4. Financial Records. Each Company shall at all times maintain true and complete records and books of account, including, without limiting the generality of the

foregoing, appropriate provisions for possible losses and liabilities, all in accordance with GAAP, and at all reasonable times (during normal business hours and upon reasonable notice to such Company) permit the Administrative Agent or any Lender, or any representative of the Administrative Agent or such Lender, to examine such Company's books and records and to make excerpts therefrom and transcripts thereof.

Section 5.5. Franchises; Change in Business.

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

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

Section 5.6. ERISA Pension and Benefit Plan Compliance. No Company shall fail to satisfy any minimum funding requirements under Code Section 412 or incur any liability to the PBGC (other than premiums payable in the ordinary course), in connection with any Pension Plan in either case which would result in a Material Adverse Effect. The Borrower shall furnish to the Administrative Agent and the Lenders as soon as possible and in any event within thirty (30) days after any Company knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, a statement of a Financial Officer of such Company, setting forth details as to such Reportable Event and the action that such Company proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to such Company. The Borrower shall promptly notify the Administrative Agent of any taxes assessed, proposed to be assessed or that the Borrower has reason to believe are likely to be assessed against a Company by the Internal Revenue Service with respect to any ERISA Plan, if any such actual, proposed or possible assessment would result in a Material Adverse Effect. As soon as practicable, and in any event within twenty (20) days, after any Company shall become aware that an ERISA Event shall have occurred that could reasonably be expected to result in a Material Adverse Effect, such Company shall provide the Administrative Agent with notice of such ERISA Event with a certificate by a Financial Officer of such Company setting forth the details of the event and the action such Company or another Controlled Group member proposes to take with respect thereto. The Borrower shall, at the reasonable request of the Administrative Agent, deliver or cause to be delivered to the Administrative Agent true and correct copies of any documents relating to the ERISA Plan of any Company.

Section 5.7. Financial Covenants.

(a) Leverage Ratio. The Borrower shall not suffer or permit at any time the Leverage Ratio, as of the end of any Quarterly Reporting Period, to exceed ~~4.25~~4.50 to 1.00.

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

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

- (a) the Loans, the Letters of Credit and any other Indebtedness under this Agreement;
- (b) any loans or other credit granted to, or Capitalized Lease Obligations entered into by, any Company for the purchase or lease of fixed assets (and refinancings of such loans, credit or Capitalized Lease Obligations), which loans, credit and Capitalized Lease Obligations shall only be secured by the fixed assets being purchased or leased, so long as the aggregate principal amount of all such loans and Capitalized Lease Obligations for all Companies shall not exceed Twenty Million Dollars (\$20,000,000) at any time outstanding;
- (c) the Indebtedness existing on the ~~Closing~~First Amendment Effective Date, in addition to the other Indebtedness permitted to be incurred pursuant to this Section 5.8, as set forth in Schedule 5.8 hereto (and any extension, renewal or refinancing thereof but only to the extent that the principal amount thereof does not increase after the Closing Date);
- (d) loans to, and guaranties of Indebtedness of, a Company from a Company so long as each such Company is a Credit Party;
- (e) loans to, and guaranties of Indebtedness of, a Foreign Subsidiary by a Credit Party in an aggregate amount not to exceed Fifteen Million Dollars (\$15,000,000) at any time outstanding;
- (f) Indebtedness under any Hedge Agreement, so long as such Hedge Agreement shall have been entered into in the ordinary course of business and not for speculative purposes;
- (g) [Intentionally Omitted]; and
- (h) other unsecured Indebtedness, in addition to the Indebtedness listed above, in an aggregate principal amount for all Companies not to exceed Twenty Million Dollars (\$20,000,000) at any time outstanding.

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

- (a) Liens for taxes not yet due or that are being actively contested in good faith by appropriate proceedings and for which adequate reserves shall have been established in accordance with GAAP;
- (b) other statutory Liens, including, without limitation, statutory Liens of landlords, carriers, warehousemen, utilities, mechanics, repairmen, workers and materialmen, incidental to the conduct of its business or the ownership of its property and assets that (i) were not incurred in connection with the incurring of Indebtedness or the obtaining of advances or



credit, and (ii) do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

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

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

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

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

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

(h) other Liens, in addition to the Liens listed above, not incurred in connection with the incurring of Indebtedness, securing amounts, in the aggregate for all Companies, not to exceed Five Million Dollars (\$5,000,000) at any time.

No Company shall enter into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and (iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that would prohibit the Administrative Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of such Company.

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

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

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;

(ii) any investment in direct obligations of the United States or in certificates of deposit issued by a member bank (having capital resources in excess of Five Hundred Million Dollars (\$500,000,000)) of the Federal Reserve System;

(iii) any investment in (A) commercial paper or securities that at the time of such investment is assigned the highest quality rating in accordance with the rating systems employed by either Moody's or Standard & Poor's, (B) other Cash Equivalents, or (C) any other investment made in accordance with the Borrower Investment Policy;

(iv) the holding of each of the Subsidiaries listed on Schedule 6.1 hereto, and the creation, acquisition and holding of and any investment in any new Subsidiary after the Closing Date so long as such new Subsidiary shall have been created, acquired or held, and investments made, in accordance with the terms and conditions of this Agreement;

(v) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(d) hereof) and to the extent not in excess of \$2,500,000 at any time outstanding in the aggregate with respect to the Companies, guaranties of trade accounts payable in the ordinary course of business and guaranties of obligations under agreements by which a third party provides a drafts payable program with respect to such accounts payable for the applicable Company, in each case of, a Company from or by a Company so long as each such Company is a Credit Party;

(vi) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(e) hereof) of, a Foreign Subsidiary from or by a Credit Party;

(vii) investments by the Borrower and the other Companies in the capital stock of their Foreign Subsidiaries in an aggregate amount not to exceed Five Million Dollars (\$5,000,000) at any time outstanding;

(viii) any advance or loan to an officer or employee of a Company made in the ordinary course of such Company's business, so long as all such advances and loans from all Companies aggregate not more than the maximum principal sum of One Million Dollars (\$1,000,000) at any time outstanding;

(ix) advances in the form of progress payments, prepaid rent or security deposits;

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

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

(xii) other investments in an aggregate amount for all of the Companies not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) during any Fiscal Year of the Borrower.

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

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

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

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

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

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

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

(f) other ~~transfers or dispositions~~ Dispositions consummated by one or more of the Companies in any Fiscal Year in an aggregate amount not to exceed 10% of Consolidated Total Assets as determined as of the last day of the immediately preceding Fiscal Year.

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

(a) [Intentionally Omitted]; or

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

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

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

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

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

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

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

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

(viii) the aggregate Consideration paid by the Companies, when added to all other Acquisitions for all Companies, would not exceed the aggregate amount of One Hundred Million Dollars (\$100,000,000) for the twelve month period ending with the month in which such Acquisition is consummated; provided, however, that the Leverage Ratio for the most recently ended reporting period for which the Administrative Agent has received a Compliance Certificate, immediately before and after giving pro forma effect to such Acquisition, shall be less than 3.75 to 1.00; provided, further, that each such pro forma determination shall be made as if such Acquisition (and related transactions, including the incurrence of any Indebtedness in connection therewith) was consummated on the first day of the applicable four-quarter period for which the Leverage Ratio is being determined.

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

(a) a Default or Event of Default has occurred hereunder or any representation or warranty made in Article VI hereof or elsewhere in this Agreement or in any Related Writing is determined for any reason to have not been true and complete cease in any material respect when made;

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

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

Section 5.15. Restricted Payments. No Company shall make or commit itself to make any Restricted Payment at any time, except, that so long as (x) the Leverage Ratio would not exceed 3.75 to 1.00 (as of the date of a Capital Distribution and giving pro forma effect thereto) and (y) no Default or Event of Default shall then exist or, after giving pro forma effect to such payment, thereafter shall begin to exist~~exists or would result therefrom,~~ the Companies may make Capital Distributions.

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

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

Section 5.18. Use of Proceeds. The Borrower's use of the proceeds of the Loans and its use of Letters of Credit shall be for working capital and other general corporate purposes of the Companies and for the refinancing of existing Indebtedness and for Acquisitions permitted hereunder. The Borrower will not request any Loan or Letter of Credit, and will not use, and the Borrower will ensure that the other Companies, and its or their respective directors, officers, employees and agents, shall not use, the proceeds of any Loan or Letter of Credit in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws. The Borrower will not, directly or indirectly, use the proceeds of the Loans or any Letter of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

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

(i) provide written notice to the Administrative Agent within forty-five (45) days after the end of each of the first three fiscal quarters of each Fiscal Year of the Borrower and within ninety (90) days after the end of each Fiscal Year of the Borrower, of any interest (including but not limited to any fee simple or leasehold interest) in any real property (including the name of any landlord (other than a retail store landlord) and the address of any such real property and whether such location will have or could reasonably be expected to have at any time Inventory and Equipment (excluding leasehold improvements) of the Credit Parties having an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000)) not previously disclosed on Schedule 6.9 hereto or previously disclosed in writing by the Borrower to the Administrative Agent pursuant to this Section 5.19, and upon the Administrative Agent's receipt of such written notice from the Borrower, such interest in real property so disclosed in such written notice shall be deemed to be included on Schedule 6.9 hereto;

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

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

In the event of any of the foregoing or if otherwise deemed appropriate by the Administrative Agent, the Administrative Agent is hereby authorized to file new U.C.C. Financing Statements describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in the Administrative Agent's sole discretion, to perfect or continue perfected the security interest of the Administrative Agent, for the benefit of the Lenders, in the Collateral. The Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such U.C.C. Financing Statements and security interests and shall promptly reimburse the Administrative Agent therefor if the Administrative Agent pays the same. Such amounts not so paid or reimbursed shall be Related Expenses hereunder.

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

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

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

Subsidiary, the Borrower shall provide to the Administrative Agent prompt written notice thereof, and, subject to Section 5.20(b)(ii) above, shall provide, with respect to such first-tier Foreign Subsidiary, share certificates (or other evidence of equity) and a Pledge Agreement as referenced in the foregoing sentence.

(c) Perfection or Registration of Interest in Foreign Shares. With respect to any foreign shares pledged to the Administrative Agent, for the benefit of the Lenders, on or after the Closing Date, the Administrative Agent shall at all times, in the discretion of the Administrative Agent or the Required Lenders, have the right to perfect, at the Borrower's cost, payable upon request therefor (including, without limitation, any foreign counsel, or foreign notary, filing, registration or similar, fees, costs or expenses), its security interest in such shares in the respective foreign jurisdiction. Such perfection may include the requirement that the applicable Company promptly execute and deliver to the Administrative Agent a separate pledge document (prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent), covering such equity interests, that conforms to the requirements of the applicable foreign jurisdiction, together with an opinion of local counsel as to the perfection of the security interest provided for therein, and all other documentation necessary or desirable to effect the foregoing and to permit the Administrative Agent to exercise any of its rights and remedies in respect thereof. Notwithstanding the foregoing, if the Administrative Agent, in its reasonable discretion, after consultation with the Borrower, determines that the cost of perfecting in a foreign jurisdiction, the security interest of the Administrative Agent, for the benefit of the Lenders, in the Pledged Securities relating to any Foreign Subsidiary, (i) is impractical or cost-prohibitive or (ii) the benefits obtained by such action are outweighed by the burdens of obtaining the same, then the Administrative Agent may agree to forego (until such time as the Administrative Agent determines it is practical to so perfect such interest) the foreign perfection of such security interest.

Section 5.21. Collateral. Each Credit Party shall:

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

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

(c) promptly notify the Administrative Agent in writing upon the acquisition or creation of any Account (other than any tax refund), in excess of One Million Dollars



(\$1,000,000) with respect to which the Account Debtor is the United States or any other Governmental Authority, or any business that is located in a foreign country;

(d) promptly notify the Administrative Agent in writing upon the acquisition or creation by any Credit Party of a Deposit Account or Securities Account not listed on the notice provided to the Administrative Agent pursuant to Section 6.19 hereof, and, prior to or simultaneously with the creation of such Deposit Account or Securities Account, provide for the execution of a Deposit Account Control Agreement or Securities Account Control Agreement with respect thereto, if required by the Administrative Agent or the Required Lenders; provided that a Control Agreement shall not be required for a Deposit Account or Securities Account (i) that constitutes Excluded Collateral, (ii) so long as no Event of Default has occurred and is continuing, that is a retail store Deposit Account provided that the aggregate amount maintained in all such retail store Deposit Accounts does not exceed Five Million Dollars (\$5,000,000) for any two consecutive Business Days during the ninety (90) day period immediately preceding such time of determination, or (iii) that is a disbursement account that automatically has a zero balance at the end of each day;

(e) subject to Section 4.3(c), with respect to any Equipment or Inventory of a Credit Party located at a location of a third party (other than another Credit Party), use commercially reasonable efforts to cause to be executed any Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document or notice that may be required by the Administrative Agent or the Required Lenders; provided that a Credit Party shall not be required to deliver a Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document for any Equipment or Inventory located at such location to the extent that the aggregate value of all Equipment (excluding leasehold improvements) and Inventory of all Companies maintained at such location does not exceed Five Hundred Thousand Dollars (\$500,000);

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

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

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

the Administrative Agent, for the benefit of the Lenders, in form and substance satisfactory to the Administrative Agent;

(i) provide to the Administrative Agent, when each Compliance Certificate is due (as necessary), a list of any patents, trademarks or copyrights that have been federally registered by such Credit Party since delivery of the last Compliance Certificate, and provide for the execution of an appropriate Intellectual Property Security Agreement; and

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

Each Credit Party hereby authorizes the Administrative Agent, on behalf of the Lenders, to file U.C.C. Financing Statements or other appropriate notices with respect to the Collateral. Such U.C.C. Financing Statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administrative Agent may determine, in its reasonable discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing such property as “all assets” or “all personal property, whether now owned or hereafter acquired. If certificates of title or applications for title are issued or outstanding with respect to any of the Inventory or Equipment of any Credit Party with an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000), such Credit Party shall, upon request of the Administrative Agent, (i) execute and deliver to the Administrative Agent a short form security agreement, prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and (ii) deliver such certificate or application to the Administrative Agent and cause the interest of the Administrative Agent, for the benefit of the Lenders, to be properly noted thereon. Each Credit Party hereby authorizes the Administrative Agent or the Administrative Agent’s designated agent (but without obligation by the Administrative Agent to do so) to incur Related Expenses (whether prior to, upon, or subsequent to any Default or Event of Default), and the Borrower shall promptly repay, reimburse, and indemnify the Administrative Agent and the Lenders for any and all Related Expenses. If any Credit Party fails to keep and maintain its Equipment (other than Equipment that is obsolete or no longer useful in such Credit Party’s business) in good operating condition, ordinary wear and tear excepted, the Administrative Agent may (but shall not be required to) so maintain or repair all or any part of such Credit Party’s Equipment and the cost thereof shall be a Related Expense. All Related Expenses are payable to the Administrative Agent upon demand therefor; the Administrative Agent may, at its option, debit Related Expenses directly to any Deposit Account of a Company located at the Administrative Agent or the Revolving Loans.

Section 5.22. Property Acquired Subsequent to the Closing Date and Right to Take Additional Collateral. Except as notice therefor is otherwise provided for herein or in any Security Document, the Borrower shall provide the Administrative Agent with prompt written notice with respect to any personal property constituting Collateral (other than in the ordinary

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

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

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

the Administrative Agent), execute and deliver to the Administrative Agent an amendment to this Agreement that incorporates such more restrictive provisions for as long as such more restrictive provisions are applicable to such Company with respect to such Material Indebtedness Agreement, with such amendment to be in form and substance satisfactory to the Administrative Agent.

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

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

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

Section 5.28. Further Assurances. The Borrower shall, and shall cause each other Credit Party to, promptly upon request by the Administrative Agent, or the Required Lenders through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or the Required Lenders through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

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

Section 5.30. Compliance with Laws. The Borrower will, and will cause each Company to, (i) comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, Anti-Corruption Laws and applicable Sanctions and (ii) perform its obligations under material agreements to which it is a party, in each case under clause (i) and (ii) above to the extent a failure to do so would reasonably be expected to have a Material Adverse Effect.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

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

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

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

(a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so would not have a Material Adverse Effect;

(b) is in compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices, except where the failure to be in compliance would not have a Material Adverse Effect;

(c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound, except with respect to any violation or default that would not have a Material Adverse Effect; and

(d) is in compliance, in all material respects, with the Patriot Act.

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

Section 6.5. Title to Assets. Each Company has good title to and ownership of all property it purports to own, which property is free and clear of all Liens, except those permitted under Section 5.9 hereof. As of the Closing Date, the Companies own the real estate listed on Schedule 6.5 hereto.

Section 6.6. Liens and Security Interests. On and after the Closing Date, except for Liens permitted pursuant to Section 5.9 hereof, (a) there is and will be no U.C.C. Financing Statement or similar notice of Lien outstanding covering any personal property of any Company, except for any such U.C.C. Financing Statement as to which the referenced secured party has provided written authorization to be terminated; (b) there is and will be no mortgage or charge outstanding covering any real property of any Company; and (c) no real or personal property of any Company is subject to any Lien of any kind. The Administrative Agent, for the benefit of the Lenders, upon the filing of the U.C.C. Financing Statements and taking such other actions necessary to perfect its Lien against collateral of the corresponding type as authorized hereunder, will have a valid and enforceable first Lien on the collateral securing the Obligations (other than (x) with respect to Commercial Tort Claims, (y) as otherwise specifically provided pursuant to Section 5.9 hereof and (z) as enforceability may be limited by Section 9-408 of the UCC with respect to commercially available software license agreements or certain other general intangibles subject to such Section 9-408). No Company has entered into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and

(iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that exists on or after the Closing Date that would prohibit the Administrative Agent or the Lenders from acquiring a Lien on, or a collateral assignment of, any of the property or assets of any Company.

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

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

Section 6.9. Locations. Schedule 6.9 sets forth, as of the Closing Date, (x) the address of each location (including third party locations) where assets of the Companies exceed Five Hundred Thousand Dollars (\$500,000) and (y) each Company's chief executive office. Schedule 6.9 hereto further specifies whether each location, as of the Closing Date, (a) is owned by the Companies, (b) is leased by a Company from a third party or (c) is the location of a bailee, processor or consignee of a Company, and, in the case of the foregoing clauses (b) and (c), if a Landlord's Waiver, Bailee's Waiver, Processor's Waiver or Consignee's Waiver has been requested.

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

Section 6.11. Employee Benefits Plans. Schedule 6.11 hereto identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred with respect to an ERISA Plan that could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, (a) full payment has been made of all amounts that each Controlled Group member is required, under applicable law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan; (b) the liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements, and (c) no changes have occurred or are expected to occur that would cause a material increase in the cost of providing benefits under the ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Code Section 401(a), except as could not reasonably be expected to have a Material Adverse Effect, (i) the ERISA Plan and any associated trust operationally comply with the applicable requirements of Code Section 401(a); (ii) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely); (iii) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype or volume submitter plan that is the subject of a favorable opinion letter from the Internal Revenue Service, unless the ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired and subject to changes the Internal Revenue Service makes to the determination letter process; (iv) the ERISA Plan currently satisfies the requirements of Code Section 410(b); and (v) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. With respect to any Pension Plan, the "accumulated benefit obligation" of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, "Employers' Accounting for Pensions", as amended) does not exceed the fair market value of Pension Plan assets by an amount that would reasonably be expected to have a Material Adverse Effect. The Borrower represents that, as of the date hereof and throughout the term of this Agreement, no Credit Party is (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

Section 6.12. Consents or Approvals. No consent, approval or authorization of, or filing (other than any filing or recording necessary to perfect any Lien granted to the Lenders hereunder) registration or qualification with, any Governmental Authority or any other Person is



required to be obtained or completed by any Company in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed.

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

Section 6.14. Financial Statements. The audited Consolidated financial statements of the Borrower for the Fiscal Year ended December 31, 2016, and the unaudited Consolidated financial statements of the Borrower for the Quarterly Reporting Period ended September 30, 2017, furnished to the Administrative Agent and the Lenders, are true and complete, have been prepared in accordance with GAAP, and fairly present the financial condition of the Companies as of the dates of such financial statements and the results of their operations for the periods then ending. Since the dates of such statements, there has been no material adverse change in any Company's financial condition, properties or business or, except as required by GAAP, any change in any Company's accounting procedures.

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

Section 6.16. Material Agreements. Except as disclosed on Schedule 6.16 hereto, as of the Closing Date, no Company is a party to any (a) debt instrument (excluding the Loan Documents); (b) lease (capital, operating or otherwise), whether as lessee or lessor thereunder; (c) contract, commitment, agreement, or other arrangement involving the purchase or sale of any inventory by it, or the license of any right to or by it; (d) contract, commitment, agreement, or other arrangement with any of its "Affiliates" (as such term is defined in the Exchange Act) other than a Company; (e) management or employment contract or contract for personal services with any of its Affiliates that is not otherwise terminable at will or on less than ninety (90) days' notice without liability; (f) collective bargaining agreement; or (g) other contract, agreement, understanding, or arrangement with a third party; that, as to subparts (a) through (g) above, if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect.

Section 6.17. Intellectual Property. Each Company owns, or has the right to use, all of the patents, patent applications, industrial designs, designs, trademarks, service marks,

copyrights and licenses, and rights with respect to the foregoing, necessary for the conduct of its business without any known material infringement of valid rights of others to any of the foregoing. Schedule 6.17 hereto sets forth all patents, trademarks, copyrights and service marks owned by each Company which are federally registered as of the Closing Date and all material license agreements of any the foregoing by any Company to another party, as of the Closing Date.

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

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

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

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

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

Section 6.23. Anti-Corruption Laws; Sanctions. Each of the Companies and its respective officers and employees, and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions, except where the failure to be in compliance would not have a Material Adverse Effect. The Borrower has implemented and maintains in effect for itself, and the other Companies policies and procedures designed to promote compliance by the Borrower, and the other Companies, and their respective officers, employees, directors, and agents, with Anti-Corruption Laws and applicable Sanctions. None of the Companies, or to the knowledge of the Borrower, any directors, officer, employee, agent, or affiliate of a Company is an individual or entity that is, or is 50% or more owned (individually or in the aggregate, directly or indirectly) or controlled by individuals or entities (including any agency, political subdivision or instrumentality of any government) that are (i) the

target of any Sanctions or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (as of the date hereof, Crimea, Cuba, Iran, North Korea and Syria).

Section 6.24. Anti-Money Laundering Compliance. The Borrower shall, and shall cause each other Company to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with anti-money laundering laws and regulations.

Section 6.25. EEA Financial Institution. No Credit Party is an EEA Financial Institution.

## ARTICLE VII

### SECURITY

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

Section 7.2. Collections and Receipt of Proceeds by Borrower.

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

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

Agent on its warranties of collection, the Administrative Agent may charge the amount of such item against the Cash Collateral Account or any other Deposit Account maintained by the Borrower with the Administrative Agent or with any other Lender, and, in any event, retain the same and the Borrower's interest therein as additional security for the Secured Obligations. The Administrative Agent may, in its sole discretion, at any time and from time to time, release funds from the Cash Collateral Account to the Borrower for use in the Borrower's business. The balance in the Cash Collateral Account may be withdrawn by the Borrower upon termination of this Agreement and payment in full of all of the Secured Obligations (other than unasserted contingent indemnity obligations).

(c) After the occurrence and during the continuance of an Event of Default, at the Administrative Agent's written request, the Borrower shall cause all remittances representing collections and Proceeds of Collateral to be mailed to a lockbox at a location acceptable to the Administrative Agent, to which the Administrative Agent shall have access for the processing of such items in accordance with the provisions, terms and conditions of the customary lockbox agreement of the Administrative Agent.

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

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

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

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

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

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

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

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

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

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

Section 7.4. Administrative Agent's Authority Under Pledged Notes. For the better protection of the Administrative Agent and the Lenders hereunder, the Borrower has executed (or will execute, with respect to future Pledged Notes) an appropriate endorsement on (or separate from) each Pledged Note and has deposited (or will promptly deposit, but in any event within 30 days after the date of receipt thereof) such Pledged Note with the Administrative Agent, for the benefit of the Lenders. The Borrower irrevocably authorizes and empowers the

Administrative Agent, for the benefit of the Lenders, to, after the occurrence and during the continuance of an Event of Default, (a) ask for, demand, collect and receive all payments of principal of and interest on the Pledged Notes; (b) compromise and settle any dispute arising in respect of the foregoing; (c) execute and deliver vouchers, receipts and acquittances in full discharge of the foregoing; (d) exercise, in the Administrative Agent's discretion, any right, power or privilege granted to the holder of any Pledged Note by the provisions thereof including, without limitation, the right to demand security or to waive any default thereunder; (e) endorse the Borrower's name to each check or other writing received by the Administrative Agent as a payment or other proceeds of or otherwise in connection with any Pledged Note; (f) enforce delivery and payment of the principal and/or interest on the Pledged Notes, in each case by suit or otherwise as the Administrative Agent may desire; and (g) enforce the security, if any, for the Pledged Notes by instituting foreclosure proceedings, by conducting public or other sales or otherwise, and to take all other steps as the Administrative Agent, in its discretion, may deem advisable in connection with the foregoing; provided, however, that nothing contained or implied herein or elsewhere shall obligate the Administrative Agent to institute any action, suit or proceeding or to make or do any other act or thing contemplated by this Section 7.4 or prohibit the Administrative Agent from settling, withdrawing or dismissing any action, suit or proceeding or require the Administrative Agent to preserve any other right of any kind in respect of the Pledged Notes and the security, if any, therefor.

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

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

## ARTICLE VIII

### EVENTS OF DEFAULT

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

Section 8.1. Payments. If (a) the interest on any Loan, any commitment or other fee, or any other Obligation not listed in subpart (b) hereof, shall not be paid in full when due and payable or within three Business Days thereafter, or (b) the principal of any Loan, an

reimbursement obligation under any Letter of Credit that has been drawn, or any amount owing pursuant to Section 2.11(a) or (b) hereof shall not be paid in full when due and payable.

Section 8.2. Special Covenants. If any Company shall fail or omit to perform and observe Section 5.3, 5.5 (with respect to the Borrower) 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28 or 5.30 hereof.

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

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

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

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

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

Section 8.8. Judgments. There is entered against any Company a final judgment or order for the payment of money by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired, provided that such occurrence shall constitute an Event of Default only if the aggregate of all such judgments for all such Companies, shall exceed Ten Million Dollars (\$10,000,000) (less any amount that will be covered by the proceeds of insurance and is not subject to dispute by the insurance provider).

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

reasonable discretion) and the Borrower (or the appropriate Credit Party) has failed to promptly execute appropriate documents to correct such matters.

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

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



## ARTICLE IX

### REMEDIES UPON DEFAULT

Notwithstanding any contrary provision or inference herein or elsewhere:

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

(a) terminate the Commitment, if not previously terminated, and, immediately upon such election, the obligations of the Lenders, and each thereof, to make any further Loan, and the obligation of the Issuing Lender to issue any Letter of Credit, immediately shall be terminated; and/or

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

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

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

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

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

Section 9.4. Offsets.

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

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

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

payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 9.6. Collateral. The Administrative Agent and the Lenders shall at all times have the rights and remedies of a secured party under the U.C.C., in addition to the rights and remedies of a secured party provided elsewhere within this Agreement, in any other Related Writing executed by the Borrower or otherwise provided in law or equity. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may require the Borrower to assemble the collateral securing the Obligations, which the Borrower agrees to do, and make it available to the Administrative Agent and the Lenders at a reasonably convenient place to be designated by the Administrative Agent. The Administrative Agent may, with or without notice to or demand upon the Borrower and with or without the aid of legal process, make use of such force as may be necessary to enter any premises where such collateral, or any thereof, may be found and to take possession thereof (including anything found in or on such collateral that is not specifically described in this Agreement, each of which findings shall be considered to be an accession to and a part of such collateral) and for that purpose may pursue such collateral wherever the same may be found, without liability for trespass or damage caused thereby to the Borrower. After any delivery or taking of possession of the collateral securing the Obligations, or any thereof, pursuant to this Agreement, then, with or without resort to the Borrower personally or any other Person or property, all of which the Borrower hereby waives, and upon such terms and in such manner as the Administrative Agent may deem advisable, the Administrative Agent, in its discretion, may sell, assign, transfer and deliver any of such collateral at any time, or from time to time. The Administrative Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. No prior notice need be given to the Borrower or to any other Person in the case of any sale of such collateral that the Administrative Agent determines to be perishable or to be declining speedily in value or that is customarily sold in any recognized market, but in any other case the Administrative Agent shall give the Borrower not fewer than ten days' prior notice of either the time and place of any public sale of such collateral or of the time after which any private sale or other intended disposition thereof is to be made. The Borrower waives advertisement of any such sale and (except to the extent specifically required by the preceding sentence) waives notice of any kind in respect of any such sale. At any such public sale, the Administrative Agent or the Lenders may purchase such collateral, or any part thereof, free from any right of redemption, all of which rights the Borrower hereby waives and releases. After deducting all Related Expenses, and after paying all claims, if any, secured by Liens having precedence over this Agreement, the Administrative Agent may apply the net proceeds of each such sale to or toward the payment of the Secured Obligations, whether or not then due, in such order and by such division as the Administrative Agent, in its sole discretion, may deem advisable. Any excess, to the extent permitted by law, shall be paid to the Borrower, and the Borrower shall remain liable for any deficiency. In addition, the Administrative Agent shall at all times have the right to obtain new appraisals of the Borrower or any collateral securing the Obligations, the cost of which shall be paid by the Borrower.

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

this Agreement. In addition, the Administrative Agent shall be entitled to exercise remedies, pursuant to the Loan Documents, against collateral securing the Secured Obligations, on behalf of any Affiliate of a Lender that holds Secured Obligations, and no Affiliate of a Lender shall act independently with respect thereto, except as otherwise specifically set forth in this Agreement.

Section 9.8. Application of Proceeds.

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

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

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

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

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

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

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

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

## ARTICLE X

### THE ADMINISTRATIVE AGENT

KeyBank National Association acted as administrative agent under the Existing Credit Agreement. Pursuant to Section 11.23 hereof, KeyBank National Association has resigned as administrative agent and U.S. Bank has agreed to act as administrative agent. The Lenders authorize U.S. Bank and U.S. Bank hereby agrees to act as agent for the Lenders in respect of this Agreement upon the terms and conditions set forth elsewhere in this Agreement, and upon the following terms and conditions:

Section 10.1. Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Administrative Agent nor any of its affiliates, directors, officers, attorneys or employees shall (a) be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction), or be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or due execution of this Agreement or any other Loan Documents, (b) be under any obligation to any Lender to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of the Borrower or any other Company, or the financial condition of the Borrower or any other Company, or (c) be liable to any of the Companies for consequential damages resulting from any breach of contract, tort or other wrong in connection with the negotiation, documentation, administration or collection of the Loans or Letters of Credit or any of the Loan Documents. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the

Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.2. ERISA Matters. Each Lender as of the date hereof represents and warrants as of the date hereof to the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Credit Party, that such Lender is not and will not be (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code; or (4) a “governmental plan” within the meaning of ERISA.

Section 10.3. Consultation With Counsel. The Administrative Agent may consult with legal counsel selected by the Administrative Agent and shall not be liable for any action taken or suffered in good faith by the Administrative Agent in accordance with the opinion of such counsel.

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

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

Section 10.6. Knowledge or Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall

take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable, in its discretion, for the protection of the interests of the Lenders.

Section 10.7. Action by Administrative Agent. Subject to the other terms and conditions hereof, so long as the Administrative Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, the Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. The Administrative Agent shall incur no liability under or in respect of this Agreement by acting upon any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable in the premises. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent's acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

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

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

Section 10.10. Indemnification of Administrative Agent. The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower) ratably, according to their respective Commitment Percentages, from and against any and all liabilities,

obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent in its capacity as agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by the Administrative Agent with respect to this Agreement or any other Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction, or from any action taken or omitted by the Administrative Agent in any capacity other than as agent under this Agreement or any other Loan Document. No action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.10. The undertaking in this Section 10.10 shall survive repayment of the Loans, cancellation of the Notes, if any, expiration or termination of the Letters of Credit, termination of the Commitment, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the agent.

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

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



Agent”, as used in this Article X, included the Issuing Lender with respect to such acts or omissions, and (b) as additionally provided in this Agreement with respect to the Issuing Lender.

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

Section 10.14. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, (a) the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise, to (i) file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent) allowed in such judicial proceedings, and (ii) collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

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

procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

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

## ARTICLE XI

### MISCELLANEOUS

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

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

Section 11.3. Amendments, Waivers and Consents.

(a) General Rule. No amendment, modification, termination, or waiver of any provision of any Loan Document nor consent to any variance therefrom, shall be effective unless

the same shall be in writing and signed by the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

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

(i) Consent of Affected Lenders Required. No amendment, modification, waiver or consent shall (A) extend or increase the Commitment of any Lender without the written consent of such Lender, (B) extend the date scheduled for payment of any principal (excluding mandatory prepayments) of or interest on the Loans or Letter of Credit reimbursement obligations or commitment fees payable hereunder without the written consent of each Lender directly affected thereby, (C) reduce the principal amount of any Loan, the stated rate of interest thereon (provided that the institution of the Default Rate or post default interest and a subsequent removal of the Default Rate or post default interest shall not constitute a decrease in interest rate pursuant to this Section 11.3) or the stated rate of commitment fees payable hereunder, without the consent of each Lender directly affected thereby, (D) change the manner of pro rata application of any payments made by the Borrower to the Lenders hereunder, without the consent of each Lender directly affected thereby, (E) without the unanimous consent of the Lenders, change any percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement, (F) without the unanimous consent of the Lenders, release the Borrower or any Guarantor of Payment or of any material amount of collateral securing the Secured Obligations, except in connection with a transaction specifically permitted hereunder as provided in Section 10.8 hereof, or (G) without the unanimous consent of the Lenders, amend the definition of “Agreed Currency”, this Section 11.3, or Section 2.13, 9.5 or 9.8 hereof.

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

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

(c) Replacement of Non-Consenting Lender. If, in connection with any proposed amendment, waiver or consent hereunder, the consent of all Lenders is required, but only the consent of Required Lenders is obtained, (any Lender withholding consent as described in this subsection (c) being referred to as a “Non-Consenting Lender”), then, so long as the Administrative Agent is not the Non-Consenting Lender, the Administrative Agent may (and

shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Non-Consenting Lender and the Borrower, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof) all of its interests, rights and obligations under this Agreement to a financial institution acceptable to the Administrative Agent and the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from such financial institution (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

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

Section 11.4. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and:

(a) if to the Borrower, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement;

(b) if to the Administrative Agent, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Beth Correll, Agent Deal Administrator, Facsimile: 612-303-3851, Email: elizabeth.correll@usbank.com with a copy to U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03N, Minneapolis, MN 55402, Attention: Tim Landro, Vice President and Portfolio Manager, Facsimile: 612-303-2265, Email: timothy.landro@usbank.com;

(c) if to U.S. Bank National Association, in its capacity as Issuing Lender, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Julie M. Seaton, International Banking Officer, Facsimile: 612.303.5226, Email: julie.seaton@usbank.com;

(d) if to a Lender, mailed or delivered to it at its address (or facsimile number) set forth in its Administrative Questionnaire;

or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties.

All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered (if received during normal business hours on a Business Day, such Business Day or otherwise the following Business Day), or two Business Days after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile or electronic communication, in each

case of facsimile or electronic communication with telephonic confirmation of receipt. All notices pursuant to any of the provisions hereof shall not be effective until received. For purposes of Article II hereof, the Administrative Agent shall be entitled to rely on telephonic instructions from any person that the Administrative Agent in good faith believes is an Authorized Officer, and the Borrower shall hold the Administrative Agent and each Lender harmless from any loss, cost or expense resulting from any such reliance.

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

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

Section 11.7. Obligations Several; No Advisory or Fiduciary Obligations. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Administrative Agent or the Lenders pursuant hereto shall be deemed to constitute the Administrative Agent or the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between the Borrower and the Lenders with respect to the Loan Documents and the other Related Writings is and shall be solely that of debtor and creditors, respectively, and neither the Administrative Agent nor any Lender shall have any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, any arranger and any book runner and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, any arranger and any book runner and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent, any arranger and any book runner and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any arranger and any book runner nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, any arranger and any book runner and each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any arranger and any book runner nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any arranger and any book runner and each of the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.8. Execution in Counterparts; Electronic Execution of Assignments; Electronic Records.

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

(b) The words "execution," "signed," "signature," and words of like import in any assignment and assumption agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity

or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other state laws based on the Uniform Electronic Transactions Act.

(c) The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent's and each Lender's normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals. The Administrative Agent and each Lender are authorized, when appropriate, to convert any note into a "transferable record" under the Uniform Electronic Transactions Act.

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

Section 11.10. Lender Assignments.

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

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

provided that no such pledge or assignment shall release such assigning Lender from its obligations hereunder or substitute such pledgee or assignee for such Lender as a party hereto.

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

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

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

(f) Non-U.S. Assignee. If the assignment is to be made to an assignee that is organized under the laws of any jurisdiction other than the United States or any state thereof, the assignor Lender shall cause such assignee, at least five Business Days prior to the effective date of such assignment, (i) to represent to the assignor Lender (for the benefit of the assignor Lender, the Administrative Agent and the Borrower) that under applicable law and treaties no taxes will be required to be withheld by the Administrative Agent, the Borrower or the assignor with respect to any payments to be made to such assignee in respect of the Loans hereunder, (ii) to furnish to the assignor Lender (and, in the case of any assignee registered in the Register (as defined below), the Administrative Agent and the Borrower) either U.S. Internal Revenue Service Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable (wherein such assignee claims entitlement to complete exemption from U.S. federal withholding tax on all payments hereunder), and (iii) to agree (for the benefit of the assignor, the Administrative Agent and the Borrower) to provide to the assignor Lender (and, in the case of any assignee registered in the Register, to the Administrative Agent and the Borrower) a new Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable, upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable U.S. laws and regulations and amendments duly executed and completed by such assignee, and to comply from time to time with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

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



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

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

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

(a) any such Lender’s obligations under this Agreement and the other Loan Documents shall remain unchanged;

(b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(c) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and each of the other Loan Documents;

(d) such Participant shall be bound by the provisions of Section 9.5 hereof, and the Lender selling such participation shall obtain from such Participant a written confirmation of its agreement to be so bound; and

(e) no Participant (unless such Participant is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant’s consent, take action of the type described as follows:

(i) increase the portion of the participation amount of any Participant over the amount thereof then in effect, or extend the Commitment Period, without the written consent of each Participant affected thereby; or

(ii) reduce the principal amount of or extend the time for any payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest on any Loan, or reduce the commitment fee, without the written consent of each Participant affected thereby.

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

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

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

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

Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

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

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

Section 11.17. Limitations on Liability of the Issuing Lender. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither the Issuing Lender nor any of its officers or directors shall be liable or responsible for (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Issuing Lender against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the account party on such Letter of Credit shall have a claim against the Issuing Lender, and the Issuing Lender shall be liable to such account party, to the extent of any direct, but not consequential, damages suffered by such account party that such account party proves were caused by (i) the Issuing Lender's willful misconduct or gross negligence (as determined by a final judgment of a court of competent jurisdiction) in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit, or (ii) the Issuing Lender's willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.18. General Limitation of Liability. No claim may be made by any Credit Party or any other Person against any Company, the Administrative Agent, the Issuing Lender, or any other Lender or the affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative

Agent and the Issuing Lender hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in their favor and regardless of whether any Company, any Lender, Issuing Lender, or the Administrative Agent has been advised of the likelihood of such loss of damage.

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

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

Section 11.21. Governing Law; Submission to Jurisdiction.

(a) **GOVERNING LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

(b) **SUBMISSION TO JURISDICTION. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER OR TO ENFORCE RIGHTS AND REMEDIES IN RESPECT OF COLLATERAL IN THE**

**COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ADMINISTRATIVE AGENT, ISSUING LENDER OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN NEW YORK, NEW YORK.**

(c) **WAIVER OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE ISSUING LENDER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.**

Section 11.22. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 11.23. Amendment and Restatement; Agency Transfer; New Lenders.

(a) The parties to this Agreement agree that, upon (i) the execution and delivery by each of the parties hereto of this Agreement and (ii) satisfaction of the conditions set forth in Section 4.2, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. This Agreement is not intended to and shall not constitute a novation. All Loans

made and Obligations incurred under the Existing Credit Agreement which are outstanding on the Closing Date shall continue as Loans and Obligations under (and shall be governed by the terms of) this Agreement and the other Loan Documents. Without limiting the foregoing, upon the effectiveness hereof: (a) all references in the “Loan Documents” (as defined in the Existing Credit Agreement) to the “Administrative Agent”, the “Credit Agreement” and the “Loan Documents” shall be deemed to refer to the Administrative Agent, this Agreement and the Loan Documents, (b) all obligations constituting “Obligations” with any Lender or any affiliate of any Lender which are outstanding on the Closing Date shall continue as Obligations under this Agreement and the other Loan Documents, (c) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender’s credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender’s credit exposure and outstanding Loans hereunder reflects such Lender’s ratable share of the outstanding aggregate credit exposure on the Closing Date and (d) the Borrower hereby agrees to compensate each Lender for any and all losses, costs and expenses incurred by such Lender in connection with the sale and assignment of any Eurocurrency Loans (including the “Eurodollar Loans” under the Existing Credit Agreement) and such reallocation described above, in each case on the terms and in the manner set forth in Section 3.3 hereof.

(b) Each of the parties hereto agrees that, notwithstanding the requirements of Article X of this Agreement, effective as of the Closing Date, but subject to the satisfaction of the conditions precedent set forth in Section 4.2, (a) KeyBank National Association has resigned as Administrative Agent under this Agreement and the other Loan Documents, and (b) U.S. Bank is hereby appointed (and U.S. Bank accepts such appointment) as Administrative Agent under this Agreement and the other Loan Documents. KeyBank National Association is discharged from its duties and obligations under this Agreement and under the other Loan Documents as Administrative Agent; provided that, notwithstanding the effectiveness of such resignation, the provisions of Article X of this Agreement and similar provisions in the other Loan Documents shall continue in effect for KeyBank National Association in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent under the Existing Credit Agreement. U.S. Bank, acting as Administrative Agent, shall bear no responsibility for any actions taken or omitted to be taken by KeyBank National Association while it served as Administrative Agent under or in connection with the Existing Credit Agreement, and KeyBank National Association shall bear no responsibility for any actions taken or omitted to be taken by U.S. Bank acting as Administrative Agent on and after the Closing Date. The parties hereto agree that all Liens in favor of the Administrative Agent run in favor of U.S. Bank acting in such capacity upon the effectiveness hereof.

(c) By its execution hereof, each of the following is becoming a party to this Agreement as a Lender: Bank of America, N.A. and Fifth Third Bank (each a “New Lender”). Each New Lender agrees that it constitutes a Lender under this Agreement and the other Loan Documents and shall be bound by the provisions of this Agreement and the other Loan Documents. Each New Lender’s Revolving Credit Commitment appears in Schedule 1 hereto. Each New Lender acknowledges and agrees that it has received a copy of this Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement and to become a Lender, which analysis and decision has been made independently of and without reliance upon the Administrative Agent or any other Lender. Each New Lender confirms it will,

independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the Loan Documents, and it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

[Remainder of page left intentionally blank]

EXHIBIT A-2

Clean Credit and Security Agreement, as amended

Attached

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EXHIBIT A-2 TO FIRST AMENDMENT  
TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

Deal CUSIP Number: 83125PAA8  
Revolving Loan CUSIP Number: 83125PAB6

**AMENDED AND RESTATED  
CREDIT AND SECURITY AGREEMENT**

**among**

**SLEEP NUMBER CORPORATION**  
*as Borrower*

**THE LENDERS NAMED HEREIN**  
*as Lenders*

**U.S. BANK NATIONAL ASSOCIATION**  
*as Administrative Agent, Swing Line Lender and Issuing Lender*

**BANK OF AMERICA, N.A.**  
**and**  
**BMO HARRIS BANK N.A.**  
*as Co-Syndication Agents*

**CITIBANK, N.A.**  
*as Documentation Agent*

**U.S. BANK NATIONAL ASSOCIATION,  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED  
BMO CAPITAL MARKETS CORP.**

**and**  
**CITIBANK, N.A.**  
*as Joint Lead Arrangers*

**and**

**U.S. BANK NATIONAL ASSOCIATION,**  
*as Sole Book Runner<sup>2</sup>*

---

**dated as of**  
**February 14, 2018**

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<sup>2</sup> Arranger and agency titles effective as of the First Amendment Effective Date.



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This AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this “Agreement”) is made effective as of the 14th day of February, 2018 among:

- (a) SLEEP NUMBER CORPORATION, a Minnesota corporation (the “Borrower”);
- (b) the lenders listed on Schedule 1 hereto and each other Eligible Transferee, as hereinafter defined, that from time to time becomes a party hereto pursuant to Section 2.9(b) or 11.10 hereof (collectively, the “Lenders” and, individually, each a “Lender”); and
- (c) U.S. BANK NATIONAL ASSOCIATION, a national banking association, as the administrative agent for the Lenders under this Agreement (the “Administrative Agent”).

WITNESSETH:

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

NOW, THEREFORE, it is mutually agreed as follows:

## ARTICLE I

### DEFINITIONS

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

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

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

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person (other than a Company), or any business unit or division of any Person (other than a Company), (b) the acquisition of in excess of fifty percent (50%) of the outstanding capital stock (or other equity interest) of any Person (other than a Company), or (c) the acquisition of another Person (other than a Company) by a merger, amalgamation or consolidation or any other combination with such Person, including pursuant to any merger or consolidation with, or as a Division Successor pursuant to the Division of, any Person that was not a Domestic Subsidiary prior to such merger or consolidation or Division.

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

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

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

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

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

“Administrative Agent Fee Letter” means that certain Amended and Restated Administrative Agent Fee Letter, dated as of February 11, 2019, between the Borrower and the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

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

“Affected Lender” means a Defaulting Lender or a Downgraded Lender.

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

“Agreed Currencies” means (i) Dollars, (ii) so long as such currencies remain Eligible Currencies, Canadian Dollars, euro, and Pounds Sterling, and (iii) any other Eligible Currency which the Borrower requests the Administrative Agent to include as an Agreed Currency hereunder and which is acceptable to all of the Lenders.

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

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

“Applicable Commitment Fee Rate” means:

- (a) for the period from the Closing Date through March 31, 2018, twenty (20.00) basis points; and
- (b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number

of basis points set forth in the following matrix, based upon the result of the computation of the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Commitment Fee Rate
Greater than or equal to 3.50 to 1.00	40.00 basis points
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	35.00 basis points
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	30.00 basis points
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	25.00 basis points
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	20.00 basis points
Less than 1.50 to 1.00	15.00 basis points

The first date on which the Applicable Commitment Fee Rate is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Commitment Fee Rate shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Commitment Fee Rate shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Commitment Fee Rate for any period (an “Applicable Commitment Fee Period”) than the Applicable Commitment Fee Rate applied for such Applicable Commitment Fee Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Commitment Fee Period, (B) the Applicable Commitment Fee Rate shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional fees owing as a result of such increased Applicable Commitment Fee Rate for such Applicable Commitment Fee Period.

“Applicable Margin” means:

- (a) for the period from the Closing Date through March 31, 2018, one hundred thirty-seven and one-half (137.5) basis points for Eurocurrency Loans and thirty-seven and one-half (37.5) basis points for Base Rate Loans; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number of basis points (depending upon whether Loans are Eurocurrency Loans or Base Rate Loans) set forth in the following matrix, based upon the result of the computation of the Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Leverage Ratio	Applicable Basis Points for Eurocurrency Loans	Applicable Basis Points for Base Rate Loans
Greater than or equal to 3.50 to 1.00	225.00	125.00
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	200.00	100.00
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	175.00	75.00
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	150.00	50.00
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	137.50	37.50
Less than 1.50 to 1.00	125.00	25.00

The first date on which the Applicable Margin is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Margin shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Margin shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid for Loans of that type, regardless of the Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Margin Period") than the Applicable Margin applied for such Applicable Margin Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Margin Period, (B) the Applicable Margin shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the

accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Margin Period.

“Approved Fund” means any Person (other than a natural Person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender, or (c) an entity or an affiliate of an entity that administers or manages a Lender.

“Approximate Equivalent Amount” of any currency with respect to any amount of Dollars means the Equivalent Amount of such currency with respect to such amount of Dollars on or as of such date, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time.

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

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

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

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

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

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

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

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

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

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) zero percent (0.0%), (b) the Prime Rate, (c) one-half of one percent (.50%) in excess of the Federal Funds Effective Rate, and (d) one percent (1.00%) in excess of the Eurocurrency Rate for a Dollar-denominated Loan for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the Base Rate shall be effective immediately from and after such change in the Base Rate.

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

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

“Business Day” means (i) with respect to any borrowing, payment or rate selection of Eurocurrency Loans, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York and London, England for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in the applicable Agreed Currency are carried on in the London interbank market or the principal financial center of such Agreed Currency and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“Canadian Dollar” means the lawful currency of Canada.

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

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

“Cash Collateral Account” means a commercial Deposit Account designated “cash collateral account” and maintained by the Borrower with the Administrative Agent,

without liability by the Administrative Agent or the Lenders to pay interest thereon, from which account the Administrative Agent, on behalf of the Lenders, shall have the exclusive right to withdraw funds until all of the Secured Obligations (other than unasserted contingent indemnity obligations) are paid in full.

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

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

“CDOR Rate” means, with respect to the relevant Interest Period, the greater of (a) zero percent (0.0%) and (b) the per annum rate equal to the arithmetic average of the annual yield rates applicable to Canadian dollar bankers’ acceptances for such Interest Period (or if such Interest Period is not equal to a number of months, for a term equivalent to the number of months closest to such Interest Period) on the “CDOR Page” (or any display substituted therefor) of Reuters Monitor Money Rates Services (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian dollar bankers’ acceptances as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) two (2) Business Days prior to the commencement of such Interest Period plus the Applicable Margin for Eurocurrency Rate Loans; provided, that if such Canadian dollar CDOR rate is unavailable at any time pursuant to the foregoing methodology, the Administrative Agent may select, using its reasonable judgment, an alternative published interest rate in order to determine such rate.

“Change in Control” means:

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

(b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) directors of the Borrower on the date on this Agreement nor (ii) nominated or appointed by the board of directors of the Borrower; or

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

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

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

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

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

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

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

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

“Commitment Period” means the period from the Closing Date to February 11, 2024, or such earlier date on which the Commitment shall have been terminated pursuant to Article IX hereof.

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

“Companies” means the Borrower and all Subsidiaries.

“Company” means the Borrower or a Subsidiary.

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

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



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

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

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

“Consolidated EBITDA” means, for any period, as determined on a Consolidated basis, (a) Consolidated Net Earnings for such period plus, without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Charges, (iv) reasonable non-recurring non-cash losses not incurred in the ordinary course of business, (v) non-cash expenses incurred in connection with stock-based compensation, (vi) non-cash impairment expenses relating to store closures or remodeling during such period, and (vii) amortization of fees payable in connection with the incurrence of Indebtedness during such period; minus (b) to the extent included in Consolidated Net Earnings for such period, non-recurring non-cash gains not incurred in the ordinary course of business.

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

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

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

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

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

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

“Consolidated Total Assets” means, for any Fiscal Year, total assets of the Companies, calculated in accordance with GAAP on a Consolidated basis as of the last day of such Fiscal Year.

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

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

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

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

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

“Daily Eurodollar Rate” means, with respect to a Swing Loan accruing interest at such rate, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) zero percent (0.0%) and (2) the applicable interest settlement rate for deposits in Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month appearing on Reuters Screen LIBOR01 (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on a Business Day, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if Reuters Screen LIBOR01 (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Daily Eurodollar Rate for one month shall instead be the applicable interest settlement rate for deposits in Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on a Business Day; provided, further, that, if no such interest settlement rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) is available to the Administrative Agent, the applicable Daily Eurodollar Rate for one month shall instead be the rate determined by the Administrative Agent to be the rate at which U.S. Bank or

one of its Affiliate banks offers to place deposits in Dollars with first-class banks in the interbank market at approximately 11:00 a.m. (London time) on a Business Day in the approximate amount of the Swing Line Lender's relevant Swing Loan and having a maturity equal to one month. For purposes of determining any interest rate hereunder or under any other Loan Document which is based on the Daily Eurodollar Rate, such interest rate shall change as and when the Daily Eurodollar Rate shall change. Notwithstanding the foregoing, in the event the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the interest rate applicable to advances hereunder is not ascertainable or does not adequately and fairly reflect the cost of making or maintaining such advances and such circumstances are unlikely to be temporary, (ii) ICE Benchmark Administration (or any Person that takes over the administration of such rate) discontinues its administration and publication of interest settlement rates for deposits in Dollars, or (iii) the supervisor for the administrator of such interest settlement rate or a Governmental Authority having jurisdiction over the Administrative Agent or the Swing Line Lender has made a public statement identifying a specific date after which such interest settlement rate shall no longer be used for determining interest rates for loans, then the Administrative Agent shall determine an alternate rate of interest to the one-month Eurocurrency Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for comparable bank-originated commercial loans in the United States at such time, and, if necessary, the Administrative Agent, the Swing Line Lender and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Such alternate rate shall be adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. Until an alternate rate of interest shall be determined in accordance herewith, interest on each Swing Line Loan shall accrue at the Base Rate. If the alternate rate of interest determined pursuant hereto shall be less than zero, such rate shall be deemed to be zero for purposes hereof.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

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

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

“Defaulting Lender” means a Lender, as reasonably determined by the Administrative Agent, that (a) has failed (which failure has not been cured) to fund any Loan or any participation interest in Letters of Credit or Swing Loans required to be made hereunder in accordance with the terms hereof (unless such Lender shall have notified the Administrative Agent and the Borrower in writing of its good faith determination that a condition under Section 4.1 hereof to its obligation to fund any Loan shall not have been satisfied); (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its

funding obligations under this Agreement or generally under other agreements in which it commits to extend credit; (c) has failed, within three Business Days after receipt of a written request from the Administrative Agent or the Borrower to confirm that it will comply with the terms of this Agreement relating to its obligation to fund prospective Loans or participations in Letters of Credit or Swing Loans, and such request states that the requesting party has reason to believe that the Lender receiving such request may fail to comply with such obligation, and states such reason; (d) has failed to pay to the Administrative Agent or any other Lender when due an amount owed by such Lender to the Administrative Agent or any other Lender pursuant to the terms of this Agreement, unless such amount is subject to a good faith dispute or such failure has been cured; or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (other than an Undisclosed Administration), including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action. Any Defaulting Lender shall cease to be a Defaulting Lender when the Administrative Agent determines, in its reasonable discretion, that such Defaulting Lender is no longer a Defaulting Lender based upon the characteristics set forth in this definition.

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

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

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

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

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of equity interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held

by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

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

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

“Dollar Amount” means, on any date of determination, (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in an Agreed Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent pursuant to Section 2.5(g) using the Exchange Rate with respect to such Agreed Currency at the time in effect.

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

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

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

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

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

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

“Eligible Currency” means any currency other than Dollars that is readily available, freely traded, in which deposits are customarily offered to banks in the London interbank market, convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Amount may be readily calculated; provided, that Canadian

Dollars shall constitute an Eligible Currency even if not customarily offered on the London interbank market so long as the CDOR Rate may be determined for Canadian Dollar Loans pursuant to the definition of CDOR Rate, and Canadian Dollars otherwise satisfy the requirements of this definition of Eligible Currency. If, after the designation by the Lenders of any currency as an Agreed Currency, currency control or other exchange regulations are imposed in the country in which such currency is issued, or any other event occurs, in each case with the result that different types of such currency are introduced, such country's currency is, (i) in the determination of the Administrative Agent, no longer readily available or freely traded, (ii) as to which, in the determination of the Administrative Agent, a Dollar Amount is not readily calculable, or (iii) no longer a currency in which the Required Lenders are willing to make Loans (each of (i), (ii) and (iii), a "Disqualifying Event"), then the Administrative Agent shall promptly notify the Lenders and the Borrower, and such country's currency shall no longer be an Agreed Currency until such time as the Disqualifying Event(s) no longer exist, but in any event within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrower shall repay all Loans made in the currency to which the Disqualifying Event applies in Dollars or convert such Loans into the Dollar Amount of Loans in Dollars, subject to the other terms contained in Article II.

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

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

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

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

"Equivalent Amount" of any currency at any date means the equivalent in Dollars of such currency, calculated on the basis of the arithmetic mean of the buy and sell spot rates of exchange of the Administrative Agent in the London interbank market (or other market where the Administrative Agent's foreign exchange operations in respect of such currency are then being conducted) for such other currency at or about 11:00 a.m. (Central time) on the date on which such amount is to be determined, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time; *provided, however*, that if at the time of any such determination, for any reason, no such spot rate

is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such amount, and such determination shall be conclusive absent manifest error.

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

“ERISA Event” means (a) the existence of a condition or event with respect to an ERISA Plan that would reasonably be expected to result in the imposition of a material excise tax under Chapter 43 of the Code or any other material liability under ERISA on a Company or of the imposition of a Lien on the assets of a Company pursuant to Section 430(k) of the Code or Section 4068 of ERISA; (b) the engagement by a Company in a non-exempt “prohibited transaction” (as defined under ERISA Section 406 or Code Section 4975) or a breach of a fiduciary duty under ERISA with respect to an ERISA Plan that, in each case could reasonably be expected to result in material liability to a Company; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Pension Plan is subject to funding based limitations pursuant to Code Section 401(a)(29) or 436; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” (as such terms are defined in ERISA Sections 4203 and 4205, respectively) that could reasonably be expected to result in material liability to a Company; (f) the failure of an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 to be so qualified or the failure of any “cash or deferred arrangement” under any such ERISA Plan to meet the requirements of Code Section 401(k) that, in each case, could reasonably be expected to result in material liability to a Company; (g) the taking by the PBGC of any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan that would reasonably be expected to result in material liability to a Company; (h) the failure by a Controlled Group member or an ERISA Plan to satisfy any requirements of law applicable to an ERISA Plan that would reasonably be expected to result in material liability to a Company; (i) the commencement, existence or, to the knowledge of a Company, threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits that would reasonably be expected to result in material liability to a Company; or (j) any incurrence by or any expectation of the incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, *et. seq.* or Code Section 4980B or other applicable law that would reasonably be expected to result in material liability to a Company. As used in this definition of “ERISA Event”, “material” means the measure of a matter of significance that shall be determined as being an amount equal to Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

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

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

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

“Eurocurrency” means an Agreed Currency denominated deposit in a bank or branch outside of the United States.

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

“Eurocurrency Rate” means (i) for a Eurocurrency Loan denominated in Canadian Dollars, the CDOR Rate, and (ii) with respect to a Eurocurrency Loan in an Agreed Currency other than Canadian Dollars, for any Interest Period, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) zero percent (0.0%) and (2) the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) appearing on the applicable Reuters Screen (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if the applicable Reuters Screen (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Eurocurrency Rate for the relevant Interest Period shall instead be the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period; provided, further, that, if no such interest settlement rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) is available to the Administrative Agent, the applicable Eurocurrency Rate for the relevant Interest Period shall instead be the rate determined by the Administrative Agent to be the rate at which U.S. Bank or one of its Affiliate banks offers to place deposits in the applicable Agreed Currency with first-class banks in the interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of U.S. Bank’s relevant Eurocurrency Loan and having a maturity equal to such Interest Period.

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

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

“euro” and/or “EUR” means the single currency of the participating member states of the EU.

“Exchange Rate” means on any day, for purposes of determining the Dollar Amount of any other currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Reuters WRLD Page for such currency. In the event that such rate does not appear on any Reuters WRLD Page, the Exchange Rate shall be determined by



reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two (2) Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Collateral” means (a) any intent-to-use trademark application filed with the United States Patent and Trademark Office in Washington D.C. pursuant to 15 U.S.C. § 1051(b) to the extent such application would be deemed to be transferred in violation of 15 U.S.C. § 1060(a) as a result of the security interest granted herein, or otherwise invalidated or made unenforceable as a result of the execution or performance of this Agreement, until such time as the circumstances that would give rise to such violation, invalidation or unenforceability no longer exist, (b) any item of equipment or general intangibles to the extent that such item is subject to a written agreement or a law or regulation which prohibits, or requires a consent of any Person other than the Borrower or any Affiliate of the Borrower (which consent has not been obtained or waived) to, the security interest granted by this Agreement and such prohibition or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law, including, without limitation, Sections 9-406, 9-407, 9-408 or 9-409 of the UCC, (c) any deposit or other account used with respect to the funds or property held in the Sleep Number Executive Investment Plan Trust, and (d) any Deposit Account that is a trust or “special account” on the records of the financial institution where such Deposit Account is located that is exclusively comprised of funds for payroll (and related payroll taxes).

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

“Excluded Taxes” means, in the case of the Administrative Agent and each Lender, (a) taxes imposed on or measured by its overall net income or revenue or branch profits, franchise taxes and branch profit taxes, in each case (i) imposed on it by the jurisdiction (or any political subdivision thereof) under the laws of which the Administrative Agent or such Lender, as the case may be, is organized or in which its principal office is located, or, in the case of any Lender, in

which its applicable lending office is located or (ii) that are Other Connection Taxes, and (b) any withholding tax imposed with respect to the Administrative Agent or such Lender, as the case may be, pursuant to FATCA.

“Existing Credit Agreement” means the Credit and Security Agreement, dated as of September 9, 2015, by and among the Borrower, the lenders party thereto, and KeyBank National Association, as amended or modified prior to the date hereof.

“Existing Letters of Credit” has the meaning set forth in Section 2.2(b)(i).

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

“Federal Funds Effective Rate” means, for any day, the greater of (a) zero percent (0.0%) and (b) the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Central time) on such day on such transactions received by the Administrative Agent from three (3) Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

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

“First Amendment Effective Date” means February 11, 2019.

“Fiscal Year” means each fiscal year of the Borrower ending on the date corresponding with such fiscal year as set forth on Schedule 5.3.

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

“Foreign Subsidiary Borrower” has the meaning set forth in Section 2.13.

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

“General Intangibles” means (a) general intangibles, as that term is defined in the U.C.C.; and (b) choses in action, causes of action, intellectual property, customer lists, corporate or other business records, inventions, designs, patents, patent applications, service marks, registrations,

trade names, trademarks, copyrights, licenses, goodwill, computer software, rights to indemnification and tax refunds.

“Governmental Authority” means any nation or government, any state, province or territory or local or other political subdivision thereof, any governmental agency, department, authority, instrumentality, regulatory body, court, central bank or other governmental entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization exercising such functions, and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

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

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

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

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

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

“Indebtedness” means, for any Company, without duplication, (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (c) all obligations under conditional sales or other title retention agreements, (d) all obligations (contingent or otherwise) under any letter of credit or banker’s acceptance, (e) all net obligations under any currency swap agreement, interest rate or commodity

swap, cap, collar or floor agreement or other interest rate, commodity or foreign exchange management device or any Hedge Agreement, (f) all synthetic leases, (g) all Capitalized Lease Obligations, (h) all obligations of such Company with respect to asset securitization financing programs, (i) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person, (j) all indebtedness of the types referred to in subparts (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Company is a general partner or joint venturer, unless such indebtedness is expressly made non-recourse to such Company, (k) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Company to finance its operations or capital requirements, and (l) any guaranty of any obligation described in subparts (a) through (k) above (for purposes of this subpart (l), the amount of any guaranty shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligations, or portion thereof, in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guarantor in good faith).

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

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

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

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

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

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

property” shall be defined in accordance with the law of that jurisdiction as in effect from time to time.

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

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

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

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

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

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

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

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

“Leverage Ratio” means, as determined on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Indebtedness (as of the end of the most recently completed Quarterly Reporting Period), plus (ii) six multiplied by Consolidated Rent Expense (for the most recently completed four Quarterly Reporting Periods), minus (iii) the aggregate amount of unrestricted

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

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

“LLC” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

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

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

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

“Material Indebtedness Agreement” means any debt instrument, lease (capital, operating or otherwise), guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of any Company or the Companies equal to or in excess of the principal amount of Ten Million Dollars (\$10,000,000).

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

“Maximum Foreign Currency Amount” means \$25,000,000.

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

“Maximum Revolving Amount” means Three Hundred Million Dollars (\$300,000,000) until the First Amendment Effective Date, and from and after the First Amendment Effective Date, Four Hundred Fifty Million Dollars (\$450,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

“Moody’s” means Moody’s Investors Service, Inc.

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

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

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

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

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

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

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

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

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate) of Incorporation, operating agreement or equivalent formation documents, and Regulations (Bylaws), or equivalent governing documents, and any amendments to any of the foregoing.

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

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise, *ad valorem* or property taxes, goods and services taxes, harmonized sales taxes and other

sales taxes, use taxes, value added taxes, charges or similar taxes or levies arising from any payment made hereunder or under any other Loan Document, or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

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

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

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

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

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

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

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

“Pledged Securities” means all of the shares of capital stock or other equity interest of a Subsidiary of a Credit Party, whether now owned or hereafter acquired or created, and all proceeds thereof; provided that Pledged Securities shall exclude (a) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, (b) shares of capital stock of any first-tier Foreign Subsidiary that is a Dormant Subsidiary, and (c) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary. (Schedule 3 hereto lists, as of the Closing Date, all of the Pledged Securities.)

“Pounds Sterling” means the lawful currency of the United Kingdom.

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

“Proceeds” means (a) proceeds, as that term is defined in the U.C.C., and any other proceeds, and (b) whatever is received upon the sale, exchange, collection or other Disposition of



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

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

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

“Quotation Date” means, in relation to any Interest Period for which an interest rate is to be determined, (a) if the related extension of credit is denominated in Dollars, two (2) Business Days before the first day of that period, (b) if the related extension of credit is denominated in euro, two (2) TARGET Days and two (2) London Business Days (to the extent the two are not the same) before the first day of such period, (c) if the related credit extension is denominated in Pounds Sterling, the first day of such period, and (d) for any Agreed Currency not covered in clause (a), (b) or (c), such number of days agreed to by the Borrower, the Administrative Agent and the Lenders.

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

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

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

“Related Writing” means each Loan Document and any other assignment, mortgage, security agreement, guaranty agreement, subordination agreement, financial statement, audit

report or other writing furnished by any Credit Party, or any of its officers, to the Administrative Agent or the Lenders pursuant to or otherwise in connection with this Agreement.

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

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

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

“Reserve Percentage” means, for any day, that percentage (expressed as a decimal) that is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, all basic, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) for a member bank of the Federal Reserve System, in respect of Eurocurrency Liabilities. The Eurocurrency Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, with respect to the CDOR Rate, such percentage shall include any other maximum reserve, liquid asset, fee or similar requirement established by any central bank, monetary authority, or other governmental authority for any category of deposits or liabilities customarily used to fund loans in Canadian Dollars.

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

“Revolving Credit Commitment” means the obligation hereunder, during the Commitment Period, of (a) the Lenders (and each Lender) to make Revolving Loans, (b) the Issuing Lender to issue, and each Lender to participate in, Letters of Credit pursuant to the Letter of Credit Commitment, and (c) the Swing Line Lender to make, and each Lender to participate in, Swing Loans pursuant to the Swing Line Commitment; up to an aggregate principal amount outstanding at any time equal to the Maximum Revolving Amount.

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

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

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

“Risk-Based Capital Guidelines” means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States, including transition rules, and, in each case, any amendments to such regulations.

“Sanctions” means sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

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

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

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

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

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

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

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

“Security Document” means each Security Agreement, each Security Agreement Joinder, each Pledge Agreement, each Intellectual Property Security Agreement, each Processor’s Waiver,

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

"Sleep Number Executive Investment Plan" means that certain Sleep Number Executive Investment Plan, as amended and restated on December 1, 2014, as the same may be further amended or restated from time to time.

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

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

"Standard & Poor's" means S&P Global Ratings, a division of S&P Global Inc.

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

"Subsidiary" means (a) a corporation more than fifty percent (50%) of the Voting Power of which is owned, directly or indirectly, by the Borrower or by one or more other subsidiaries of the Borrower or by the Borrower and one or more subsidiaries of the Borrower, (b) a partnership, limited liability company or unlimited liability company of which the Borrower, one or more other subsidiaries of the Borrower or the Borrower and one or more subsidiaries of the Borrower, directly or indirectly, is a general partner or managing member, as the case may be, or otherwise has an ownership interest greater than fifty percent (50%) of all of the ownership interests in such partnership, limited liability company or unlimited liability company, or (c) any other Person (other than a corporation, partnership, limited liability company or unlimited liability company) in

which the Borrower, one or more other subsidiaries of the Borrower or the Borrower and one or more subsidiaries of the Borrower, directly or indirectly, has at least a majority interest in the Voting Power or the power to elect or direct the election of a majority of directors or other governing body of such Person.

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

“Swing Line Commitment” means the commitment of the Swing Line Lender to make Swing Loans to the Borrower, on a discretionary basis, up to the aggregate amount at any time outstanding of Forty Million Dollars (\$40,000,000).

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

“Swing Line Lender” means U.S. Bank, as holder of the Swing Line Commitment.

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

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

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (a) the date selected by the Administrative Agent, or (b) the last day of the Commitment Period.

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

“Total Commitment Amount” means the principal amount of Four Hundred Fifty Million Dollars (\$450,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

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

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

“Undisclosed Administration” means in relation to a Lender the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such

Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“United States” means the United States of America.

“U.S. Bank” means U.S. Bank National Association, and its successors and assigns.

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

“Welfare Plan” means an ERISA Plan that is a “welfare plan” within the meaning of ERISA Section 3(1).

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2.        Accounting Terms.

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

(b)        If any change in the rules, regulations, pronouncements, opinions or other requirements of the Financial Accounting Standards Board (or any successor thereto or agency with similar function) with respect to GAAP, or if the Borrower adopts the International Financial Reporting Standards, and such change or adoption results in a change in the calculation of any component (or components in the aggregate) of the financial covenants set forth in Section 5.7 hereof or the related financial definitions, at the option of the Administrative Agent, the Required Lenders or the Borrower, the parties hereto will enter into good faith negotiations to amend such financial covenants and financial definitions in such manner as the parties shall agree, each acting reasonably, in order to reflect fairly such change or adoption so that the criteria for evaluating the financial condition of the Borrower shall be the same in commercial effect after, as well as before, such change or adoption is made (in which case the method and calculating such financial covenants and definitions hereunder shall be determined in the manner so agreed); provided that, until so amended, such calculations shall continue to be computed in accordance with GAAP as in effect prior to such change or adoption. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification Section 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower, any other Company or any of their respective Subsidiaries at “fair value”, as defined therein, or (ii) any treatment of Indebtedness in respect of

convertible debt instruments under Financial Accounting Standards Codification Subtopic 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, notwithstanding any other provision contained herein, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

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

Section 1.4. Foreign Exchange. For purposes of any determination of whether any borrowing, investment, payment, Lien, or other transaction is permitted under this Agreement, all amounts in currencies other than Dollars shall be translated into Dollars at the Exchange Rate (as determined by the Administrative Agent) as of the date of determination; provided that (a) if Indebtedness denominated in currencies other than Dollars is incurred to refinance other Indebtedness denominated in the same foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency Exchange Rate in effect on the date of such refinancing, such Dollar denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced, and (b) determinations of whether additional borrowings, investments, payments, Liens, or other transactions are permitted under this Agreement shall account for changes in any Exchange Rate with respect to other then existing borrowings, investments, payments, Liens, or other transactions in currencies other than Dollars.

## ARTICLE II

### AMOUNT AND TERMS OF CREDIT

Section 2.1. Amount and Nature of Credit.

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

(b) Each Lender, for itself and not one for any other, agrees to make Loans, participate in Swing Loans, and issue or participate in Letters of Credit, during the Commitment

Period, on such basis that, immediately after the completion of any borrowing by the Borrower or the issuance of a Letter of Credit:

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

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

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

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

Section 2.2. Revolving Credit Commitment.

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

(b) Letters of Credit.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Issuing Lender shall, in its own name, on behalf of the Lenders, issue such Letters of Credit for the account of the Borrower or a Guarantor of Payment, as the Borrower may from time to time request. All Letters of Credit shall be denominated in Dollars, and all reimbursement amounts in respect of Letters of Credit, as well as fees and expenses owing in respect of Letters of Credit, shall be paid in Dollars. The Borrower shall not request any Letter of Credit (and the Issuing Lender shall not be obligated to issue any Letter of Credit) if, after giving



effect thereto, (A) the Letter of Credit Exposure would exceed the Letter of Credit Commitment, or (B) the Revolving Credit Exposure would exceed the Revolving Credit Commitment. The issuance of each Letter of Credit shall confer upon each Lender the benefits and liabilities of a participation consisting of an undivided pro rata interest in the Letter of Credit to the extent of such Lender's Commitment Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, the letters of credit issued pursuant to the Existing Credit Agreement and identified on Schedule 2.2(b) (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" for all purposes of the Loan Documents.

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

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

(iv) Standby Letters of Credit Fees. With respect to each Letter of Credit that shall be a standby letter of credit and the drafts thereunder, if any, whether issued for the account of the Borrower or a Guarantor of Payment, the Borrower agrees to (A) pay to the Administrative Agent, for the pro rata benefit of the Lenders, a non-refundable commission based upon the undrawn amount of such Letter of Credit, which shall be paid quarterly in arrears, on each Regularly Scheduled Payment Date, in an amount equal to the aggregate sum of the Letter of Credit Fee for such Letter of Credit for each day of such quarter; (B) pay to the Administrative

Agent, for the sole benefit of the Issuing Lender, an additional Letter of Credit fee, which shall be paid on each date that such Letter of Credit shall be issued, amended or renewed at the rate of one-fourth percent (1/4%) of the face amount of such Letter of Credit; and (C) pay to the Administrative Agent, for the sole benefit of the Issuing Lender, such other issuance, amendment, renewal, negotiation, draw, acceptance, facsimile, courier, postage and similar transactional fees as are customarily charged by the Issuing Lender in respect of the issuance and administration of similar letters of credit under its fee schedule as in effect from time to time.

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

(vi) Participation in Letters of Credit. If, for any reason, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall be unable to or, in the opinion of the Administrative Agent, it shall be impracticable to, convert any amount drawn under a Letter of Credit to a Revolving Loan pursuant to the preceding subsection, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall have the right to request that each Lender fund a participation in the amount due with respect to such Letter of Credit, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Issuing Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the

Issuing Lender, an undivided participation interest in the amount due with respect to such Letter of Credit in an amount equal to such Lender's Commitment Percentage of the principal amount due with respect to such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's ratable share of the amount due with respect to such Letter of Credit (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in the amount due under any Letter of Credit that is drawn but not reimbursed by the Borrower pursuant to this Section 2.2(b)(vi) shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(b)(vi) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans. Each Lender is hereby authorized to record on its records such Lender's pro rata share of the amounts paid and not reimbursed on the Letters of Credit.

(vii) Auto-Renewal Letters of Credit. If the Borrower so requests, a Letter of Credit shall have an automatic renewal provision; provided that any Letter of Credit that has an automatic renewal provision must permit the Administrative Agent (or the applicable Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) to prevent any such renewal by giving prior notice to the beneficiary thereof at least thirty (30) days prior to the renewal date of such Letter of Credit (or such other period as agreed to by the Administrative Agent and the Issuing Lender). Once any such Letter of Credit that has automatic renewal provisions has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Administrative Agent (and the Issuing Lender) to permit at any time the renewal of such Letter of Credit to an expiry date not later than one year after the last day of the Commitment Period.

(viii) Letters of Credit Outstanding Beyond the Commitment Period. If any Letter of Credit is outstanding upon the termination of the Commitment, then, upon such termination, the Borrower shall deposit with the Administrative Agent, for the benefit of the Issuing Lender, with respect to all outstanding Letters of Credit, cash denominated in Dollars in an amount equal to one hundred five percent (105%) of the undrawn amount of the outstanding Letters of Credit, which cash shall be free and clear of all rights and claims of third parties. The cash shall be deposited in an escrow account at a financial institution designated by the Issuing Lender. The Issuing Lender shall be entitled to withdraw amounts necessary to reimburse the Issuing Lender for payments to be made under the Letters of Credit and any fees and expenses associated with such Letters of Credit, or incurred pursuant to the reimbursement agreements with respect to such Letters of Credit. The Borrower shall also execute such documentation as the Administrative Agent or the Issuing Lender may reasonably require in connection with the survival of the Letters of Credit beyond the Commitment or this Agreement. After expiration of all undrawn Letters of Credit, the remainder of the cash, if any, shall promptly be returned to the Borrower.

(c) Swing Loans.

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

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

(iii) Participation in Swing Loans. If, for any reason, the Swing Line Lender is unable to or, in the opinion of the Administrative Agent, it is impracticable to, convert any Swing Loan to a Revolving Loan pursuant to the preceding Section 2.2(c)(ii), then on any day that a Swing Loan is outstanding (whether before or after the maturity thereof), the Administrative Agent shall have the right to request that each Lender fund a participation in such Swing Loan, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Swing Line Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Swing Line Lender, an undivided participation interest in the

right to share in the payment of such Swing Loan in an amount equal to such Lender's Commitment Percentage of the principal amount of such Swing Loan. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the benefit of the Swing Line Lender, such Lender's ratable share of such Swing Loan (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in Swing Loans pursuant to this Section 2.2(c)(iii) is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(c)(iii) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans to be made by such Lender.

Section 2.3. Interest.

(a) Revolving Loans.

(i) Base Rate Loan. The Borrower shall pay interest on the unpaid principal amount of a Revolving Loan that is a Base Rate Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on such Base Rate Loan shall be payable, commencing March 31, 2018, and continuing on each Regularly Scheduled Payment Date thereafter and at the maturity thereof.

(ii) Eurocurrency Loans. The Borrower shall pay interest on the unpaid principal amount of each Revolving Loan that is a Eurocurrency Loan outstanding from time to time, with the interest rate to be fixed in advance on the first day of the Interest Period applicable thereto through the last day of the Interest Period applicable thereto (but subject to changes in the Applicable Margin for Eurocurrency Loans), at the Derived Eurocurrency Rate. Interest on such Eurocurrency Loan shall be payable on each Interest Adjustment Date with respect to an Interest Period (provided that, if an Interest Period shall exceed three months, the interest must also be paid every three months, commencing three months from the beginning of such Interest Period).

(b) Swing Loans. The Borrower shall pay interest to the Administrative Agent, for the sole benefit of the Swing Line Lender (and any Lender that shall have funded a participation in such Swing Loan), on the unpaid principal amount of each Swing Loan outstanding from time to time from the date thereof until paid at either (i) the Derived Base Rate from time to time in effect or (ii) the Daily Eurodollar Rate plus the Applicable Margin for Eurocurrency Loans, in each case as selected by the Borrower (with such election being made by the Borrower together with the request for such Swing Loan). Interest on each Swing Loan shall be payable on each Regularly Scheduled Payment Date and on the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall bear interest for a minimum of one day.

(c) Default Rate. Anything herein to the contrary notwithstanding, if an Event of Default shall occur and be continuing, upon the election of the Administrative Agent or the Required Lenders (i) the principal of each Loan and the unpaid interest thereon shall bear interest,

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

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

Section 2.4. Noteless Agreement; Evidence of Indebtedness.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Agreed Currency for such Loan and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the original stated amount of each Letter of Credit and the amount of obligations in respect thereof outstanding at any time, and (iv) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall be *rebuttably presumptive* evidence of the existence and amounts of the Obligations therein recorded; *provided, however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender (including the Swing Line Lender) may request that its Loans be evidenced by a Note. Notes related to Revolving Loans shall be substantially in the form of Exhibit A hereto, and Notes related to Swing Loans shall be substantially in the form of Exhibit B hereto. The Borrower shall prepare, execute and deliver to such Lender such Note or Notes in favor of such Lender as supplied by the Administrative Agent. Thereafter, the Loans evidenced

by such Note and interest thereon shall at all times (prior to any assignment pursuant to Section 12.3) be represented by one or more Notes in favor of the payee named therein, except to the extent that any such Lender subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in clauses (b) (i) and (ii) above.

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

(a)        Notice of Loans and Credit Events. The Borrower, through an Authorized Officer, shall provide to the Administrative Agent a Notice of Loan prior to (i) 12:00 P.M. (Eastern time) on the proposed date of borrowing of, or conversion of a Loan to, a Base Rate Loan, (ii) 12:00 P.M. (Eastern time) three Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in Dollars, (iii) 12:00 P.M. (Eastern time) four Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in an Agreed Currency other than Dollars, and (iii) 4:30 P.M. (Eastern time) on the proposed date of borrowing of a Swing Loan (or such later time as agreed to from time to time by the Swing Line Lender). An Authorized Officer of the Borrower may verbally request a Loan, so long as a Notice of Loan is received by the end of the same Business Day, and, if the Administrative Agent or any Lender provides funds or initiates funding based upon such verbal request, the Borrower shall bear the risk with respect to any information regarding such funding that is later determined to have been incorrect. The Borrower shall comply with the notice provisions set forth in Section 2.2(b) hereof with respect to Letters of Credit.

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

(c)        Conversion and Continuation of Loans.

(i)        At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall convert a Base Rate Loan to one or more Eurocurrency Loans at any time and shall convert a Eurocurrency Loan to a Base Rate Loan on any Interest Adjustment Date applicable thereto; provided, that any Loan denominated in an Agreed Currency other than Dollars shall be converted into a Loan denominated in Dollars (using the then applicable Exchange Rate as determined by the Administrative Agent)

prior to such Loan becoming a Base Rate Loan. Swing Loans may be converted by the Swing Line Lender to Revolving Loans in accordance with Section 2.2(c)(ii) hereof.

(ii) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall continue one or more Eurocurrency Loans as of the end of the applicable Interest Period as a new Eurocurrency Loan with a new Interest Period; provided, that any such Loan shall be continued in the same Agreed Currency in which it was initially made.

Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or roll over all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

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

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

(ii) a Eurocurrency Loan shall be in an amount of not less than Five Hundred Thousand Dollars (\$500,000), increased by increments of One Hundred Thousand Dollars (\$100,000) (or the Approximate Equivalent Amount thereof, as applicable); and

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

(e) Interest Periods. The Borrower shall not request that Eurocurrency Loans be outstanding for more than fifteen (15) different Interest Periods at the same time.

(f) Additional Provisions with Respect to Affected Lenders.

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

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



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

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

(g) Determination of Dollar Amounts. The Administrative Agent will determine the Dollar Amount of: (a) each Loan as of the date three (3) Business Days prior to the date on which such Loan is to be made or, if applicable, date of conversion/continuation of such Loan, and (b) all outstanding Loans on and as of the last Business Day of each calendar quarter and on any other Business Day elected by the Administrative Agent in its discretion or upon instruction by the Required Lenders. Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in the preceding clauses (a) and (b) is herein described as a "Computation Date" with respect to each Loan for which a Dollar Amount is determined on or as of such day. If at any time the Dollar Amount of (i) the aggregate principal amount of outstanding Loans exceeds the Total Commitment Amount, or (ii) the aggregate outstanding principal Dollar Amount of all Loans in Agreed Currencies other than Dollars exceeds the Maximum Foreign Currency Amount, the Borrower shall immediately make a payment on the Loans sufficient to eliminate such excess.

Section 2.6. Payment on Loans and Other Obligations.

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

(b) Payments from Borrower. All payments (including prepayments) to the Administrative Agent of the principal of or interest on each Loan or other payment, including but not limited to principal, interest, fees or any other amount owed by the Borrower under this Agreement, shall be made in Dollars unless otherwise specified herein. All payments described in this subsection (b) shall be remitted to the Administrative Agent, at the address of the Administrative Agent for notices referred to in Section 11.4 hereof for the account of the Lenders (or the Issuing Lender or the Swing Line Lender, as appropriate) not later than 3:00 P.M. (Eastern time) on the due date thereof with respect to payments other than for application to Swing Line Loans, and not later than 4:30 P.M. (Eastern time) on the due date thereof with respect to payments for application to Swing Line Loans, in each case in immediately available funds. Any such payments received by the Administrative Agent (or the Issuing Lender or the Swing Line Lender) after the time required above shall be deemed to have been made and received on the next Business Day.

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

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

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

(f) Payment of Non Pro-Rata Loans and Letters of Credit. Notwithstanding anything in this Agreement to the contrary, at the sole discretion of the Administrative Agent, any payment of principal, interest, fees or other amounts hereunder may first be applied to such Loans, Letters of Credit and other obligations that were not advanced or participated pro rata hereunder.

(g) Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan in any currency other than Dollars, currency control or exchange regulations are imposed in the country which issues such currency, or any other event occurs, in each case with the result that the type of currency in which the Loan was made (the "Original Currency") no longer exists or would no longer be an Eligible Currency or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower take all risks of the imposition of any such currency control or exchange regulations.

Section 2.7. Prepayment.

(a) Right to Prepay.

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

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

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

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

(c) Minimum Amount for Eurocurrency Loans. Each prepayment of a Eurocurrency Loan shall be in the principal amount of not less than the lesser of Two Hundred Fifty Thousand Dollars (\$250,000) (or the Approximate Equivalent Amount thereof, if applicable), or the principal amount of such Loan, or, with respect to a Swing Loan, the principal balance of such Swing Loan, except in the case of a mandatory payment pursuant to Section 2.11 or Article III hereof.

Section 2.8. Commitment and Other Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders, as a consideration for the Revolving Credit Commitment, a commitment fee, for each day from the Closing Date through the last day of the Commitment Period, in an amount equal to (i) (A) the Maximum Revolving Amount at the end of such day, minus (B) the Revolving Credit Exposure (exclusive of the Swing Line Exposure) at the end of such day, multiplied by (ii) the Applicable Commitment Fee Rate in effect on such day divided by three hundred sixty (360). The commitment fee shall be payable quarterly in arrears, commencing on March 31, 2018 and continuing on each Regularly Scheduled Payment Date thereafter, and on the last day of the Commitment Period.

(b) Other Fees. The Borrower shall pay the fees set forth in the Administrative Agent Fee Letter.

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

Section 2.9. Modifications to Commitment.

(a) Optional Reduction of Revolving Credit Commitment. The Borrower may at any time and from time to time permanently reduce in whole or ratably in part the Maximum Revolving Amount to an amount not less than the then existing Revolving Credit Exposure, by giving the Administrative Agent not fewer than three Business Days' written notice of such reduction, provided that any such partial reduction shall be in an aggregate amount, for all of the Lenders, of not less than Five Million Dollars (\$5,000,000), increased in increments of One

Million Dollars (\$1,000,000). The Administrative Agent shall promptly notify each Lender of the date of each such reduction and such Lender's proportionate share thereof. After each such partial reduction, the commitment fees payable hereunder shall be calculated upon the Maximum Revolving Amount as so reduced. If the Borrower reduces in whole the Revolving Credit Commitment, on the effective date of such reduction (the Borrower having prepaid in full the unpaid principal balance, if any, of the Loans, together with all interest (if any) and commitment and other fees accrued and unpaid with respect thereto, and provided that no Letter of Credit Exposure or Swing Line Exposure shall exist), all of the Revolving Credit Notes shall be delivered to the Administrative Agent marked "Canceled" and the Administrative Agent shall redeliver such Revolving Credit Notes to the Borrower. Any partial reduction in the Maximum Revolving Amount shall be effective during the remainder of the Commitment Period. Upon each decrease of the Maximum Revolving Amount, the Total Commitment Amount shall be decreased by the same amount.

(b) Increase in Commitment.

(i) At any time during the Commitment Increase Period, the Borrower may request that the Administrative Agent increase the Total Commitment Amount by increasing the Maximum Revolving Amount; provided that the aggregate amount of all such increases made pursuant to this Section 2.9(b) shall not exceed One Hundred Fifty Million Dollars (\$150,000,000). Each such request for an increase shall be in an amount of at least Ten Million Dollars (\$10,000,000), and may be made by either (A) increasing, for one or more Lenders, with their prior written consent, their respective Revolving Credit Commitments, or (B) including one or more Additional Lenders, each with a new commitment under the Revolving Credit Commitment, as a party to this Agreement (each an "Additional Commitment" and, collectively, the "Additional Commitments").

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

(iii) On each Additional Lender Assumption Effective Date, the Lenders shall make adjustments among themselves with respect to the Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to reallocate among such Lenders such outstanding amounts, based on the revised Commitment Percentages and to otherwise carry out fully the intent and terms of this Section 2.9(b) (and the Borrower shall pay to

the Lenders any amounts that would be payable pursuant to Section 3.3 hereof if such adjustments among the Lenders would cause a prepayment of one or more Eurocurrency Loans). In connection therewith, it is understood and agreed that the Maximum Amount of any Lender will not be increased (or decreased except pursuant to subsection (a) hereof) without the prior written consent of such Lender. The Borrower shall not request any increase in the Total Commitment Amount pursuant to this Section 2.9(b) if a Default or an Event of Default shall then exist, or, after giving pro forma effect to any such increase, would exist. At the time of any such increase, at the request of the Administrative Agent, the Credit Parties and the Lenders shall enter into an amendment to evidence such increase and to address related provisions as deemed necessary or appropriate by the Administrative Agent. Upon each increase of the Maximum Revolving Amount, the Total Commitment Amount shall be increased by the same amount.

Section 2.10. Computation of Interest and Fees. Interest on Loans (other than Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention does not follow a 360-day year), Letter of Credit fees, Related Expenses and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed. Interest on Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention is to follow a 365/366 day year shall be computed on the basis of a year having three hundred sixty-five (365) days or three hundred sixty-six (366) days, as the case may be, and calculated for the actual number of days elapsed.

Section 2.11. Mandatory Payments.

(a) Revolving Credit Exposure. If, at any time, the Revolving Credit Exposure shall exceed the Revolving Credit Commitment, the Borrower shall, as promptly as practicable, but in no event later than the next Business Day, pay an aggregate principal amount of the Revolving Loans sufficient to bring the Revolving Credit Exposure within the Revolving Credit Commitment. Prepayments resulting from foreign currency exchange rate fluctuations shall be made as contemplated by Section 2.5(g).

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

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

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

Section 2.13. Market Disruption. Notwithstanding the satisfaction of all conditions referred to in Article II and Article IV with respect to any Loan in any Agreed Currency other than Dollars, if there shall occur on or prior to the date of such Loan any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls, or any other event, in each case, which would in the reasonable opinion of the Administrative Agent or the Required Lenders make it impracticable for such Loan to be denominated in the Agreed Currency specified by the Borrower, then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, and such Loan shall not be denominated in such Agreed Currency but shall be made in Dollars on the requested date for such Loan to be extended, with such Loan being made in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be, as a Base Rate Loan, unless the Borrower notifies the Administrative Agent at least one (1) Business Day before such date that (i) it elects not to borrow on such date or (ii) it elects to borrow on such date in a different Agreed Currency, as the case may be, in which the denomination of such Loans would in the opinion of the Administrative Agent and the Required Lenders be practicable and in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be.

Section 2.14. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the “specified currency”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent’s offices on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Borrower in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due

to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under the requirements of this Agreement, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the Borrower.

Section 2.15. Foreign Subsidiary Borrowers. The Borrower from time to time may request in writing that one or more of its Foreign Subsidiaries become borrowers hereunder with the ability to request and receive Loans and Letters of Credit (each, a “Foreign Subsidiary Borrower”). Each such request shall be delivered to the Administrative Agent. The Administrative Agent shall promptly circulate each such request to the Lenders. Each Lender shall notify the Administrative Agent and the Borrower no later than 20 days after its receipt of such request as to whether the applicable Foreign Subsidiary may become a party hereto as a Foreign Subsidiary Borrower. No Foreign Subsidiary shall become a Foreign Subsidiary Borrower unless approved in writing by all of the Lenders and the Administrative Agent. Any Lender that fails to respond to such a request shall be deemed to have rejected the joinder of such Foreign Subsidiary Borrower hereto. Each of the Administrative Agent and each Lender may request from the Borrower certain information in respect of such a Foreign Subsidiary in order to make such decision, including, without limitation, such Foreign Subsidiary’s jurisdiction of organization. Loans and Letters of Credit requested by a Foreign Subsidiary Borrower shall be made or issued from the United States. If the Lenders and the Administrative Agent agree with the Borrower to add a Foreign Subsidiary Borrower hereto, this Agreement (and the other Loan Documents, as relevant) shall be amended to give effect to such addition. All Lenders shall be required to make Loans to each Foreign Subsidiary Borrower, subject to any borrowing sublimits agreed to by the Borrower, the applicable Foreign Subsidiary Borrower, the Administrative Agent, and the Lenders. Each such Foreign Subsidiary Borrower shall be required to deliver, among other things (and in each case in form, scope and substance acceptable to the Administrative Agent and the Lenders), (a) amendments, joinders and other documents required by the Administrative Agent and the Lenders to give such Foreign Subsidiary Borrower the ability to receive extensions of credit hereunder, (b) collateral documents made by such Foreign Subsidiary Borrower in favor of the Administrative Agent, (c) resolutions, charter documents, incumbency certificates, opinions of counsel and other documents or information, as may be required by the Administrative Agent and the Lenders (including without limitation, information necessary to evaluate (i) any withholding tax that may arise in respect of any Loans made to or Letters of Credit issued on behalf of such Foreign Subsidiary, and (ii) the manner in which Loans may be made available to such Foreign Subsidiary, including in Dollars or the requested Agreed Currency), (d) promissory notes signed by such Foreign Subsidiary Borrower to the extent any Lender so requires, and (e) information required under “know your customer”, anti-money laundering or similar regulations to which such Lender is subject. No Foreign Subsidiary Borrower shall be joined hereto if (x) a violation of applicable law would result therefrom or (y) any Lender or the Administrative Agent objects to any adverse change in tax treatment that would result therefrom (including, without limitation, the payment of any tax gross-up or the accrual of any withholding tax). In addition, extensions of credit and other financial accommodations from the United States into the applicable jurisdiction must be permitted under applicable law. The Borrower and each Guarantor of Payment shall guaranty the Obligations of each such Foreign Subsidiary Borrower on terms and conditions acceptable to the Administrative Agent and the Lenders. Each Foreign Subsidiary that is or becomes a Foreign Subsidiary Borrower hereby irrevocably appoints the Borrower as its agent for all purposes relevant to this Agreement and each related document, including service of process.



## ARTICLE III

### ADDITIONAL PROVISIONS RELATING TO EUROCURRENCY LOANS; INCREASED CAPITAL; TAXES

#### Section 3.1. Requirements of Law.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

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

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

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

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

(b) If any Lender shall have determined that, after the Closing Date, the adoption of or any change in any Requirement of Law or Risk-Based Capital Guidelines regarding capital adequacy or liquidity, or liquidity requirements, or in the interpretation or application thereof by a Governmental Authority or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) from any Governmental Authority shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder, or under or in respect of any Letter of Credit, to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration the policies of such Lender or such corporation with respect to capital adequacy and

liquidity), then from time to time, upon submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor (which shall include the method for calculating such amount and reasonable detail with respect to such calculation), the Borrower shall promptly pay or cause to be paid to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) For purposes of this Section 3.1 and Section 3.5(a) hereof, the Dodd-Frank Act, any requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), and any rules, regulations, orders, requests, guidelines and directives adopted, issued, promulgated or implemented in connection with any of the foregoing, regardless of the date adopted, issued, promulgated or implemented, are deemed to have been introduced and adopted after the Closing Date.

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

### Section 3.2. Taxes.

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

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

receipts or other required documentary evidence, such Credit Party and the Borrower shall indemnify the Administrative Agent and the appropriate Lenders on demand for any incremental Taxes or Other Taxes paid or payable by the Administrative Agent or such Lender as a result of any such failure.

(c) If any Lender shall be so indemnified by a Credit Party, such Lender shall use reasonable efforts to obtain the benefits of any refund, deduction or credit for any taxes or other amounts with respect to the amount paid by such Credit Party and shall reimburse such Credit Party to the extent, but only to the extent, that such Lender shall receive a refund with respect to the amount paid by such Credit Party or an effective net reduction in taxes or other governmental charges (including any taxes imposed on or measured by the total net income of such Lender) of the United States or any state or subdivision or any other Governmental Authority thereof by virtue of any such deduction or credit, after first giving effect to all other deductions and credits otherwise available to such Lender. If, at the time any audit of such Lender's income tax return is completed, such Lender determines, based on such audit, that it shall not have been entitled to the full amount of any refund reimbursed to such Credit Party as aforesaid or that its net income taxes shall not have been reduced by a credit or deduction for the full amount reimbursed to such Credit Party as aforesaid, such Credit Party, upon request of such Lender, shall promptly pay to such Lender the amount so refunded to which such Lender shall not have been so entitled, or the amount by which the net income taxes of such Lender shall not have been so reduced, as the case may be.

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

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

(f) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under any Loan Document shall use reasonable efforts to deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided that (i) such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender, and (ii) to the extent that such Lender fails to comply with the requirements of this subpart (f), such Lender shall not be entitled to additional compensation otherwise payable under this Section 3.2 if such additional compensation would not have been required had such Lender so complied.

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

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

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

(j) For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans and the Letters of Credit as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 3.3. Funding Losses. The Borrower agrees to indemnify each Lender, promptly after receipt of a written request therefor, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurocurrency Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurocurrency Loans after the Borrower has

given a notice (including a written or verbal notice that is subsequently revoked) thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of a Eurocurrency Loan on a day that is not the last day of an Interest Period applicable thereto, (d) any conversion of a Eurocurrency Loan to a Base Rate Loan on a day that is not the last day of an Interest Period applicable thereto, or (e) any compulsory assignment of such Lender's interests, rights and obligations under this Agreement pursuant to Section 11.3(c) or 11.12 hereof. Such indemnification shall be in an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amounts so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the appropriate London interbank market, along with any administration fee charged by such Lender. A certificate as to any amounts payable pursuant to this Section 3.3 submitted to the Borrower (with a copy to the Administrative Agent) by any Lender together with a reasonably detailed calculation and description of such amounts, shall be conclusive absent manifest error. The obligations of the Borrower pursuant to this Section 3.3 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

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

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

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

(b) If the Administrative Agent or the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Loan, or that the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain such Eurocurrency Loan shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of such Eurocurrency Loan or, failing that, will be deemed to have converted such request into a request for a borrowing of a Base Rate Loan in the amount specified therein. Notwithstanding the foregoing, in the event the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in this Section 3.5(b) have arisen and such circumstances are unlikely to be temporary, (ii) ICE Benchmark Administration (or any Person that takes over the administration of such rate) discontinues its administration and publication of interest settlement rates for deposits in Dollars, or (iii) the supervisor for the administrator of the interest settlement rate described above in this Section 3.5(b) or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which such interest settlement rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall seek to jointly agree upon an alternate rate of interest to the Eurocurrency Base Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 11.3, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this Section 3.5(b), (x) any request pursuant to this Agreement that requests the conversion of any Loan to, or continuation of any Loan as, a Loan accruing interest at the Eurocurrency Rate shall be ineffective and any such Loan shall be continued as or converted to, as the case may be, a Base Rate Loan, and (y) if any request pursuant to this Agreement requests a Loan accruing interest at the Eurocurrency Rate, such Loan shall be made as a Base Rate Loan. If the alternate rate of interest determined pursuant to this Section 3.5(b) shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 3.6. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that requests reimbursement for amounts owing pursuant to Section 3.1 or 3.2(a) hereof, or asserts its inability to make a Eurocurrency Loan pursuant to Section 3.5 hereof; provided that (a) such replacement does not conflict with any Requirement of Law, (b) no Default or Event of Default shall have occurred and be continuing at the time of such replacement, (c) prior to any such replacement, such Lender shall have taken no action under Section 3.4 hereof so as to eliminate the continued need for payment of amounts owing pursuant to Section 3.1 or 3.2(a) hereof or, if it has taken any action, such request has still been made, (d) the replacement financial

institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement and assume all commitments and obligations of such replaced Lender, (e) the Borrower shall be liable to such replaced Lender under Section 3.3 hereof if any Eurocurrency Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (f) the replacement Lender, if not already a Lender, shall be satisfactory to the Administrative Agent, (g) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 11.10 hereof (provided that the Borrower (or the succeeding Lender, if such Lender is willing) shall be obligated to pay the assignment fee referred to therein), (h) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 3.1 or 3.2(a) hereof, as the case may be; provided that a Lender shall not be required to make any such assignment if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to replace such Lender cease to apply, and (i) if more than one Lender shall request such reimbursement based on the same circumstances giving rise to such request, the Borrower shall not be permitted to replace only one of such Lenders.

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

## ARTICLE IV

### CONDITIONS PRECEDENT

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

- (a) all conditions precedent as listed in Section 4.2 hereof required to be satisfied prior to the first Credit Event shall have been satisfied prior to or as of the first Credit Event;
- (b) the Borrower shall have submitted a Notice of Loan (or with respect to a Letter of Credit, complied with the provisions of Section 2.2(b)(ii) hereof) and otherwise complied with Section 2.5 hereof;
- (c) no Default or Event of Default shall then exist or immediately after such Credit Event would exist; and
- (d) each of the representations and warranties contained in Article VI hereof shall be true in all material respects as if made on and as of the date of such Credit Event, except to the extent that any thereof expressly relate to an earlier date.

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

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

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

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

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

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

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

(f) Officer's Certificate, Resolutions, Organizational Documents. The Borrower shall have delivered to the Administrative Agent an officer's certificate (or comparable domestic or foreign documents) certifying the names of the officers of each Credit Party authorized to sign the Loan Documents, together with the true signatures of such officers and certified copies



of (i) the resolutions of the board of directors (or comparable domestic or foreign documents) of such Credit Party evidencing approval of the execution, delivery and performance of the Loan Documents and the execution and performance of other Related Writings to which such Credit Party is a party, and the consummation of the transactions contemplated thereby, and (ii) the Organizational Documents of such Credit Party.

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

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

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

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

(k) Pro-Forma Projections. The Borrower shall have delivered to the Administrative Agent annual pro-forma projections of financial statements (which report shall include balance sheets and statements of income (loss) and cash-flow) of the Borrower through and including the Fiscal Year ending December 30, 2023, prepared on a Consolidated basis, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Borrower shall have (i) paid all fees required to be paid to the Administrative Agent on the Closing Date, including as set forth in the Administrative Agent Fee Letter, and (ii) paid all legal fees and expenses of the Administrative Agent in connection with the preparation and negotiation of the Loan Documents.

(m) Mortgage Releases. The Administrative Agent shall have received evidence reasonably satisfactory to it that all mortgages securing obligations under the Existing Credit Agreement have been or contemporaneously with the effectiveness hereof shall be terminated.

(n) Closing Certificate. The Borrower shall have delivered to the Administrative Agent and the Lenders an officer's certificate certifying that, as of the Closing Date, (i) all conditions precedent set forth in Sections 4.1 and 4.2 have been satisfied, (ii) no Default or Event of Default exists or immediately after the first Credit Event will exist, and (iii) each of the representations and warranties contained in Article VI hereof are true and correct as of the Closing Date.

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

(p) No Material Adverse Change. No material adverse change, in the opinion of the Administrative Agent, shall have occurred in the financial condition, operations or prospects of the Companies since December 31, 2016.

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

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

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

(b) Control Agreements. No later than forty-five (45) days after the Closing Date, the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent an executed Control Agreement, in form and substance satisfactory to the Administrative Agent, for each Deposit Account and each Securities Account maintained by a Credit Party; provided that the Borrower shall not be required to deliver a Control Agreement with respect to any Deposit Account or Securities Account if it would not be required to deliver a Control Agreement pursuant to Section 5.21(d) hereof.

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

## ARTICLE V

### COVENANTS

So long as any Obligations (other than unasserted contingent indemnity obligations) remain unpaid or the Commitment remains outstanding, the Borrower will (or, as applicable, cause each

other Company to) comply with the following requirements, unless the Required Lenders (or the Administrative Agent, with the consent of the Required Lenders) shall otherwise consent in writing:

Section 5.1. Insurance. Each Company (other than a Dormant Subsidiary) shall at all times maintain insurance upon its Inventory, Equipment and other personal and real property (including, if applicable, insurance required by the National Flood Insurance Reform Act of 1994) in such form, written by such companies, in such amounts, for such periods, and against such risks as may be reasonably acceptable to the Administrative Agent, with provisions satisfactory to the Administrative Agent for, with respect to Credit Parties, payment of all losses thereunder to the Administrative Agent, for the benefit of the Lenders, and such Company as their interests may appear (with lender's loss payable and additional insured endorsements, as appropriate, in favor of the Administrative Agent, for the benefit of the Lenders), and, if required by the Administrative Agent, the Borrower shall deposit the policies with the Administrative Agent. Any such policies of insurance shall provide for no fewer than thirty (30) days prior written notice of cancellation to the Administrative Agent and the Lenders. If any Event of Default then exists, any sums received by the Administrative Agent, for the benefit of the Lenders, in payment of insurance losses, returns, or unearned premiums under the policies may, at the option of the Administrative Agent or the Required Lenders, be applied upon the Obligations whether or not the same is then due and payable, or may be delivered to the Companies for the purpose of replacing, repairing, or restoring the insured property; provided that if an Event of Default does not then exist, any such sums received by the Administrative Agent shall be delivered to the Borrower. The Administrative Agent is hereby authorized to act as attorney-in-fact for the Companies, after the occurrence and during the continuance of an Event of Default, in obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. In the event of failure to provide such insurance as herein provided, the Administrative Agent may, at its option, provide such insurance and the Borrower shall pay to the Administrative Agent, upon demand, the cost thereof. Should the Borrower fail to pay such sum to the Administrative Agent upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the Default Rate. Within ten days of the Administrative Agent's written request, the Borrower shall furnish to the Administrative Agent such information about the insurance of the Companies as the Administrative Agent may from time to time reasonably request, which information shall be prepared in form and detail satisfactory to the Administrative Agent and certified by a Financial Officer.

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

Section 5.3. Financial Statements and Information.

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

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

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

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

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

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

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

(h) Beneficial Ownership Certification. On or promptly after any time at which the Borrower or any Subsidiary becomes subject to the Beneficial Ownership Regulation, a completed Beneficial Ownership Certification in form and substance acceptable to the Administrative Agent.

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

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

Section 5.5. Franchises; Change in Business.

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

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

Section 5.6. ERISA Pension and Benefit Plan Compliance. No Company shall fail to satisfy any minimum funding requirements under Code Section 412 or incur any liability to the PBGC (other than premiums payable in the ordinary course), in connection with any Pension Plan in either case which would result in a Material Adverse Effect. The Borrower shall furnish to the Administrative Agent and the Lenders as soon as possible and in any event within thirty (30) days after any Company knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, a statement of a Financial Officer of such Company, setting forth details as to such Reportable Event and the action that such Company proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to such Company. The Borrower shall promptly notify the

Administrative Agent of any taxes assessed, proposed to be assessed or that the Borrower has reason to believe are likely to be assessed against a Company by the Internal Revenue Service with respect to any ERISA Plan, if any such actual, proposed or possible assessment would result in a Material Adverse Effect. As soon as practicable, and in any event within twenty (20) days, after any Company shall become aware that an ERISA Event shall have occurred that could reasonably be expected to result in a Material Adverse Effect, such Company shall provide the Administrative Agent with notice of such ERISA Event with a certificate by a Financial Officer of such Company setting forth the details of the event and the action such Company or another Controlled Group member proposes to take with respect thereto. The Borrower shall, at the reasonable request of the Administrative Agent, deliver or cause to be delivered to the Administrative Agent true and correct copies of any documents relating to the ERISA Plan of any Company.

Section 5.7. Financial Covenants.

(a) Leverage Ratio. The Borrower shall not suffer or permit at any time the Leverage Ratio, as of the end of any Quarterly Reporting Period, to exceed 4.50 to 1.00.

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

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

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

(b) any loans or other credit granted to, or Capitalized Lease Obligations entered into by, any Company for the purchase or lease of fixed assets (and refinancings of such loans, credit or Capitalized Lease Obligations), which loans, credit and Capitalized Lease Obligations shall only be secured by the fixed assets being purchased or leased, so long as the aggregate principal amount of all such loans and Capitalized Lease Obligations for all Companies shall not exceed Twenty Million Dollars (\$20,000,000) at any time outstanding;

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

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

(e) loans to, and guaranties of Indebtedness of, a Foreign Subsidiary by a Credit Party in an aggregate amount not to exceed Fifteen Million Dollars (\$15,000,000) at any time outstanding;

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

(g) [Intentionally Omitted]; and

(h) other unsecured Indebtedness, in addition to the Indebtedness listed above, in an aggregate principal amount for all Companies not to exceed Twenty Million Dollars (\$20,000,000) at any time outstanding.

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

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

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

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

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

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

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

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

(h) other Liens, in addition to the Liens listed above, not incurred in connection with the incurring of Indebtedness, securing amounts, in the aggregate for all Companies, not to exceed Five Million Dollars (\$5,000,000) at any time.

No Company shall enter into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and (iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that would prohibit the Administrative Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of such Company.

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

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

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;

(ii) any investment in direct obligations of the United States or in certificates of deposit issued by a member bank (having capital resources in excess of Five Hundred Million Dollars (\$500,000,000)) of the Federal Reserve System;

(iii) any investment in (A) commercial paper or securities that at the time of such investment is assigned the highest quality rating in accordance with the rating systems employed by either Moody's or Standard & Poor's, (B) other Cash Equivalents, or (C) any other investment made in accordance with the Borrower Investment Policy;

(iv) the holding of each of the Subsidiaries listed on Schedule 6.1 hereto, and the creation, acquisition and holding of and any investment in any new Subsidiary after the Closing Date so long as such new Subsidiary shall have been created, acquired or held, and investments made, in accordance with the terms and conditions of this Agreement;



(v) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(d) hereof) and to the extent not in excess of \$2,500,000 at any time outstanding in the aggregate with respect to the Companies, guaranties of trade accounts payable in the ordinary course of business and guaranties of obligations under agreements by which a third party provides a drafts payable program with respect to such accounts payable for the applicable Company, in each case of, a Company from or by a Company so long as each such Company is a Credit Party;

(vi) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(e) hereof) of, a Foreign Subsidiary from or by a Credit Party;

(vii) investments by the Borrower and the other Companies in the capital stock of their Foreign Subsidiaries in an aggregate amount not to exceed Five Million Dollars (\$5,000,000) at any time outstanding;

(viii) any advance or loan to an officer or employee of a Company made in the ordinary course of such Company's business, so long as all such advances and loans from all Companies aggregate not more than the maximum principal sum of One Million Dollars (\$1,000,000) at any time outstanding;

(ix) advances in the form of progress payments, prepaid rent or security deposits;

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

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

(xii) other investments in an aggregate amount for all of the Companies not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) during any Fiscal Year of the Borrower.

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

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

(a) a Company (other than the Borrower) may merge with (i) the Borrower (provided that the Borrower shall be the continuing or surviving Person) or (ii) any one or more

Guarantors of Payment (provided that at least one Guarantor of Payment shall be the continuing or surviving Person);

(b) a Company may Dispose of any of its assets to (i) the Borrower or (ii) any Guarantor of Payment;

(c) a Company (other than a Credit Party) may merge with or otherwise Dispose of any of its assets to any other Company;

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

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

(f) other Dispositions consummated by one or more of the Companies in any Fiscal Year in an aggregate amount not to exceed 10% of Consolidated Total Assets as determined as of the last day of the immediately preceding Fiscal Year.

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

(a) [Intentionally Omitted]; or

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

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

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

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

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

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

(vi) the Borrower shall have provided to the Administrative Agent and the Lenders, at least five Business Days prior to such Acquisition, in form and substance satisfactory to the Administrative Agent, historical financial statements of the target entity and a pro forma financial statement of the Companies accompanied by a certificate of a Financial Officer

showing pro forma compliance with Section 5.7 hereof, both before and after giving effect to the proposed Acquisition;

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

(viii) the aggregate Consideration paid by the Companies, when added to all other Acquisitions for all Companies, would not exceed the aggregate amount of One Hundred Million Dollars (\$100,000,000) for the twelve month period ending with the month in which such Acquisition is consummated; provided, however, that the Leverage Ratio for the most recently ended reporting period for which the Administrative Agent has received a Compliance Certificate, immediately before and after giving pro forma effect to such Acquisition, shall be less than 3.75 to 1.00; provided, further, that each such pro forma determination shall be made as if such Acquisition (and related transactions, including the incurrence of any Indebtedness in connection therewith) was consummated on the first day of the applicable four-quarter period for which the Leverage Ratio is being determined.

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

(a) a Default or Event of Default has occurred hereunder or any representation or warranty made in Article VI hereof or elsewhere in this Agreement or in any Related Writing is determined for any reason to have not been true and complete cease in any material respect when made;

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

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

Section 5.15. Restricted Payments. No Company shall make or commit itself to make any Restricted Payment at any time, except, that so long as (x) the Leverage Ratio would not exceed 3.75 to 1.00 (as of the date of a Capital Distribution and giving pro forma effect thereto) and (y) no Default or Event of Default exists or would result therefrom, the Companies may make Capital Distributions.

Section 5.16. Environmental Compliance. Each Company shall comply in all material respects with any and all Environmental Laws and Environmental Permits including, without limitation, all Environmental Laws in jurisdictions in which such Company owns or operates a facility or site, arranges for disposal or treatment of hazardous substances, solid waste or other wastes, accepts for transport any hazardous substances, solid waste or other wastes or holds any interest in real property or otherwise, except where the failure to comply would not result in a material expenditure or loss to such Company. The Borrower shall furnish to the Administrative Agent and the Lenders, promptly after receipt thereof, a copy of any material notice any Company may receive from any Governmental Authority or private Person, or otherwise, that any material

litigation or proceeding pertaining to any environmental, health or safety matter has been filed or is threatened against such Company, any real property in which such Company holds any interest or any past or present operation of such Company. No Company shall allow the release or disposal of hazardous waste, solid waste or other wastes on, under or to any real property in which any Company holds any ownership interest or performs any of its operations, in violation of any Environmental Law, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. As used in this Section 5.16, “litigation or proceeding” means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise. The Borrower shall defend, indemnify and hold the Administrative Agent and the Lenders harmless against all costs, expenses, claims, damages, penalties and liabilities of every kind or nature whatsoever (including attorneys’ fees) arising out of or resulting from the noncompliance of any Company with any Environmental Law. Such indemnification shall survive any termination of this Agreement.

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

Section 5.18. Use of Proceeds. The Borrower’s use of the proceeds of the Loans and its use of Letters of Credit shall be for working capital and other general corporate purposes of the Companies and for the refinancing of existing Indebtedness and for Acquisitions permitted hereunder. The Borrower will not request any Loan or Letter of Credit, and will not use, and the Borrower will ensure that the other Companies, and its or their respective directors, officers, employees and agents, shall not use, the proceeds of any Loan or Letter of Credit in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws. The Borrower will not, directly or indirectly, use the proceeds of the Loans or any Letter of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

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

(i) provide written notice to the Administrative Agent within forty-five (45) days after the end of each of the first three fiscal quarters of each Fiscal Year of the Borrower and within ninety (90) days after the end of each Fiscal Year of the Borrower, of any interest (including but not limited to any fee simple or leasehold interest) in any real property (including the name of any landlord (other than a retail store landlord) and the address of any such real property and whether such location will have or could reasonably be expected to have at any time Inventory and Equipment (excluding leasehold improvements) of the Credit Parties having an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000)) not previously disclosed on Schedule 6.9 hereto or previously disclosed in writing by the Borrower to the Administrative Agent pursuant to this Section 5.19, and upon the Administrative Agent's receipt of such written notice from the Borrower, such interest in real property so disclosed in such written notice shall be deemed to be included on Schedule 6.9 hereto;

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

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

In the event of any of the foregoing or if otherwise deemed appropriate by the Administrative Agent, the Administrative Agent is hereby authorized to file new U.C.C. Financing Statements describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in the Administrative Agent's sole discretion, to perfect or continue perfected the security interest of the Administrative Agent, for the benefit of the Lenders, in the Collateral. The Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such U.C.C. Financing Statements and security interests and shall promptly reimburse the Administrative Agent therefor if the Administrative Agent pays the same. Such amounts not so paid or reimbursed shall be Related Expenses hereunder.

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

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

(b) Pledge of Stock or Other Ownership Interest. With respect to the creation or acquisition of a Domestic Subsidiary or first-tier Foreign Subsidiary of the Borrower or a Domestic Subsidiary (including as a result of a Division, with respect to each applicable Division Successor), the Borrower shall deliver to the Administrative Agent, for the benefit of the Lenders, all of the share certificates (or other evidence of equity) owned by a Credit Party pursuant to the terms of a Pledge Agreement prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and executed by the appropriate Credit Party; provided that no such pledge shall include (i) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, (ii) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary and (iii) shares of capital stock or other equity interests of any first-tier Foreign Subsidiary that is a Dormant Subsidiary; provided, that with respect to a first-tier Foreign Subsidiary that has been classified as a Dormant Subsidiary, at such time that such first-tier Foreign Subsidiary no longer meets the requirements of a Dormant Subsidiary, the Borrower shall provide to the Administrative Agent prompt written notice thereof, and, subject to Section 5.20(b)(ii) above, shall provide, with respect to such first-tier Foreign Subsidiary, share certificates (or other evidence of equity) and a Pledge Agreement as referenced in the foregoing sentence.

(c) Perfection or Registration of Interest in Foreign Shares. With respect to any foreign shares pledged to the Administrative Agent, for the benefit of the Lenders, on or after the Closing Date, the Administrative Agent shall at all times, in the discretion of the Administrative Agent or the Required Lenders, have the right to perfect, at the Borrower's cost, payable upon request therefor (including, without limitation, any foreign counsel, or foreign notary, filing, registration or similar, fees, costs or expenses), its security interest in such shares in the respective foreign jurisdiction. Such perfection may include the requirement that the applicable Company promptly execute and deliver to the Administrative Agent a separate pledge document (prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent), covering such equity interests, that conforms to the requirements of the applicable foreign jurisdiction, together with an opinion of local counsel as to the perfection of the security interest provided for therein, and all other documentation necessary or desirable to effect the foregoing and to permit the Administrative Agent to exercise any of its rights and remedies in respect thereof. Notwithstanding the foregoing, if the Administrative Agent, in its reasonable discretion, after consultation with the Borrower, determines that the cost of perfecting in a foreign jurisdiction, the security interest of the Administrative Agent, for the benefit of the Lenders, in the Pledged Securities relating to any Foreign Subsidiary, (i) is impractical or cost-prohibitive or (ii) the benefits obtained by such action are outweighed by the burdens of obtaining the same, then the Administrative Agent may agree to forego (until such time as the Administrative Agent determines it is practical to so perfect such interest) the foreign perfection of such security interest.

Section 5.21. Collateral. Each Credit Party shall:

(a) at all reasonable times and, except after the occurrence and during the continuance of an Event of Default, upon reasonable notice, allow the Administrative Agent and the Lenders by or through any of the Administrative Agent's officers, agents, employees, attorneys or accountants to (i) examine, inspect and make extracts from such Credit Party's books and other records, including, without limitation, the tax returns of such Credit Party, (ii) arrange for

verification of such Credit Party's Accounts, under reasonable procedures, directly with Account Debtors or by other methods, and (iii) examine and inspect such Credit Party's Inventory and Equipment, wherever located;

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

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

(d) promptly notify the Administrative Agent in writing upon the acquisition or creation by any Credit Party of a Deposit Account or Securities Account not listed on the notice provided to the Administrative Agent pursuant to Section 6.19 hereof, and, prior to or simultaneously with the creation of such Deposit Account or Securities Account, provide for the execution of a Deposit Account Control Agreement or Securities Account Control Agreement with respect thereto, if required by the Administrative Agent or the Required Lenders; provided that a Control Agreement shall not be required for a Deposit Account or Securities Account (i) that constitutes Excluded Collateral, (ii) so long as no Event of Default has occurred and is continuing, that is a retail store Deposit Account provided that the aggregate amount maintained in all such retail store Deposit Accounts does not exceed Five Million Dollars (\$5,000,000) for any two consecutive Business Days during the ninety (90) day period immediately preceding such time of determination, or (iii) that is a disbursement account that automatically has a zero balance at the end of each day;

(e) subject to Section 4.3(c), with respect to any Equipment or Inventory of a Credit Party located at a location of a third party (other than another Credit Party), use commercially reasonable efforts to cause to be executed any Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document or notice that may be required by the Administrative Agent or the Required Lenders; provided that a Credit Party shall not be required to deliver a Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document for any Equipment or Inventory located at such location to the extent that the aggregate value of all Equipment (excluding leasehold improvements) and Inventory of all Companies maintained at such location does not exceed Five Hundred Thousand Dollars (\$500,000);

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

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

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

(i) provide to the Administrative Agent, when each Compliance Certificate is due (as necessary), a list of any patents, trademarks or copyrights that have been federally registered by such Credit Party since delivery of the last Compliance Certificate, and provide for the execution of an appropriate Intellectual Property Security Agreement; and

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

Each Credit Party hereby authorizes the Administrative Agent, on behalf of the Lenders, to file U.C.C. Financing Statements or other appropriate notices with respect to the Collateral. Such U.C.C. Financing Statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administrative Agent may determine, in its reasonable discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired. If certificates of title or applications for title are issued or outstanding with respect to any of the Inventory or Equipment of any Credit Party with an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000), such Credit Party shall, upon request of the Administrative Agent, (i) execute and deliver to the Administrative Agent a short form security agreement, prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and (ii) deliver such certificate or application to the Administrative Agent and cause the interest of the Administrative Agent, for the benefit of the Lenders, to be properly noted thereon. Each Credit Party hereby authorizes the Administrative Agent or the Administrative Agent's designated agent (but without obligation by the Administrative Agent to do so) to incur Related Expenses (whether prior to, upon, or subsequent to any Default or Event of Default), and the Borrower shall promptly repay, reimburse, and indemnify the Administrative Agent and the Lenders for any and all Related



Expenses. If any Credit Party fails to keep and maintain its Equipment (other than Equipment that is obsolete or no longer useful in such Credit Party's business) in good operating condition, ordinary wear and tear excepted, the Administrative Agent may (but shall not be required to) so maintain or repair all or any part of such Credit Party's Equipment and the cost thereof shall be a Related Expense. All Related Expenses are payable to the Administrative Agent upon demand therefor; the Administrative Agent may, at its option, debit Related Expenses directly to any Deposit Account of a Company located at the Administrative Agent or the Revolving Loans.

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

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

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

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

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

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

Section 5.28. Further Assurances. The Borrower shall, and shall cause each other Credit Party to, promptly upon request by the Administrative Agent, or the Required Lenders through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or the Required Lenders through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

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

Section 5.30. Compliance with Laws. The Borrower will, and will cause each Company to, (i) comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, Anti-Corruption Laws and applicable Sanctions and (ii) perform its obligations under material agreements to which it is a party, in each case under clause (i) and (ii) above to the extent a failure to do so would reasonably be expected to have a Material Adverse Effect.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

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

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

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

(a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so would not have a Material Adverse Effect;

(b) is in compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices, except where the failure to be in compliance would not have a Material Adverse Effect;

(c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound, except with respect to any violation or default that would not have a Material Adverse Effect; and

(d) is in compliance, in all material respects, with the Patriot Act.

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

Section 6.5. Title to Assets. Each Company has good title to and ownership of all property it purports to own, which property is free and clear of all Liens, except those permitted under Section 5.9 hereof. As of the Closing Date, the Companies own the real estate listed on Schedule 6.5 hereto.

Section 6.6. Liens and Security Interests. On and after the Closing Date, except for Liens permitted pursuant to Section 5.9 hereof, (a) there is and will be no U.C.C. Financing Statement or similar notice of Lien outstanding covering any personal property of any Company, except for any such U.C.C. Financing Statement as to which the referenced secured party has provided written authorization to be terminated; (b) there is and will be no mortgage or charge outstanding covering any real property of any Company; and (c) no real or personal property of any Company is subject to any Lien of any kind. The Administrative Agent, for the benefit of the Lenders, upon the filing of the U.C.C. Financing Statements and taking such other actions necessary to perfect its Lien against collateral of the corresponding type as authorized hereunder, will have a valid and enforceable first Lien on the collateral securing the Obligations (other than (x) with respect to Commercial Tort Claims, (y) as otherwise specifically provided pursuant to Section 5.9 hereof and (z) as enforceability may be limited by Section 9-408 of the UCC with respect to commercially available software license agreements or certain other general intangibles subject to such Section 9-408). No Company has entered into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other

agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and (iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that exists on or after the Closing Date that would prohibit the Administrative Agent or the Lenders from acquiring a Lien on, or a collateral assignment of, any of the property or assets of any Company.

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

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

Section 6.9. Locations. Schedule 6.9 sets forth, as of the Closing Date, (x) the address of each location (including third party locations) where assets of the Companies exceed Five Hundred Thousand Dollars (\$500,000) and (y) each Company's chief executive office. Schedule 6.9 hereto further specifies whether each location, as of the Closing Date, (a) is owned by the Companies, (b) is leased by a Company from a third party or (c) is the location of a bailee, processor or consignee of a Company, and, in the case of the foregoing clauses (b) and (c),

if a Landlord's Waiver, Bailee's Waiver, Processor's Waiver or Consignee's Waiver has been requested.

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

Section 6.11. Employee Benefits Plans. Schedule 6.11 hereto identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred with respect to an ERISA Plan that could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, (a) full payment has been made of all amounts that each Controlled Group member is required, under applicable law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan; (b) the liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements, and (c) no changes have occurred or are expected to occur that would cause a material increase in the cost of providing benefits under the ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Code Section 401(a), except as could not reasonably be expected to have a Material Adverse Effect, (i) the ERISA Plan and any associated trust operationally comply with the applicable requirements of Code Section 401(a); (ii) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely); (iii) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype or volume submitter plan that is the subject of a favorable opinion letter from the Internal Revenue Service, unless the ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired and subject to changes the Internal Revenue Service makes to the determination letter process; (iv) the ERISA Plan currently satisfies the requirements of Code Section 410(b); and (v) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. With respect to any Pension Plan, the "accumulated benefit obligation" of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, "Employers' Accounting for Pensions", as amended) does not exceed the fair market value of Pension Plan assets by an amount that would reasonably be expected to have a Material Adverse Effect. The Borrower represents that, as of the date hereof and throughout the term of this Agreement, no Credit Party is (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code; or (4) a "governmental plan" within the meaning of ERISA.

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

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

Section 6.14. Financial Statements. The audited Consolidated financial statements of the Borrower for the Fiscal Year ended December 31, 2016, and the unaudited Consolidated financial statements of the Borrower for the Quarterly Reporting Period ended September 30, 2017, furnished to the Administrative Agent and the Lenders, are true and complete, have been prepared in accordance with GAAP, and fairly present the financial condition of the Companies as of the dates of such financial statements and the results of their operations for the periods then ending. Since the dates of such statements, there has been no material adverse change in any Company's financial condition, properties or business or, except as required by GAAP, any change in any Company's accounting procedures.

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

Section 6.16. Material Agreements. Except as disclosed on Schedule 6.16 hereto, as of the Closing Date, no Company is a party to any (a) debt instrument (excluding the Loan Documents); (b) lease (capital, operating or otherwise), whether as lessee or lessor thereunder; (c) contract, commitment, agreement, or other arrangement involving the purchase or sale of any inventory by it, or the license of any right to or by it; (d) contract, commitment, agreement, or other arrangement with any of its "Affiliates" (as such term is defined in the Exchange Act) other than a Company; (e) management or employment contract or contract for personal services with any of its Affiliates that is not otherwise terminable at will or on less than ninety (90) days' notice without liability; (f) collective bargaining agreement; or (g) other contract, agreement, understanding, or arrangement with a third party; that, as to subparts (a) through (g) above, if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect.

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

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

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

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

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

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

Section 6.23. Anti-Corruption Laws; Sanctions. Each of the Companies and its respective officers and employees, and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions, except where the failure to be in compliance would not have a Material Adverse Effect. The Borrower has implemented and maintains in effect for itself, and the other Companies policies and procedures designed to promote compliance by the Borrower, and the other Companies, and their respective officers, employees, directors, and agents, with Anti-Corruption Laws and applicable Sanctions. None of the Companies, or to the knowledge of the Borrower, any directors, officer, employee, agent, or affiliate of a Company is an individual or entity that is, or is 50% or more owned (individually or in the aggregate, directly or indirectly) or controlled by individuals or entities (including any



agency, political subdivision or instrumentality of any government) that are (i) the target of any Sanctions or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (as of the date hereof, Crimea, Cuba, Iran, North Korea and Syria).

Section 6.24. Anti-Money Laundering Compliance. The Borrower shall, and shall cause each other Company to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with anti-money laundering laws and regulations.

Section 6.25. EEA Financial Institution. No Credit Party is an EEA Financial Institution.

## ARTICLE VII

### SECURITY

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

Section 7.2. Collections and Receipt of Proceeds by Borrower.

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

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

Agent may charge the amount of such item against the Cash Collateral Account or any other Deposit Account maintained by the Borrower with the Administrative Agent or with any other Lender, and, in any event, retain the same and the Borrower's interest therein as additional security for the Secured Obligations. The Administrative Agent may, in its sole discretion, at any time and from time to time, release funds from the Cash Collateral Account to the Borrower for use in the Borrower's business. The balance in the Cash Collateral Account may be withdrawn by the Borrower upon termination of this Agreement and payment in full of all of the Secured Obligations (other than unasserted contingent indemnity obligations).

(c) After the occurrence and during the continuance of an Event of Default, at the Administrative Agent's written request, the Borrower shall cause all remittances representing collections and Proceeds of Collateral to be mailed to a lockbox at a location acceptable to the Administrative Agent, to which the Administrative Agent shall have access for the processing of such items in accordance with the provisions, terms and conditions of the customary lockbox agreement of the Administrative Agent.

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

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

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

(b) to transmit to Account Debtors, on any or all of the Borrower's Accounts, notice of assignment to the Administrative Agent, for the benefit of the Lenders, thereof and the

security interest therein, and to request from such Account Debtors at any time, in the name of the Administrative Agent or the Borrower, information concerning the Borrower's Accounts and the amounts owing thereon;

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

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

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

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

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

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

Section 7.4. Administrative Agent's Authority Under Pledged Notes. For the better protection of the Administrative Agent and the Lenders hereunder, the Borrower has executed (or will execute, with respect to future Pledged Notes) an appropriate endorsement on (or separate from) each Pledged Note and has deposited (or will promptly deposit, but in any event within 30 days after the date of receipt thereof) such Pledged Note with the Administrative Agent, for the benefit of the Lenders. The Borrower irrevocably authorizes and empowers the Administrative Agent, for the benefit of the Lenders, to, after the occurrence and during the continuance of an Event of Default, (a) ask for, demand, collect and receive all payments of principal of and interest

on the Pledged Notes; (b) compromise and settle any dispute arising in respect of the foregoing; (c) execute and deliver vouchers, receipts and acquittances in full discharge of the foregoing; (d) exercise, in the Administrative Agent's discretion, any right, power or privilege granted to the holder of any Pledged Note by the provisions thereof including, without limitation, the right to demand security or to waive any default thereunder; (e) endorse the Borrower's name to each check or other writing received by the Administrative Agent as a payment or other proceeds of or otherwise in connection with any Pledged Note; (f) enforce delivery and payment of the principal and/or interest on the Pledged Notes, in each case by suit or otherwise as the Administrative Agent may desire; and (g) enforce the security, if any, for the Pledged Notes by instituting foreclosure proceedings, by conducting public or other sales or otherwise, and to take all other steps as the Administrative Agent, in its discretion, may deem advisable in connection with the foregoing; provided, however, that nothing contained or implied herein or elsewhere shall obligate the Administrative Agent to institute any action, suit or proceeding or to make or do any other act or thing contemplated by this Section 7.4 or prohibit the Administrative Agent from settling, withdrawing or dismissing any action, suit or proceeding or require the Administrative Agent to preserve any other right of any kind in respect of the Pledged Notes and the security, if any, therefor.

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

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

## ARTICLE VIII

### EVENTS OF DEFAULT

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

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

Section 8.2. Special Covenants. If any Company shall fail or omit to perform and observe Section 5.3, 5.5 (with respect to the Borrower) 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28 or 5.30 hereof.

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

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

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

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

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

Section 8.8. Judgments. There is entered against any Company a final judgment or order for the payment of money by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired, provided that such occurrence shall constitute an Event of Default only if the aggregate of all such judgments for all such Companies, shall exceed Ten Million Dollars (\$10,000,000) (less any amount that will be covered by the proceeds of insurance and is not subject to dispute by the insurance provider).

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

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

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

## ARTICLE IX

### REMEDIES UPON DEFAULT

Notwithstanding any contrary provision or inference herein or elsewhere:

Section 9.1. Optional Defaults. If any Event of Default referred to in Section 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9 or 8.10 hereof shall occur, the Administrative Agent may, with the

consent of the Required Lenders, and shall, at the written request of the Required Lenders, give written notice to the Borrower to:

(a) terminate the Commitment, if not previously terminated, and, immediately upon such election, the obligations of the Lenders, and each thereof, to make any further Loan, and the obligation of the Issuing Lender to issue any Letter of Credit, immediately shall be terminated; and/or

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

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

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

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

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

Section 9.4. Offsets.

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

Payment, all without notice to or demand upon the Borrower or any other Person, all such notices and demands being hereby expressly waived by the Borrower.

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

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

Section 9.6. Collateral. The Administrative Agent and the Lenders shall at all times have the rights and remedies of a secured party under the U.C.C., in addition to the rights and remedies of a secured party provided elsewhere within this Agreement, in any other Related Writing executed by the Borrower or otherwise provided in law or equity. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may require the Borrower to assemble the collateral securing the Obligations, which the Borrower agrees to do, and make it available to the Administrative Agent and the Lenders at a reasonably convenient place to be designated by the Administrative Agent. The Administrative Agent may, with or



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

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

Section 9.8. Application of Proceeds.

(a) Payments Prior to Exercise of Remedies. Prior to the exercise by the Administrative Agent, on behalf of the Lenders, of remedies under this Agreement or the other Loan Documents, all monies received by the Administrative Agent in connection with the Revolving Credit Commitment shall be applied, unless otherwise required by the terms of the other

Loan Documents or by applicable law, to the Loans and Letters of Credit, as appropriate; provided that the Administrative Agent shall have the right at all times to apply any payment received from the Borrower first to the payment of all obligations (to the extent not paid by the Borrower) incurred by the Administrative Agent pursuant to Sections 11.5 and 11.6 hereof and to the payment of Related Expenses.

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

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

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

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

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

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

Each Lender hereby agrees to promptly provide all information reasonably requested by the Administrative Agent regarding any Bank Product Obligations owing to such Lender (or affiliate of such Lender) or any Hedge Agreement entered into by a Company with such Lender (or affiliate

of such Lender), and each such Lender, on behalf of itself and any of its affiliates, hereby agrees to promptly provide notice to the Administrative Agent upon such Lender (or any of its affiliates) entering into any such Hedge Agreement or cash management services agreement.

## ARTICLE X

### THE ADMINISTRATIVE AGENT

KeyBank National Association acted as administrative agent under the Existing Credit Agreement. Pursuant to Section 11.23 hereof, KeyBank National Association has resigned as administrative agent and U.S. Bank has agreed to act as administrative agent. The Lenders authorize U.S. Bank and U.S. Bank hereby agrees to act as agent for the Lenders in respect of this Agreement upon the terms and conditions set forth elsewhere in this Agreement, and upon the following terms and conditions:

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

Section 10.2. ERISA Matters. Each Lender as of the date hereof represents and warrants as of the date hereof to the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Credit Party, that such Lender is not and will not be (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold “plan assets” of any such plans

or accounts for purposes of ERISA or the Code; or (4) a “governmental plan” within the meaning of ERISA.

Section 10.3. Consultation With Counsel. The Administrative Agent may consult with legal counsel selected by the Administrative Agent and shall not be liable for any action taken or suffered in good faith by the Administrative Agent in accordance with the opinion of such counsel.

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

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

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

Section 10.7. Action by Administrative Agent. Subject to the other terms and conditions hereof, so long as the Administrative Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, the Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. The Administrative Agent shall incur no liability under or in respect of this Agreement by acting upon

any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable in the premises. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent's acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

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

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

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

Letters of Credit, termination of the Commitment, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the agent.

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

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

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

Section 10.14. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, (a) the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed

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

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

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

## ARTICLE XI

### MISCELLANEOUS

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

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

Section 11.3. Amendments, Waivers and Consents.

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

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

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



interest rate pursuant to this Section 11.3) or the stated rate of commitment fees payable hereunder, without the consent of each Lender directly affected thereby, (D) change the manner of pro rata application of any payments made by the Borrower to the Lenders hereunder, without the consent of each Lender directly affected thereby, (E) without the unanimous consent of the Lenders, change any percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement, (F) without the unanimous consent of the Lenders, release the Borrower or any Guarantor of Payment or of any material amount of collateral securing the Secured Obligations, except in connection with a transaction specifically permitted hereunder as provided in Section 10.8 hereof, or (G) without the unanimous consent of the Lenders, amend the definition of “Agreed Currency”, this Section 11.3, or Section 2.13, 9.5 or 9.8 hereof.

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

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

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

(d) Generally. Notice of amendments, waivers or consents ratified by the Lenders hereunder shall be forwarded by the Administrative Agent to all of the Lenders. Each

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

Section 11.4. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and:

(a) if to the Borrower, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement;

(b) if to the Administrative Agent, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Beth Correll, Agent Deal Administrator, Facsimile: 612-303-3851, Email: [elizabeth.correll@usbank.com](mailto:elizabeth.correll@usbank.com) with a copy to U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03N, Minneapolis, MN 55402, Attention: Tim Landro, Vice President and Portfolio Manager, Facsimile: 612-303-2265, Email: [timothy.landro@usbank.com](mailto:timothy.landro@usbank.com);

(c) if to U.S. Bank National Association, in its capacity as Issuing Lender, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Julie M. Seaton, International Banking Officer, Facsimile: 612.303.5226, Email: [julie.seaton@usbank.com](mailto:julie.seaton@usbank.com);

(d) if to a Lender, mailed or delivered to it at its address (or facsimile number) set forth in its Administrative Questionnaire;

or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties.

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

Section 11.5. Costs, Expenses and Documentary Taxes. The Borrower agrees to pay on demand all costs and expenses of the Administrative Agent and all Related Expenses, including but not limited to (a) syndication, administration, travel and out-of-pocket expenses, including but not limited to attorneys' fees and expenses, of the Administrative Agent in connection with the preparation, negotiation and closing of the Loan Documents and the administration of the Loan Documents, and the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder, (b) out-of-pocket expenses of the Administrative Agent

in connection with the administration of the Loan Documents and the other instruments and documents to be delivered hereunder, and (c) the reasonable fees and expenses of special counsel for the Administrative Agent, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto. The Borrower also agrees to pay on demand all costs and expenses (including Related Expenses) of the Administrative Agent and the Lenders, including reasonable attorneys' fees and expenses, in connection with the restructuring, workout or enforcement of the Obligations, this Agreement or any other Related Writing. In addition, the Borrower shall pay any and all stamp, transfer, documentary and other taxes, assessments, charges and fees payable or determined to be payable in connection with the execution and delivery of the Loan Documents, and the other instruments and documents to be delivered hereunder, and agrees to hold the Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes or fees. All obligations provided for in this Section 11.5 shall survive any termination of this Agreement.

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

Section 11.7. Obligations Several; No Advisory or Fiduciary Obligations. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Administrative Agent or the Lenders pursuant hereto shall be deemed to constitute the Administrative Agent or the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between the Borrower and the Lenders with respect to the Loan Documents and the other Related Writings is and shall be solely that of debtor and creditors, respectively, and neither the Administrative Agent nor any Lender shall have any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, any arranger and any

book runner and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, any arranger and any book runner and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent, any arranger and any book runner and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any arranger and any book runner nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, any arranger and any book runner and each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any arranger and any book runner nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any arranger and any book runner and each of the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.8. Execution in Counterparts; Electronic Execution of Assignments; Electronic Records.

(a) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, and by facsimile or other electronic signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

(b) The words "execution," "signed," "signature," and words of like import in any assignment and assumption agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other state laws based on the Uniform Electronic Transactions Act.

(c) The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent's and each Lender's normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals. The Administrative Agent and each Lender are authorized, when appropriate, to convert any note into a "transferable record" under the Uniform Electronic Transactions Act.

Section 11.9. Binding Effect; Borrower's Assignment. This Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent and each Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each of the Lenders and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent and all of the Lenders.

Section 11.10. Lender Assignments.

(a) Assignments of Commitments. Each Lender shall have the right at any time or times to assign to an Eligible Transferee (other than to a Defaulting Lender), without recourse, all or a percentage of all of the following: (i) such Lender's Commitment, (ii) all Loans made by that Lender, (iii) such Lender's Notes, and (iv) such Lender's interest in any Letter of Credit or Swing Loan, and any participation purchased pursuant to Section 2.2(b) or (c) or Section 9.5 hereof.

(b) Prior Consent. No assignment may be consummated pursuant to this Section 11.10 without the prior written consent of the Borrower and the Administrative Agent (other than an assignment by any Lender to any affiliate of such Lender which affiliate is an Eligible Transferee and either wholly-owned by a Lender or is wholly-owned by a Person that wholly owns, either directly or indirectly, such Lender, or to another Lender), which consent of the Borrower and the Administrative Agent shall not be unreasonably withheld; provided that (i) the consent of the Borrower shall not be required if, at the time of the proposed assignment, any Default or Event of Default shall then exist and (ii) the Borrower shall be deemed to have granted its consent unless the Borrower has expressly objected to such assignment within three Business Days after notice thereof. Anything herein to the contrary notwithstanding, any Lender may at any time make a pledge or collateral assignment of all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, as applicable, provided that no such pledge or assignment shall release such assigning Lender from its obligations hereunder or substitute such pledgee or assignee for such Lender as a party hereto.

(c) Minimum Amount. Each such assignment shall be in a minimum amount of the lesser of Five Million Dollars (\$5,000,000) of the assignor's Commitment and interest herein, or the entire amount of the assignor's Commitment and interest herein.

(d) Assignment Fee. Unless the assignment shall be to an affiliate of the assignor or the assignment shall be due to merger of the assignor or for regulatory purposes, either the assignor or the assignee shall remit to the Administrative Agent, for its own account, an administrative fee of Three Thousand Five Hundred Dollars (\$3,500).

(e) Assignment Agreement. Unless the assignment shall be due to merger of the assignor or a collateral assignment for regulatory purposes, the assignor shall (i) cause the assignee to execute and deliver to the Borrower and the Administrative Agent an Assignment Agreement, and (ii) execute and deliver, or cause the assignee to execute and deliver, as the case may be, to the Administrative Agent such additional amendments, assurances and other writings as the Administrative Agent may reasonably require.

(f) Non-U.S. Assignee. If the assignment is to be made to an assignee that is organized under the laws of any jurisdiction other than the United States or any state thereof, the assignor Lender shall cause such assignee, at least five Business Days prior to the effective date of such assignment, (i) to represent to the assignor Lender (for the benefit of the assignor Lender, the Administrative Agent and the Borrower) that under applicable law and treaties no taxes will be required to be withheld by the Administrative Agent, the Borrower or the assignor with respect to any payments to be made to such assignee in respect of the Loans hereunder, (ii) to furnish to the assignor Lender (and, in the case of any assignee registered in the Register (as defined below), the Administrative Agent and the Borrower) either U.S. Internal Revenue Service Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable (wherein such assignee claims entitlement to complete exemption from U.S. federal withholding tax on all payments hereunder), and (iii) to agree (for the benefit of the assignor, the Administrative Agent and the Borrower) to provide to the assignor Lender (and, in the case of any assignee registered in the Register, to the Administrative Agent and the Borrower) a new Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable, upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable U.S. laws and regulations and amendments duly executed and completed by such assignee, and to comply from time to time with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

(g) Deliveries by Borrower. Upon satisfaction of all applicable requirements specified in subsections (a) through (f) above, the Borrower shall execute and deliver (i) to the Administrative Agent, the assignor and the assignee, any consent or release (of all or a portion of the obligations of the assignor) required to be delivered by the Borrower in connection with the Assignment Agreement, and (ii) to the assignee, if requested, and the assignor, if applicable, an appropriate Note or Notes. After delivery of the new Note or Notes, the assignor's Note or Notes, if any, being replaced shall be returned to the Borrower marked "replaced".

(h) Effect of Assignment. Upon satisfaction of all applicable requirements set forth in subsections (a) through (g) above, and any other condition contained in this Section 11.10, (i) the assignee shall become and thereafter be deemed to be a "Lender" for the purposes of this Agreement, (ii) the assignor shall be released from its obligations hereunder to the extent that its interest has been assigned, (iii) in the event that the assignor's entire interest has been assigned, the assignor shall cease to be and thereafter shall no longer be deemed to be a "Lender" and (iv) the signature pages hereto and Schedule 1 hereto shall be automatically amended, without further action, to reflect the result of any such assignment.

(i) Administrative Agent to Maintain Register. Administrative Agent shall maintain at the address for notices referred to in Section 11.4 hereof a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Section 11.11. Sale of Participations. Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell participations to one or more Eligible Transferees (each a “Participant”) in all or a portion of its rights or obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Commitment and the Loans and participations owing to it and the Note, if any, held by it); provided that:

(a) any such Lender’s obligations under this Agreement and the other Loan Documents shall remain unchanged;

(b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(c) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and each of the other Loan Documents;

(d) such Participant shall be bound by the provisions of Section 9.5 hereof, and the Lender selling such participation shall obtain from such Participant a written confirmation of its agreement to be so bound; and

(e) no Participant (unless such Participant is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant’s consent, take action of the type described as follows:

(i) increase the portion of the participation amount of any Participant over the amount thereof then in effect, or extend the Commitment Period, without the written consent of each Participant affected thereby; or

(ii) reduce the principal amount of or extend the time for any payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest on any Loan, or reduce the commitment fee, without the written consent of each Participant affected thereby.

The Borrower agrees that any Lender that sells participations pursuant to this Section 11.11 shall still be entitled to the benefits of Article III hereof, notwithstanding any such transfer; provided that the obligations of the Borrower shall not increase as a result of such transfer and the Borrower shall have no obligation to any Participant.

Section 11.12. Replacement of Affected Lenders. Each Lender agrees that, during the time in which any Lender is an Affected Lender, the Administrative Agent shall have the right (and the Administrative Agent shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Affected Lender and the Borrower, to require that such Affected Lender assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof), all of its interests, rights and obligations under this Agreement to an Eligible Transferee, approved by the Borrower (unless an Event of Default shall exist) and the Administrative Agent, that shall assume such obligations (which assignee may be another Lender,

if a Lender accepts such assignment); provided that such Affected Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (recognizing that any Affected Lender may have given up its rights under this Agreement to receive payment of fees and other amounts pursuant to Section 2.6(e) and (f) hereof), from such Eligible Transferee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

Section 11.13. Patriot Act Notice. Each Lender, and the Administrative Agent (for itself and not on behalf of any other party), hereby notifies the Credit Parties that, pursuant to the requirements of the Patriot Act, such Lender and the Administrative Agent are required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each of the Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Administrative Agent or a Lender in order to assist the Administrative Agent or such Lender in maintaining compliance with the Patriot Act.

Section 11.14. Severability of Provisions; Captions; Attachments. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

Section 11.15. Investment Purpose. Each of the Lenders represents and warrants to the Borrower that such Lender is entering into this Agreement with the present intention of acquiring any Note issued pursuant hereto (or, if there is no Note, the interest as reflected on the books and records of the Administrative Agent) for investment purposes only and not for the purpose of distribution or resale, it being understood, however, that each Lender shall at all times retain full control over the disposition of its assets.

Section 11.16. Entire Agreement. This Agreement, any Note and any other Loan Document or other agreement, document or instrument attached hereto or executed on or as of the Closing Date integrate all of the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof (except with respect to any provisions of the Administrative Agent Fee Letter, that by their terms survive the termination thereof, in each case, which shall remain in full force and effect after the Closing Date).

Section 11.17. Limitations on Liability of the Issuing Lender. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither the Issuing Lender nor any of its officers or directors shall be liable or responsible for (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency



or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Issuing Lender against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the account party on such Letter of Credit shall have a claim against the Issuing Lender, and the Issuing Lender shall be liable to such account party, to the extent of any direct, but not consequential, damages suffered by such account party that such account party proves were caused by (i) the Issuing Lender's willful misconduct or gross negligence (as determined by a final judgment of a court of competent jurisdiction) in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit, or (ii) the Issuing Lender's willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.18. General Limitation of Liability. No claim may be made by any Credit Party or any other Person against any Company, the Administrative Agent, the Issuing Lender, or any other Lender or the affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative Agent and the Issuing Lender hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in their favor and regardless of whether any Company, any Lender, Issuing Lender, or the Administrative Agent has been advised of the likelihood of such loss of damage.

Section 11.19. No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such Person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Loan Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to the Borrower, any other Companies, or any other Person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrower agrees, on behalf of itself and its Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.

Section 11.20. Legal Representation of Parties. The Loan Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement or any other Loan Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

Section 11.21. Governing Law; Submission to Jurisdiction.

(a) **GOVERNING LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

(b) **SUBMISSION TO JURISDICTION. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER OR TO ENFORCE RIGHTS AND REMEDIES IN RESPECT OF COLLATERAL IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ADMINISTRATIVE AGENT, ISSUING LENDER OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN NEW YORK, NEW YORK.**

(c) **WAIVER OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE ISSUING LENDER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.**

Section 11.22. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 11.23. Amendment and Restatement; Agency Transfer; New Lenders.

(a) The parties to this Agreement agree that, upon (i) the execution and delivery by each of the parties hereto of this Agreement and (ii) satisfaction of the conditions set forth in Section 4.2, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. This Agreement is not intended to and shall not constitute a novation. All Loans made and Obligations incurred under the Existing Credit Agreement which are outstanding on the Closing Date shall continue as Loans and Obligations under (and shall be governed by the terms of) this Agreement and the other Loan Documents. Without limiting the foregoing, upon the effectiveness hereof: (a) all references in the “Loan Documents” (as defined in the Existing Credit Agreement) to the “Administrative Agent”, the “Credit Agreement” and the “Loan Documents” shall be deemed to refer to the Administrative Agent, this Agreement and the Loan Documents, (b) all obligations constituting “Obligations” with any Lender or any affiliate of any Lender which are outstanding on the Closing Date shall continue as Obligations under this Agreement and the other Loan Documents, (c) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender’s credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender’s credit exposure and outstanding Loans hereunder reflects such Lender’s ratable share of the outstanding aggregate credit exposure on the Closing Date and (d) the Borrower hereby agrees to compensate each Lender for any and all losses, costs and expenses incurred by such Lender in connection with the sale and assignment of any Eurocurrency Loans (including the “Eurodollar Loans” under the Existing Credit Agreement) and such reallocation described above, in each case on the terms and in the manner set forth in Section 3.3 hereof.

(b) Each of the parties hereto agrees that, notwithstanding the requirements of Article X of this Agreement, effective as of the Closing Date, but subject to the satisfaction of the conditions precedent set forth in Section 4.2, (a) KeyBank National Association has resigned as Administrative Agent under this Agreement and the other Loan Documents, and (b) U.S. Bank is hereby appointed (and U.S. Bank accepts such appointment) as Administrative Agent under this Agreement and the other Loan Documents. KeyBank National Association is discharged from its duties and obligations under this Agreement and under the other Loan Documents as Administrative Agent; provided that, notwithstanding the effectiveness of such resignation, the

provisions of Article X of this Agreement and similar provisions in the other Loan Documents shall continue in effect for KeyBank National Association in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent under the Existing Credit Agreement. U.S. Bank, acting as Administrative Agent, shall bear no responsibility for any actions taken or omitted to be taken by KeyBank National Association while it served as Administrative Agent under or in connection with the Existing Credit Agreement, and KeyBank National Association shall bear no responsibility for any actions taken or omitted to be taken by U.S. Bank acting as Administrative Agent on and after the Closing Date. The parties hereto agree that all Liens in favor of the Administrative Agent run in favor of U.S. Bank acting in such capacity upon the effectiveness hereof.

(c) By its execution hereof, each of the following is becoming a party to this Agreement as a Lender: Bank of America, N.A. and Fifth Third Bank (each a “New Lender”). Each New Lender agrees that it constitutes a Lender under this Agreement and the other Loan Documents and shall be bound by the provisions of this Agreement and the other Loan Documents. Each New Lender’s Revolving Credit Commitment appears in Schedule 1 hereto. Each New Lender acknowledges and agrees that it has received a copy of this Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement and to become a Lender, which analysis and decision has been made independently of and without reliance upon the Administrative Agent or any other Lender. Each New Lender confirms it will, independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the Loan Documents, and it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-70493, 333-79157, 333-74876, 333-84329, 333-80755, 333-85914, 333-118329, 333-167331, and 333-188766 on Form S-8 of our reports dated February 26, 2019, relating to the consolidated financial statements and consolidated financial statement schedule of Sleep Number Corporation and subsidiaries (the “Company”), and the effectiveness of the Company’s internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended December 29, 2018.

/s/ DELOITTE & TOUCHE LLP

Minneapolis, Minnesota  
February 26, 2019

**Certification by Chief Executive Officer**

I, Shelly R. Ibach, certify that:

1. I have reviewed this annual report on Form 10-K of Sleep Number Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2019

/s/ Shelly R. Ibach

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Shelly R. Ibach

Chief Executive Officer

**Certification by Chief Financial Officer**

I, David R. Callen, certify that:

1. I have reviewed this annual report on Form 10-K of Sleep Number Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2019

/s/ David R. Callen

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David R. Callen

Senior Vice President and Chief  
Financial Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Sleep Number Corporation (the “Company”) on Form 10-K for the year ended December 29, 2018, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Shelly R. Ibach, Chief Executive Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to her knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 26, 2019

/s/ Shelly R. Ibach  
\_\_\_\_\_  
Shelly R. Ibach  
Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.



CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Sleep Number Corporation (the “Company”) on Form 10-K for the year ended December 29, 2018, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, David R. Callen, Senior Vice President and Chief Financial Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 26, 2019

/s/ David R. Callen

\_\_\_\_\_  
David R. Callen  
Senior Vice President and Chief Financial  
Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

**Document and Entity  
Information - USD (\$)**

**12 Months Ended**

**Dec. 29, 2018**

**Jan. 26, 2019 Jun. 30, 2018**

**Document And Entity Information [Abstract]**

<u>Entity Registrant Name</u>	SLEEP NUMBER CORP		
<u>Trading Symbol</u>	SNBR		
<u>Entity Central Index Key</u>	0000827187		
<u>Current Fiscal Year End Date</u>	--12-29		
<u>Entity Filer Category</u>	Large Accelerated Filer		
<u>Document Type</u>	10-K		
<u>Document Period End Date</u>	Dec. 29, 2018		
<u>Document Fiscal Year Focus</u>	2018		
<u>Document Fiscal Period Focus</u>	FY		
<u>Amendment Flag</u>	false		
<u>Entity Shell Company</u>	false		
<u>Entity Small Business</u>	false		
<u>Entity Emerging Growth Company</u>	false		
<u>Entity Common Stock, Shares Outstanding</u>		30,522,000	
<u>Entity Well-known Seasoned Issuer</u>	Yes		
<u>Entity Voluntary Filers</u>	No		
<u>Entity Current Reporting Status</u>	Yes		
<u>Entity Public Float</u>			\$ 604,888,000

**Consolidated Balance Sheets**  
**- USD (\$)**  
**\$ in Thousands**

	<b>Dec. 29, 2018</b>	<b>Dec. 30, 2017</b>
<b><u>Current assets:</u></b>		
<u>Cash and cash equivalents</u>	\$ 1,612	\$ 3,651
<u>Accounts receivable, net of allowance for doubtful accounts of \$699 and \$714, respectively</u>	24,795	19,312
<u>Inventories</u>	84,882	84,298
<u>Prepaid expenses</u>	8,009	17,565
<u>Other current assets</u>	31,559	27,665
<u>Total current assets</u>	150,857	152,491
<b><u>Non-current assets:</u></b>		
<u>Property and equipment, net</u>	205,631	208,646
<u>Goodwill and intangible assets, net</u>	75,407	77,588
<u>Deferred income taxes</u>	0	2,625
<u>Other non-current assets</u>	38,243	30,484
<u>Total assets</u>	470,138	471,834
<b><u>Current liabilities:</u></b>		
<u>Borrowings under revolving credit facility</u>	199,600	24,500
<u>Accounts payable</u>	144,781	129,194
<u>Customer prepayments</u>	27,066	27,767
<u>Accrued sales returns</u>	19,907	19,270
<u>Compensation and benefits</u>	27,700	34,602
<u>Taxes and withholding</u>	18,380	24,234
<u>Other current liabilities</u>	51,234	46,822
<u>Total current liabilities</u>	488,668	306,389
<b><u>Non-current liabilities:</u></b>		
<u>Deferred income taxes</u>	4,822	0
<u>Other non-current liabilities</u>	86,198	76,289
<u>Total liabilities</u>	579,688	382,678
<b><u>Shareholders' (deficit) equity:</u></b>		
<u>Undesignated preferred stock; 5,000 shares authorized, no shares issued and outstanding</u>	0	0
<u>Common stock, \$0.01 par value; 142,500 shares authorized, 30,868 and 38,813 shares issued and outstanding, respectively</u>	309	388
<u>Additional paid-in capital</u>	0	0
<u>(Accumulated deficit) retained earnings</u>	(109,859)	88,768
<u>Total shareholders' (deficit) equity</u>	(109,550)	89,156
<u>Total liabilities and shareholders' (deficit) equity</u>	\$ 470,138	\$ 471,834

**Consolidated Balance Sheets**  
**(Parenthetical) - USD (\$)**  
**\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Current assets:**

Allowance for doubtful accounts

\$ 699                      \$ 714

**Shareholders' (deficit) equity:**

Undesignated preferred stock, shares authorized (in shares) 5,000,000                      5,000,000

Undesignated preferred stock, shares issued (in shares)                      0                      0

Undesignated preferred stock, shares outstanding (in shares) 0                      0

Common stock, par value (in dollars per share)                      \$ 0.01                      \$ 0.01

Common stock, shares authorized (in shares)                      142,500,000                      142,500,000

Common stock, shares issued (in shares)                      30,868,000                      38,813,000

Common stock, shares outstanding (in shares)                      30,868,000                      38,813,000

**Consolidated Statements of  
Operations - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**Income Statement [Abstract]**

<u>Net sales</u>	\$ 1,531,575	\$ 1,444,497	\$ 1,311,291
<u>Cost of sales</u>	603,614	547,150	501,131
<u>Gross profit</u>	927,961	897,347	810,160
<b><u>Operating expenses:</u></b>			
<u>Sales and marketing</u>	687,380	650,357	595,845
<u>General and administrative</u>	119,378	127,269	109,674
<u>Research and development</u>	28,775	27,806	27,991
<u>Total operating expenses</u>	835,533	805,432	733,510
<u>Operating income</u>	92,428	91,915	76,650
<u>Other expense, net</u>	5,907	877	717
<u>Income before income taxes</u>	86,521	91,038	75,933
<u>Income tax expense</u>	16,982	25,961	24,516
<u>Net income</u>	\$ 69,539	\$ 65,077	\$ 51,417
<b><u>Basic net income per share:</u></b>			
<u>Net income per share – basic</u>	\$ 1.97	\$ 1.58	\$ 1.11
<u>Weighted-average shares – basic</u>	35,256,000	41,212,000	46,154,000
<b><u>Diluted net income per share:</u></b>			
<u>Net income per share – diluted</u>	\$ 1.92	\$ 1.55	\$ 1.10
<u>Weighted-average shares – diluted</u>	36,165,000	42,085,000	46,902,000

**Consolidated Statements of  
Comprehensive Income -  
USD (\$)  
\$ in Thousands**

**12 Months Ended  
Dec. 29, Dec. 30, Dec. 31,  
2018 2017 2016**

**Statement Of Income And Comprehensive Income [Abstract]**

<u>Net income</u>	\$ 69,539	\$ 65,077	\$ 51,417
<u>Other comprehensive income – unrealized gain on available-for-sale marketable debt securities, net of income tax</u>	0	0	14
<u>Comprehensive income</u>	\$ 69,539	\$ 65,077	\$ 51,431

<b>Consolidated Statements of Shareholders' (Deficit) Equity - USD (\$) \$ in Thousands</b>	<b>Total</b>	<b>Common Stock</b>	<b>Additional Paid-In Capital</b>	<b>Retained Earnings (Accumulated Deficit)</b>	<b>Accumulated Other Comprehensive Income (Loss)</b>
<u>Balance at Jan. 02, 2016</u>	\$ 222,339	\$ 494	\$ 0	\$ 221,859	\$ (14)
<u>Balance (in shares) at Jan. 02, 2016</u>		49,402,000			
<u>Net income</u>	51,417	\$ 0	0	51,417	0
<u>Unrealized gain on available- for-sale marketable debt securities, net of tax</u>	14	0	0	0	14
<u>Exercise of common stock options</u>	2,298	\$ 2	2,296	0	0
<u>Exercise of common stock options (in shares)</u>		188,000			
<u>Tax effect from stock-based compensation</u>	(1,016)	\$ 0	(1,016)	0	0
<u>Stock-based compensation</u>	11,961	\$ 0	11,961	0	0
<u>Stock-based compensation (in shares)</u>		11,000			
<u>Repurchases of common stock</u>	(126,693)	\$ (60)	(13,241)	(113,392)	0
<u>Repurchases of common stock (in shares)</u>		(6,032,000)			
<u>Balance at Dec. 31, 2016</u>	160,320	\$ 436	0	159,884	0
<u>Balance (in shares) at Dec. 31, 2016</u>		43,569,000			
<u>Net income</u>	65,077	\$ 0	0	65,077	0
<u>Unrealized gain on available- for-sale marketable debt securities, net of tax</u>	0				
<u>Exercise of common stock options</u>	3,241	\$ 2	3,239	0	0
<u>Exercise of common stock options (in shares)</u>		222,000			
<u>Stock-based compensation</u>	15,763	\$ 6	15,757	0	0
<u>Stock-based compensation (in shares)</u>		594,000			
<u>Repurchases of common stock</u>	(155,245)	\$ (56)	(18,996)	(136,193)	0
<u>Repurchases of common stock (in shares)</u>		(5,572,000)			
<u>Balance at Dec. 30, 2017</u>	\$ 89,156	\$ 388	0	88,768	0
<u>Balance (in shares) at Dec. 30, 2017</u>	38,813,000	38,813,000			
<u>Net income</u>	\$ 69,539	\$ 0	0	69,539	0

<u>Unrealized gain on available-for-sale marketable debt securities, net of tax</u>	0				
<u>Exercise of common stock options</u>	2,788	\$ 2	2,786	0	0
<u>Exercise of common stock options (in shares)</u>		186,000			
<u>Stock-based compensation</u>	11,412	\$ 3	11,409	0	0
<u>Stock-based compensation (in shares)</u>		271,000			
<u>Repurchases of common stock</u>	(282,445)	\$ (84)	(14,195)	(268,166)	0
<u>Repurchases of common stock (in shares)</u>		(8,402,000)			
<u>Balance at Dec. 29, 2018</u>	\$ (109,550)	\$ 309	\$ 0	\$ (109,859)	\$ 0
<u>Balance (in shares) at Dec. 29, 2018</u>	30,868,000	30,868,000			



**Consolidated Statements of  
Cash Flows - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29,  
2018      Dec. 30,  
2017      Dec. 31,  
2016**

**Cash flows from operating activities:**

Net income \$ 69,539      \$ 65,077      \$ 51,417

**Adjustments to reconcile net income to net cash provided by operating activities:**

Depreciation and amortization 61,966      61,291      57,172

Stock-based compensation 11,412      15,763      11,961

Net (gain) loss on disposals and impairments of assets (51)      249      27

Excess tax benefits from stock-based compensation 0      0      (517)

Deferred income taxes 7,447      2,042      (1,640)

**Changes in operating assets and liabilities:**

Accounts receivable (5,483)      393      9,297

Inventories (584)      (9,272)      11,574

Income taxes (6,561)      1,697      25,119

Prepaid expenses and other assets 5,551      (12,405)      (2,195)

Accounts payable (9,894)      21,779      (4,965)

Customer prepayments (701)      1,560      (25,266)

Accrued compensation and benefits (6,872)      15,398      2,808

Other taxes and withholding 707      (893)      2,723

Other accruals and liabilities 5,064      9,928      14,130

Net cash provided by operating activities 131,540      172,607      151,645

**Cash flows from investing activities:**

Purchases of property and equipment (45,515)      (59,829)      (57,852)

Proceeds from sales of property and equipment 272      36      92

Proceeds from marketable debt securities 0      0      21,053

Investments in marketable debt securities 0      0      (5,968)

Net cash used in investing activities (45,243)      (59,793)      (42,675)

**Cash flows from financing activities:**

Repurchases of common stock (272,446)      (155,245)      (126,693)

Net increase in short-term borrowings 182,336      28,094      5,932

Proceeds from issuance of common stock 2,788      3,241      2,298

Debt issuance costs (1,014)      (12)      (409)

Excess tax benefits from stock-based compensation 0      0      517

Net cash used in financing activities (88,336)      (123,922)      (118,355)

Net decrease in cash, cash equivalents and restricted cash (2,039)      (11,108)      (9,385)

Cash, cash equivalents and restricted cash, at beginning of period 3,651      14,759      24,144

Cash, cash equivalents and restricted cash, at end of period 1,612      3,651      14,759

**Non-cash financing transactions:**

Change in unsettled repurchases of common stock 9,999      0      0

**Supplemental Disclosure of Cash Flow Information**

Income taxes paid (received) 15,031      22,807      (653)

<u>Interest paid</u>	5,086	753	608
<u>Capital lease obligations incurred</u>	943	0	0
<u>Purchases of property and equipment included in accounts payable</u>	\$ 12,123	\$ 3,964	\$ 5,517

**Business and Summary of  
Significant Accounting  
Policies**

**12 Months Ended**

**Dec. 29, 2018**

[Accounting Policies](#)

[\[Abstract\]](#)

[Business and Summary of  
Significant Accounting  
Policies](#)

**(1) Business and Summary of Significant Accounting Policies**

*Business & Basis of Presentation*

Sleep Number Corporation and our 100%-owned subsidiaries (Sleep Number or the Company) have a vertically integrated business model and are the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number beds which allows us to offer consumers high-quality, individualized sleep solutions and services. Sleep Number also offers FlexFit adjustable bases, and Sleep Number pillows, sheets and other bedding products.

We generate revenue by marketing our innovations to new and existing customers, and by selling products through two distribution channels. Our Company-Controlled channel, which includes retail, online and phone, sells directly to consumers. Our Wholesale/Other channel sells to and through selected retail and wholesale customers in the United States.

The consolidated financial statements include the accounts of Sleep Number Corporation and our subsidiaries. All significant intra-entity balances and transactions have been eliminated in consolidation.

*Fiscal Year*

Our fiscal year ends on the Saturday closest to December 31. Fiscal years and their respective fiscal year ends were as follows: fiscal 2018 ended December 29, 2018; fiscal 2017 ended December 30, 2017; and fiscal 2016 ended December 31, 2016. Fiscal years 2018, 2017 and 2016 each had 52 weeks.

*Use of Estimates in the Preparation of Financial Statements*

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of sales, expenses and income taxes during the reporting period. Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in these estimates will be reflected in the financial statements in future periods. Our critical accounting policies consist of stock-based compensation, goodwill and indefinite-lived intangible assets, warranty liabilities and revenue recognition.

*Cash and Cash Equivalents*

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. The carrying value of these investments approximates fair value due to their short-term maturity. Our banking arrangements allow us to fund outstanding checks when presented to the financial institution for payment, resulting in book overdrafts. Book overdrafts are included in accounts payable in our consolidated balance sheets and in net increase in short-term borrowings in the financing activities section of our consolidated statements of cash flows. Book overdrafts totaled \$38 million and \$30 million at December 29, 2018 and December 30, 2017, respectively.

### *Accounts Receivable*

Accounts receivable are recorded net of an allowance for expected losses and consist primarily of receivables from third-party financiers for customer credit card purchases and receivables from wholesale customers. The allowance is recognized in an amount equal to anticipated future write-offs. We estimate future write-offs based on delinquencies, aging trends, industry risk trends, our historical experience and current trends. Account balances are charged off against the allowance when we believe it is probable the receivable will not be recovered.

### *Inventories*

Inventories include materials, labor and overhead and are stated at the lower of cost or net realizable value. Cost is determined by the first-in, first-out method. We review inventory quantities on hand and record reserves for obsolescence based on historical selling prices, current market conditions and forecasted product demand, to reduce inventory to net realizable value.

### *Property and Equipment*

Property and equipment, carried at cost, is depreciated using the straight-line method over the estimated useful lives of the assets. The cost and related accumulated depreciation of assets sold or retired is removed from the accounts with any resulting gain or loss included in net income in our consolidated statements of operations. Maintenance and repairs are charged to expense as incurred. Major renewals and betterments that extend useful life are capitalized.

Leasehold improvements are depreciated over the shorter of the estimated useful lives of the assets or the contractual term of the lease, with consideration of lease renewal options if renewal appears probable.

Estimated useful lives of our property and equipment by major asset category are as follows:

Leasehold improvements	5 to 15 years
Furniture and equipment	3 to 15 years
Production machinery	3 to 7 years
Computer equipment and software	3 to 12 years

### *Goodwill and Intangible Assets, Net*

Goodwill is the difference between the purchase price of a company and the fair market value of the acquired company's net identifiable assets. Our intangible assets include developed technologies and trade names/trademarks. Definite-lived intangible assets are being amortized using the straight-line method over their estimated lives, ranging from 8-10 years.

### *Asset Impairment Charges*

Long-lived Assets and Definite-lived Intangible Assets - we review our long-lived assets and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When evaluating long-lived assets for potential impairment, we first compare the carrying value of the asset to the estimated future cash flows (undiscounted and without interest charges - plus proceeds expected from disposition, if any). If the estimated undiscounted cash flows are less than the carrying value of the asset, we calculate an impairment loss. The impairment loss calculation compares the carrying value of the asset to the asset's estimated fair value. When we recognize an impairment loss, the carrying amount of the asset is reduced to estimated fair value based on discounted cash flows, quoted market prices or other valuation techniques. Assets to be disposed of are reported at the lower of the carrying amount of the asset or fair value less costs to sell. We review retail store assets for potential impairment based on historical cash flows, lease termination provisions and expected future retail store operating results. If we recognize an impairment loss for a depreciable

long-lived asset, the adjusted carrying amount of the asset becomes its new cost basis and will be depreciated (amortized) over the remaining useful life of that asset.

Goodwill and Indefinite-lived Intangible Assets - goodwill and indefinite-lived intangible assets are not amortized but are tested for impairment annually or when there are indicators of impairment using a fair value approach. The Financial Accounting Standards Board's (FASB) guidance allows us to perform either a quantitative assessment or a qualitative assessment before calculating the fair value of a reporting unit. We have elected to perform the quantitative assessment. The quantitative goodwill impairment test is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step reflects impairment, then the loss would be measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of fair value of the reporting unit over the fair value of all identified assets and liabilities. Fair value is determined using a market-based approach utilizing widely accepted valuation techniques, including quoted market prices and our market capitalization. Indefinite-lived intangible assets are assessed for impairment by comparing the carrying value of an asset with its fair value. If the carrying value exceeds fair value, an impairment loss is recognized in an amount equal to the excess. Based on our 2018 assessments, we determined there was no impairment.

#### *Warranty Liabilities*

We provide a limited warranty on most of the products we sell. The estimated warranty costs, which are expensed at the time of sale and included in cost of sales, are based on historical trends and warranty claim rates incurred by us and are adjusted for any current trends as appropriate. The majority of our warranty claims are incurred within the first year. Our warranty liability contains uncertainties because our warranty obligations cover an extended period of time and require management to make estimates for claim rates and the projected cost of materials and freight associated with sending replacement parts to customers. We regularly assess and adjust the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs.

We classify as non-current those estimated warranty costs expected to be paid out in greater than one year. The activity in the accrued warranty liabilities account was as follows (in thousands):

	<u>2018</u>	<u>2017</u>	<u>2016</u>
Balance at beginning of period	\$ 9,320	\$ 8,633	\$ 10,028
Additions charged to costs and expenses for current-year sales	12,385	12,214	9,034
Deductions from reserves	(11,743)	(10,752)	(10,016)
Changes in liability for pre-existing warranties during the current year, including expirations	427	(775)	(413)
Balance at end of period	<u>\$ 10,389</u>	<u>\$ 9,320</u>	<u>\$ 8,633</u>

#### *Fair Value Measurements*

Fair value measurements are reported in one of three levels based on the lowest level of significant input used:

- Level 1 – observable inputs such as quoted prices in active markets;
- Level 2 – inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
- Level 3 – unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

We generally estimate fair value of long-lived assets, including our retail stores, using the income approach, which we base on estimated future cash flows (discounted and with interest charges). The inputs used to determine fair value relate primarily to future assumptions regarding sales volumes, gross profit rates, retail store operating expenses and applicable probability weightings

regarding future alternative uses. These inputs are categorized as Level 3 inputs under the fair value measurements guidance. The inputs used represent management's assumptions about what information market participants would use in pricing the assets and are based upon the best information available at the balance sheet date.

### *Dividends*

We are not restricted from paying cash dividends under our credit agreement so long as we are not in default under the credit agreement, our leverage ratio (as defined in our credit agreement) after giving effect to such restricted payments (as defined in our credit agreement) would not exceed 3.75:1.00 and no default or event of default (as defined in our credit agreement) would result therefrom. However, we have not historically paid, and have no current plans to pay, cash dividends on our common stock.

### *Revenue Recognition*

We recognize revenue when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Revenue recognized excludes sales taxes. Amounts billed to customers for delivery and setup are included in net sales. For most products, we receive payment before or promptly after, the products or services are delivered to the customer.

Our beds sold with SleepIQ technology contain multiple performance obligations including the bed and SleepIQ hardware and software. We analyze our multiple performance obligation(s) to determine whether they are distinct and can be separated or whether they must be accounted for as a single performance obligation. We determined that the beds sold with the SleepIQ technology have two performance obligations consisting of: (i) the bed; and (ii) SleepIQ hardware and software. SleepIQ hardware and software are not separable as the hardware and related software are not sold separately and the software is integral to the hardware's functionality. We determine the transaction price for multiple performance obligations based on their relative standalone selling prices. The performance obligation related to the bed is satisfied at a point in time. The performance obligation related to SleepIQ technology is satisfied over time based on the ongoing access and usage by the customer of software essential to the functionality of SleepIQ technology. The deferred revenue and costs related to SleepIQ technology are recognized on a straight-line basis over the product's estimated life of four years because our inputs are generally expended evenly throughout the performance period.

See Note 9, *Revenue Recognition*, for additional information on revenue recognition.

### *Cost of Sales, Sales and Marketing, General and Administrative (G&A) and Research & Development (R&D) Expenses*

The following tables summarize the primary costs classified in each major expense category (the classification of which may vary within our industry):

<b>Cost of Sales</b>	<b>Sales &amp; Marketing</b>
<ul style="list-style-type: none"> <li>• Costs associated with purchasing, manufacturing, shipping, handling and delivering our products to our retail stores and customers;</li> <li>• Physical inventory losses, scrap and obsolescence;</li> <li>• Related occupancy and depreciation expenses;</li> <li>• Costs associated with returns and exchanges; and</li> <li>• Estimated costs to service customer warranty claims.</li> </ul>	<ul style="list-style-type: none"> <li>• Advertising, marketing and media production;</li> <li>• Marketing and selling materials such as brochures, videos, websites, customer mailings and in-store signage;</li> <li>• Payroll and benefits for sales and customer service staff;</li> <li>• Store occupancy costs;</li> <li>• Store depreciation expense;</li> <li>• Credit card processing fees; and</li> <li>• Promotional financing costs.</li> </ul>
<b>G&amp;A</b>	<b>R&amp;D(1)</b>

- Payroll and benefit costs for corporate employees, including information technology, legal, human resources, finance, sales and marketing administration, investor relations and risk management;
  - Occupancy costs of corporate facilities;
  - Depreciation related to corporate assets;
  - Information hardware, software and maintenance;
  - Insurance;
  - Investor relations costs; and
  - Other overhead costs.
- Internal labor and benefits related to research and development activities;
  - Outside consulting services related to research and development activities; and
  - Testing equipment related to research and development activities.
- (1) Costs incurred in connection with R&D are charged to expense as incurred.

### *Operating Leases*

We lease our retail, office and manufacturing space under operating leases which, in addition to the minimum lease payments, may require payment of a proportionate share of the real estate taxes and certain building operating expenses. Our retail store leases generally provide for an initial lease term of five to 10 years. In addition, our mall-based retail store leases may require payment of contingent rent based on net sales in excess of certain thresholds. Certain retail store leases may contain options to extend the term of the original lease.

Minimum rent expense, which excludes contingent rents, is recognized on a straight-line basis over the lease term, after consideration of rent escalations and rent holidays. We record any difference between the straight-line rent amounts and amounts payable under the leases as part of deferred rent, in other current liabilities or other non-current liabilities, as appropriate. The lease term for purposes of the calculation begins on the earlier of the lease commencement date or the date we take possession of the property. During lease renewal negotiations that extend beyond the original lease term, we estimate straight-line rent expense based on current market conditions. Deferred rent is included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred rent included in:		
Other current liabilities	\$ 1,408	\$ 1,447
Other non-current liabilities	11,452	9,555
	<u>\$ 12,860</u>	<u>\$ 11,002</u>

Contingent rent expense is recorded when it is probable the expense has been incurred and the amount is reasonably estimable. Future payments for real estate taxes and certain building operating expenses for which we are obligated are not included in minimum lease payments.

Leasehold improvements that are funded by landlord incentives or allowances under an operating lease are recorded as deferred lease incentives, in other current liabilities or other non-current liabilities, as appropriate and amortized as reductions to rent expense over the lease term. Deferred lease incentives are included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred lease incentives included in:		
Other current liabilities	\$ 2,842	\$ 2,784
Other non-current liabilities	11,930	9,688
	<u>\$ 14,772</u>	<u>\$ 12,472</u>

### *Pre-Opening Costs*

Costs associated with the start-up and promotion of new retail store openings are expensed as incurred.

### *Advertising Costs*

We incur advertising costs associated with print, digital and broadcast advertisements. Advertising costs are charged to expense when the ad first runs. Advertising expense was \$210 million, \$194 million and \$190 million in 2018, 2017 and 2016, respectively. Advertising costs deferred and included in prepaid expenses in our consolidated balance sheets were \$2 million and \$2 million as of December 29, 2018 and December 30, 2017, respectively.

### *Insurance*

We are self-insured for certain losses related to health and workers' compensation claims, although we obtain third-party insurance coverage to limit exposure to these claims. We estimate our self-insured liabilities using a number of factors including historical claims experience and analysis of incurred but not reported claims. Our self-insurance liability was \$8 million and \$9 million at December 29, 2018 and December 30, 2017, respectively. At December 29, 2018, and December 30, 2017, \$5 million and \$6 million, respectively, were included in compensation and benefits in our consolidated balance sheets and \$3 million and \$3 million, respectively, were included in other non-current liabilities in our consolidated balance sheets.

### *Software Capitalization*

For software developed or obtained for internal use, we capitalize direct external costs associated with developing or obtaining internal-use software. In addition, we capitalize certain payroll and payroll-related costs for employees who are directly involved with the development of such applications. Capitalized costs related to internal-use software under development are treated as construction-in-progress until the program, feature or functionality is ready for its intended use, at which time depreciation commences. We expense any data conversion or training costs as incurred.

We capitalize costs incurred with the implementation of a cloud computing arrangement, that is a service contract, consistent with our policy for software developed or obtained for internal use. The capitalized implementation costs of cloud computing arrangements are expensed over the term of the cloud computing arrangement in the same line item in the statement of operations as the associated fees.

### *Stock-Based Compensation*

We compensate officers, directors and key employees with stock-based compensation under stock plans approved by our shareholders and administered under the supervision of our Board of Directors (Board). At December 29, 2018, a total of 2.3 million shares were available for future grant. These plans include non-qualified stock options and stock awards.

We record stock-based compensation expense based on the award's fair value at the grant date and the awards that are expected to vest. We recognize stock-based compensation expense over the period during which an employee is required to provide services in exchange for the award. We reduce compensation expense by estimated forfeitures. Forfeitures are estimated using historical experience and projected employee turnover. Beginning in 2017, we include, as part of cash flows from operating activities, the benefit of tax deductions in excess of recognized stock-based compensation expense. In addition, excess tax benefits or deficiencies that in prior years were recorded in additional paid-in capital are now recorded as discrete adjustments to income tax expense.

Stock Options - stock option awards are granted at exercise prices equal to the closing price of our stock on the grant date. Generally, options vest proportionally over three years and expire after 10 years. Compensation expense is recognized ratably over the vesting period.

We determine the fair value of stock options granted and the resulting compensation expense at the date-of-grant using the Black-Scholes-Merton option-pricing model. Descriptions of



significant assumptions used to estimate the expected volatility, risk-free interest rate and expected term are as follows:

*Expected Volatility* – expected volatility was determined based on implied volatility of our traded options and historical volatility of our stock price.

*Risk-Free Interest Rate* – the risk-free interest rate was based on the implied yield available on U.S. Treasury zero-coupon issues at the date of grant with a term equal to the expected term.

*Expected Term* – expected term represents the period that our stock-based awards are expected to be outstanding and was determined based on historical experience and anticipated future exercise patterns, giving consideration to the contractual terms of unexercised stock-based awards.

Stock Awards - we issue stock awards to certain employees in conjunction with our stock-based compensation plan. The stock awards generally vest over three years based on continued employment (time-based). Compensation expense related to stock awards, except for stock awards with a market condition, is determined on the grant date based on the publicly quoted closing price of our common stock and is charged to earnings on a straight-line basis over the vesting period. Stock awards with a market condition are valued using a Monte Carlo simulation model. The significant assumptions used to estimate the expected volatility and risk-free interest rate are similar to those described above in *Stock Options*.

Certain time-based stock awards have a performance condition (performance-based). The final number of shares earned for performance-based stock awards and the related compensation expense is adjusted up or down to the extent the performance target is met as of the last day of the performance period. The actual number of shares that will ultimately be awarded range from 0% - 200% of the targeted amount for the 2018, 2017 and 2016 awards. We evaluate the likelihood of meeting the performance targets at each reporting period and adjust compensation expense, on a cumulative basis, based on the expected achievement of each of the performance targets. For performance-based stock awards granted in 2018, 2017 and 2016, the performance targets are based on growth in net sales and in operating profit, and the performance periods are fiscal 2018 through 2020, 2017 through 2019, and fiscal 2016 through 2018, respectively.

See Note 8, *Shareholders' Equity*, for additional information on stock-based compensation.

#### *Income Taxes*

We recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is established for any portion of deferred tax assets that are not considered more likely than not to be realized. We evaluate all available positive and negative evidence, including our forecast of future taxable income, to assess the need for a valuation allowance on our deferred tax assets.

We record a liability for unrecognized tax benefits from uncertain tax positions taken, or expected to be taken, in our tax returns. We follow a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely of being realized upon ultimate settlement. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments, and may not accurately forecast actual outcomes.

We classify net interest and penalties related to income taxes as a component of income tax expense in our consolidated statements of operations.

#### *Net Income Per Share*

We calculate basic net income per share by dividing net income by the weighted-average number of common shares outstanding during the period. We calculate diluted net income per share based on the weighted-average number of common shares outstanding adjusted by the number of potentially dilutive common shares as determined by the treasury stock method. Potentially dilutive shares consist of stock options and stock awards.

#### *Sources of Supply*

We currently obtain materials and components used to produce our beds from outside sources. As a result, we are dependent upon suppliers that in some instances, are our sole source of supply. We are continuing our efforts to dual-source key components. The failure of one or more of our suppliers to provide us with materials or components on a timely basis could significantly impact our consolidated results of operations and net income per share. We believe we can obtain these raw materials and components from other sources of supply in the ordinary course of business, although an unexpected loss of supply over a short period of time may not allow us to replace these sources in the ordinary course of business.

#### *New Accounting Pronouncements*

##### Recently Adopted Accounting Guidance

###### *Adoption of ASC Topic 230, Restricted Cash*

Effective December 31, 2017, we adopted ASC Topic 230, *Restricted Cash*, which requires amounts generally described as restricted cash and restricted cash equivalents be included with cash and cash equivalents when reconciling the total beginning and ending amounts for the periods shown on the statement of cash flows. Amounts for prior periods have been retrospectively adjusted to conform to the current period presentation.

###### *Adoption of ASC Topic 606, Revenue from Contracts with Customers*

On December 31, 2017, we adopted ASC Topic 606, *Revenue from Contracts with Customers*, using the modified retrospective method applied to those contracts which were not completed as of December 30, 2017. Results for reporting periods beginning after December 30, 2017 are presented under the new guidance, while prior period amounts are not restated.

The cumulative effect of the changes made to our consolidated balance sheet as of December 31, 2017 resulting from the adoption of the new revenue guidance was not material and did not impact opening retained earnings. The impact on the timing of net sales for 2018, as a result of applying the new guidance, was not material.

Practical expedients and exemptions permissible under ASC Topic 606 that we elected are as follows: we do not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less; and (ii) contracts for which we recognize revenue at the amount to which we have the right to invoice for services performed.

See Note 9, *Revenue Recognition*, for further details regarding our revenue recognition policy.

##### Accounting Guidance Issued but Not Yet Adopted as of December 29, 2018

We are the lessee under various agreements for facilities, equipment and vehicles that are currently accounted for as operating leases. In February 2016, the FASB issued ASC Topic 842, *Leases*, that requires most leases to be recognized on the balance sheet and expands disclosure

requirements. Leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement.

This new guidance is effective for us beginning December 30, 2018 (fiscal 2019). The provisions of this new guidance require a modified-retrospective approach, with elective reliefs. The new guidance will apply to all leases existing at the date of initial application. We have the option to choose either (1) the effective date, or (2) the beginning of the earliest comparative period presented in the financial statements as the date of initial application. We expect to adopt the new standard using the effective date option.

The new guidance establishes a right-of-use model (ROU) that requires a lessee to recognize a ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. On adoption, we expect to recognize additional lease liabilities and corresponding ROU assets of approximately \$300 million based on the present value of the remaining minimum rental payments for existing operating leases.

The new guidance provides a number of optional practical expedients in transition. We expect to elect the package of practical expedients, which permits us to not reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We do not expect to elect the use of hindsight. The new guidance also provides practical expedients for an entity's ongoing accounting. We expect to elect the short-term lease recognition exemption for all leases that qualify, primarily small equipment leases. This means, for those leases that qualify, we will not recognize ROU assets or lease liabilities, and this includes not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also expect to elect the practical expedient option to not separate lease and non-lease components for all of our leases.

We will be providing significant new disclosures about our leasing activities and have implemented a new lease accounting system in connection with the adoption. We also expect that adoption of the new guidance will require changes to our internal controls over financial reporting. We continue to evaluate the effect of the new standard on our consolidated financial statements and related disclosures.

## Fair Value Measurements

**12 Months Ended  
Dec. 29, 2018**

### [Fair Value Disclosures](#)

#### [\[Abstract\]](#)

#### [Fair Value Measurements](#)

#### **(2) Fair Value Measurements**

At December 29, 2018 and December 30, 2017, we had \$6 million and \$4 million, respectively, of debt and equity securities that fund our deferred compensation plan and are classified in other non-current assets. We also had corresponding deferred compensation plan liabilities of \$6 million and \$4 million at December 29, 2018 and December 30, 2017, respectively, which are included in other non-current liabilities. The majority of the debt and equity securities are Level 1 as they trade with sufficient frequency and volume to enable us to obtain pricing information on an ongoing basis. Unrealized gains/(losses) on the debt and equity securities offset those associated with the corresponding deferred compensation plan liabilities.

## Inventories

12 Months Ended  
Dec. 29, 2018

[Inventory Disclosure](#)  
[\[Abstract\]](#)  
[Inventories](#)

### (3) Inventories

Inventories consisted of the following (in thousands):

	December 29, 2018	December 30, 2017
Raw materials	\$ 4,549	\$ 6,577
Work in progress	3	170
Finished goods	80,330	77,551
	<u>\$ 84,882</u>	<u>\$ 84,298</u>

Finished goods inventories consisted of the following (in thousands):

	December 29, 2018	December 30, 2017
Finished beds, including retail display beds and deliveries in-transit to those customers who have utilized home delivery services	\$ 25,313	\$ 24,825
Finished components that were ready for assembly for the completion of beds	38,665	34,709
Retail accessories	16,352	18,017
	<u>\$ 80,330</u>	<u>\$ 77,551</u>

## Property and Equipment

12 Months Ended  
Dec. 29, 2018

[Property And Equipment](#)

[\[Abstract\]](#)

[Property and Equipment](#)

### (4) Property and Equipment

Property and equipment consisted of the following (in thousands):

	December 29, 2018	December 30, 2017
Land	\$ 1,999	\$ 1,999
Leasehold improvements	109,722	102,495
Furniture and equipment	108,841	94,265
Production machinery, computer equipment and software	238,659	224,758
Construction in progress	10,385	5,661
Less: Accumulated depreciation and amortization	(263,975)	(220,532)
	<u>\$ 205,631</u>	<u>\$ 208,646</u>

**Goodwill and Intangible  
Assets, Net**

**12 Months Ended  
Dec. 29, 2018**

**Goodwill And Intangible  
Assets Disclosure [Abstract]**

**Goodwill and Intangible  
Assets, Net**

**(5) Goodwill and Intangible Assets, Net**

*Goodwill and Indefinite-Lived Intangible Assets*

Goodwill was \$64 million at December 29, 2018 and December 30, 2017. Indefinite-lived trade name/trademarks totaled \$1.4 million at December 29, 2018 and December 30, 2017.

*Definite-Lived Intangible Assets*

The following table provides the gross carrying amount and related accumulated amortization of our definite-lived intangible assets (in thousands):

	<b>December 29, 2018</b>		<b>December 30, 2017</b>	
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>
Developed technologies	\$ 18,851	\$ 8,886	\$ 18,851	\$ 6,705
Trade names/trademarks	101	101	101	101
	<u>\$ 18,952</u>	<u>\$ 8,987</u>	<u>\$ 18,952</u>	<u>\$ 6,806</u>

Amortization expense in 2018, 2017 and 2016 for definite-lived intangible assets was \$2 million, \$3 million and \$2 million, respectively. Annual amortization for definite-lived intangible assets for subsequent years are as follows (in thousands):

2019	\$ 2,180
2020	2,213
2021	2,181
2022	2,181
2023	1,210
Thereafter	—
Total future amortization for definite-lived intangible assets	<u>\$ 9,965</u>

## Leases

**12 Months Ended  
Dec. 29, 2018**

[Leases \[Abstract\]](#)

[Leases](#)

### (6) Leases

Rent expense was as follows (in thousands):

Facility Rents:	2018	2017	2016
Minimum rents	\$ 71,851	\$ 66,239	\$ 59,002
Contingent rents	1,847	2,845	3,099
Total	<u>\$ 73,698</u>	<u>\$ 69,084</u>	<u>\$ 62,101</u>
Equipment Rents	<u>\$ 5,692</u>	<u>\$ 4,935</u>	<u>\$ 5,316</u>

The aggregate minimum rental commitments under operating leases for subsequent years are as follows (in thousands):

2019	\$ 78,337
2020	73,331
2021	66,491
2022	59,515
2023	51,076
Thereafter	149,318
Total future minimum lease payments	<u>\$ 478,068</u>

We also had \$0.9 million in capital lease commitments at December 29, 2018.



## Credit Agreement

**12 Months Ended  
Dec. 29, 2018**

### [Debt Disclosure \[Abstract\]](#) [Debt](#)

#### (7) Credit Agreement

Our revolving credit facility as of December 29, 2018, had a net aggregate availability of \$300 million. The credit facility is for general corporate purposes, to meet our seasonal working capital requirements and to repurchase our stock. The credit agreement provides the lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio and a minimum interest coverage ratio. Under the terms of the credit agreement we pay a variable rate of interest and a commitment fee based on our leverage ratio. We were in compliance with all financial covenants as of December 29, 2018.

The following tables summarizes our borrowings under the credit facility (\$ in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Outstanding borrowings	\$ 199,600	\$ 24,500
Outstanding letters of credit	\$ 3,497	\$ 3,150
Additional borrowing capacity	\$ 96,903	\$ 125,500
Weighted-average interest rate	4.2%	3.1%

In February 2019, we amended our revolving credit facility (Credit Agreement, as amended) to increase our net aggregate availability from \$300 million to \$450 million. We maintained the accordion feature which allows us to increase the amount of the credit facility from \$450 million to \$600 million, subject to Lenders' approval. The Credit Agreement, as amended, matures in February 2024. There were no other significant changes to the credit facility's terms and conditions.

## Shareholders' Equity

### [Shareholders' Equity](#)

#### [\[Abstract\]](#)

### [Shareholders' Equity](#)

12 Months Ended

Dec. 29, 2018

#### (8) Shareholders' Equity

##### Stock-Based Compensation Expense

Total stock-based compensation expense was as follows (in thousands):

	2018	2017	2016
Stock options	\$ 2,482	\$ 2,344	\$ 2,344
Stock awards	8,930	13,419	13,419
Total stock-based compensation expense <sup>(1)</sup>	11,412	15,763	15,763
Income tax benefit	2,750	5,249	5,249
Total stock-based compensation expense, net of tax	\$ 8,662	\$ 10,514	\$ 10,514

(1) Decrease in 2018 stock-based compensation expense reflects the cumulative impact of the change in the expected achievements of certain performance targets.

##### Stock Options

A summary of our stock option activity was as follows (in thousands, except per share amounts and years):

	Stock Options	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 30, 2017	1,355	\$ 20.23	6.2	\$ 1.8
Granted	170	33.72		
Exercised	(186)	14.96		
Canceled/Forfeited	(17)	26.43		
Outstanding at December 29, 2018	1,322	\$ 22.64	5.9	\$ 1.8
Exercisable at December 29, 2018	898	\$ 20.76	4.8	\$ 1.8
Vested and expected to vest at December 29, 2018	1,295	\$ 22.55	5.9	\$ 1.8

(1) Aggregate intrinsic value includes only those options where the current share price is equal to or greater than the share price on the date of grant.

Other information pertaining to options was as follows (in thousands, except per share amounts):

	2018	2017	2016
Weighted-average grant date fair value of stock options granted	\$ 13.96	\$ 10.33	\$ 10.33
Total intrinsic value (at exercise) of stock options exercised	\$ 3,459	\$ 3,586	\$ 3,586

Cash received from the exercise of stock options for the fiscal year ended December 29, 2018 was \$2.8 million. Our tax benefit related to the exercise of stock options for the fiscal year ended December 29, 2018 was \$0.8 million.

At December 29, 2018, there was \$2.7 million of total stock option compensation expense related to non-vested stock options not yet recognized, which is expected to be recognized over a weighted-average period of 1.7 years.

During 2016, 30,500 market-based stock options were granted and had a weighted-average grant date fair value of \$10.25 per option. The fair value of market-based stock options granted is reflected in the stock option activity table above. There were no market-based stock options granted in 2018 or 2017. The assumptions used to calculate the fair value of market-based stock options granted using the Monte Carlo simulation model were as follows:

Valuation Assumptions	2018	2017	2016
Expected dividend yield	NA	NA	NA
Expected volatility	NA	NA	NA
Risk-free interest rate	NA	NA	NA

Except for the market-based stock options discussed above, the fair value of options granted was calculated using the Black-Scholes option-pricing model.

The assumptions used to calculate the fair value of options granted using the Black-Scholes-Merton option-pricing model were as follows:

Valuation Assumptions	2018	2017	2016
Expected dividend yield	0%	0%	0%
Expected volatility	43%	46%	46%
Risk-free interest rate	2.7%	2.0%	2.0%
Expected term (in years)	5.0	5.1	5.1

### Stock Awards

Stock award activity was as follows (in thousands, except per share amounts):

	Time-Based Awards	Weighted-Average Grant Date Fair Value	Performance- and Market-Based Stock Awards	Weighted-Average Grant Date Fair Value
Outstanding at December 30, 2017	395	\$ 23.77	1,063	\$ 28.66
Granted	222	33.53	200	
Vested	(172)	24.28	(151)	
Canceled/Forfeited	(62)	26.76	(51)	
Outstanding at December 29, 2018	383	\$ 28.66	1,061	\$ 28.66

At December 29, 2018, there was \$4.2 million of unrecognized compensation expense related to non-vested time-based stock awards. This expense is expected to be recognized over a weighted-average period of 1.8 years and \$12.4 million of unrecognized compensation expense related to non-vested performance-based and market-based stock awards, which is expected to be recognized over a weighted-average period of 1.8 years.

During 2018, 5,027 performance-based stock awards with a market condition were granted and had a weighted-average grant date fair value of \$35.97 per award. These stock awards are reflected in the "Performance- and Market-Based Stock Awards" column in the stock award activity table above. During 2017, 270,895 performance-based stock awards with a market condition were granted and had a weighted-average grant date fair value of \$22.40 per award. There were no market-based stock awards granted in 2016.

The assumptions used to calculate the fair value of the 2018 and 2017 performance-based stock awards with a market condition, using the Monte Carlo simulation model, were as follows:

Valuation Assumptions	2018	2017
Expected dividend yield	0%	0%
Expected volatility	43%	46%
Risk-free interest rate	2.6%	1.5%

### Repurchases of Common Stock

Repurchases of our common stock were as follows (in thousands):

	2018	2017
Amount repurchased under Board-approved share repurchase program	\$ 279,101	\$ 150,000
Amount repurchased in connection with the vesting of employee restricted stock grants	3,344	5,245
Total amount repurchased	\$ 282,445	\$ 155,245

As of December 29, 2018, the remaining authorization under our Board-approved share repurchase program was \$186 million. This authorization expires on December 31, 2019, the expiration date governing the period over which we can repurchase shares. Any repurchased shares are constructively retired and no longer have an unissued status. The cost of stock repurchases is first charged to additional paid-in-capital. Once additional paid-in capital is reduced to zero, any additional amounts are charged to retained earnings.

### Net Income per Common Share

The components of basic and diluted net income per share were as follows (in thousands, except per share amounts):

	2018	2017
Net income	\$ 69,539	\$ 65,077
<b>Reconciliation of weighted-average shares outstanding:</b>		
Basic weighted-average shares outstanding	35,256	41,212
Dilutive effect of stock-based awards	909	873
Diluted weighted-average shares outstanding	36,165	42,085
Net income per share – basic	\$ 1.97	\$ 1.58
Net income per share – diluted	\$ 1.92	\$ 1.55

Additional potential dilutive stock options totaling 0.2 million, 0.4 million and 0.6 million for 2018, 2017 and 2016, respectively, were excluded from our diluted net income per share calculations because these securities' exercise prices were anti-dilutive (e.g., greater than the average market price of our common stock).

## Revenue Recognition

12 Months Ended  
Dec. 29, 2018

### [Revenue Recognition](#)

#### [\[Abstract\]](#)

### [Revenue Recognition](#)

#### (9) Revenue Recognition

Deferred contract liabilities and deferred contract assets are included in our consolidated balance sheets as follows (in thousands):

	December 29, 2018	December 30, 2017
Deferred Contract Liabilities included in:		
Other current liabilities	\$ 32,395	\$ 29,534
Other non-current liabilities	42,194	43,159
	<u>\$ 74,589</u>	<u>\$ 72,693</u>
Deferred Contract Assets included in:		
Other current assets	\$ 20,553	\$ 17,208
Other non-current assets	29,456	25,772
	<u>\$ 50,009</u>	<u>\$ 42,980</u>

During the year ended December 29, 2018, we recognized revenue of \$30 million that was included in the deferred contract liability balance at the beginning of the year.

Revenue from goods and services transferred to customers at a point in time accounted for approximately 98% of our revenues for 2018 and 2017.

Net sales from each of our channels was as follows (in thousands):

	2018	2017
Retail	\$ 1,401,991	\$ 1,324,690
Online and phone	115,831	101,145
Company-Controlled channel	1,517,822	1,425,835
Wholesale/Other channel	13,753	18,662
Total	<u>\$ 1,531,575</u>	<u>\$ 1,444,497</u>

#### *Obligation for Sales Returns*

We accept sales returns during a 100-night trial period. Accrued sales returns represent a refund liability for the amount of consideration that we do not expect to be entitled to because it will be refunded to customers. The refund liability estimate is based on historical return rates and is adjusted for any current trends as appropriate. Each reporting period we remeasure the liability to reflect changes in the estimate, with a corresponding adjustment to net sales. The activity in the sales returns liability account for 2018 and 2017 was as follows (in thousands):

	2018	2017
Balance at beginning of year	\$ 19,270	\$ 15,222
Additions that reduce net sales	79,326	77,226
Deduction from reserves	(78,689)	(73,178)
Balance at end of period	<u>\$ 19,907</u>	<u>\$ 19,270</u>

**Profit Sharing and 401(k)  
Plan**

**12 Months Ended  
Dec. 29, 2018**

[Profit Sharing And 401 K  
Plan \[Abstract\]](#)

[Profit Sharing and 401\(k\) Plan](#) (10) **Profit Sharing and 401(k) Plan**

Under our profit sharing and 401(k) plan, eligible employees may defer up to 50% of their compensation on a pre-tax basis, subject to Internal Revenue Service limitations. Each year, we may make a discretionary contribution equal to a percentage of the employee's contribution. During 2018, 2017 and 2016, our contributions, net of forfeitures, were \$5 million, \$5 million and \$5 million, respectively.

**Other (Expense) Income, Net**

**12 Months Ended  
Dec. 29, 2018**

**Other Income And Expenses [Abstract]**

**Other (Expense) Income, Net**

**(11) Other Expense, Net**

Other expense, net, consisted of the following (in thousands):

	<u>2018</u>	<u>2017</u>	<u>2016</u>
Interest expense	\$ 5,911	\$ 975	\$ 811
Interest income	(4)	(98)	(94)
Other expense, net	<u>\$ 5,907</u>	<u>\$ 877</u>	<u>\$ 717</u>

## Income Taxes

12 Months Ended  
Dec. 29, 2018

### [Income Tax Disclosure](#)

#### [\[Abstract\]](#)

#### [Income Taxes](#)

#### (12) Income Taxes

Income tax expense consisted of the following (in thousands):

	2018	2017	2016
Current:			
Federal	\$ 12,483	\$ 19,153	\$ 21,634
State	2,871	4,046	5,289
	<u>15,354</u>	<u>23,199</u>	<u>26,923</u>
Deferred:			
Federal	708	2,734	(105)
State	920	28	(2,302)
	<u>1,628</u>	<u>2,762</u>	<u>(2,407)</u>
Income tax expense	<u>\$ 16,982</u>	<u>\$ 25,961</u>	<u>\$ 24,516</u>

The following table provides a reconciliation between the statutory federal income tax rate and our effective income tax rate:

	2018	2017	2016
Statutory federal income tax	21.0%	35.0%	35.0%
State income taxes, net of federal benefit	3.3	2.5	2.6
Manufacturing deduction	—	(3.5)	(3.3)
Tax Cuts and Jobs Act effects	(3.9)	(1.9)	—
Changes in unrecognized tax benefits	1.2	(0.6)	1.2
R&D tax credits	(2.0)	(1.1)	(1.4)
Other	—	(1.9)	(1.8)
Effective income tax rate	<u>19.6%</u>	<u>28.5%</u>	<u>32.3%</u>

We file income tax returns with the U.S. federal government and various state jurisdictions. In the normal course of business, we are subject to examination by federal and state taxing authorities. We are no longer subject to federal income tax examinations for years prior to 2015 or state income tax examinations prior to 2014.

On December 22, 2017, the Tax Cuts and Jobs Act (TCJA) was enacted. The TCJA reduced the statutory federal tax rate from 35% to 21% starting in 2018. In addition, there were various other tax law changes that impacted us. In connection with the reduction of the federal tax rate, we recognized a provisional tax benefit of \$1.7 million for the year ended December 30, 2017. This provisional tax benefit was related to the re-measurement of U.S. deferred tax assets and liabilities using a federal tax rate of 21%, which, under the TCJA, is expected to be in place when such deferred assets and liabilities reverse in future periods. During 2018, we updated our provisional tax benefit based on new information, including a tax planning analysis, and recorded an additional \$2.9 million tax benefit.

The TCJA has significant complexity and our 2018 tax liability may differ from these estimates, due to, among other things, guidance that may be issued by the U.S. Treasury Department, the Internal Revenue Service, state tax jurisdictions, and related interpretations and clarifications of tax law.

#### Deferred Income Taxes

The tax effects of temporary differences that give rise to deferred income taxes were as follows (in thousands):

	<b>2018</b>	<b>2017</b>
<b>Deferred tax assets:</b>		
Stock-based compensation	\$ 7,633	\$ 6,940
Deferred rent and lease incentives	6,994	6,007
Warranty and returns liabilities	6,857	6,602
Net operating loss carryforwards and credits	2,324	3,240
Compensation and benefits	3,699	3,315
Other	3,406	3,321
Total gross deferred tax assets	<u>30,913</u>	<u>29,425</u>
Valuation allowance	<u>(615)</u>	<u>(615)</u>
Total gross deferred tax assets after valuation allowance	30,298	28,810
<b>Deferred tax liabilities:</b>		
Property and equipment	29,912	21,475
Deferred revenue	1,749	723
Other	3,459	3,987
Total gross deferred tax liabilities	<u>35,120</u>	<u>26,185</u>
Net deferred tax (liabilities) assets	<u>\$ (4,822)</u>	<u>\$ 2,625</u>

At December 29, 2018, we had net operating loss carryforwards for federal purposes of \$1 million, which will expire between 2025 and 2027, and for state income tax purposes of \$6 million, which will expire between 2028 and 2038.

We evaluate our deferred income taxes quarterly to determine if valuation allowances are required. As part of this evaluation, we assess whether valuation allowances should be established for any deferred tax assets that are not considered more likely than not to be realized, using all available evidence, both positive and negative. This assessment considers, among other matters, the nature, frequency, and severity of historical losses, forecasts of future profitability, taxable income in available carryback periods and tax planning strategies. In making such judgments, significant weight is given to evidence that can be objectively verified. We have provided a \$0.6 million valuation allowance resulting primarily from our inability to utilize certain foreign net operating losses, and federal net operating losses associated with our 2015 acquisition of BAM Labs, Inc.

### Unrecognized Tax Benefits

Reconciliations of the beginning and ending amounts of unrecognized tax benefits were as follows (in thousands):

	<b>Federal and State Tax</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Beginning balance	\$ 2,839	\$ 3,460	\$ 2,077
Increases related to current-year tax positions	778	330	326
Increases related to prior-year tax positions	595	87	1,594
Decreases related to prior-year tax positions	—	(1,038)	—
Lapse of statute of limitations	(333)	—	(333)
Settlements with taxing authorities	(13)	—	(204)
Ending balance	<u>\$ 3,866</u>	<u>\$ 2,839</u>	<u>\$ 3,460</u>

As of December 29, 2018 and December 30, 2017, we had \$4 million and \$3 million, respectively, of unrecognized tax benefits, which if recognized, would affect our effective tax rate. The amount of unrecognized tax benefits is not expected to change materially within the next 12 months.



## Commitments and Contingencies

12 Months Ended  
Dec. 29, 2018

### Commitments And Contingencies Disclosure

#### [Abstract]

#### Commitments and Contingencies

#### **(13) Commitments and Contingencies**

##### *Legal Proceedings*

We are involved from time to time in various legal proceedings arising in the ordinary course of our business, including primarily commercial, product liability, employment and intellectual property claims. In accordance with generally accepted accounting principles in the United States, we record a liability in our consolidated financial statements with respect to any of these matters when it is both probable that a liability has been incurred and the amount of the liability can be reasonably estimated. If a loss is reasonably possible but not known or probable, and may be reasonably estimated, the estimated loss or range of loss is disclosed. With respect to currently pending legal proceedings, we have not established an estimated range of reasonably possible losses either because we believe that we have valid defenses to claims asserted against us or the proceeding has not advanced to a stage of discovery that would enable us to establish an estimate. We currently do not expect the outcome of pending legal proceedings to have a material effect on our consolidated results of operations, financial position or cash flows. Litigation, however, is inherently unpredictable, and it is possible that the ultimate outcome of one or more claims asserted against us could adversely impact our consolidated results of operations, financial position or cash flows. We expense legal costs as incurred.

On January 12, 2015, Plaintiffs David and Katina Spade commenced a purported class action lawsuit in New Jersey state court against Sleep Number alleging that Sleep Number violated New Jersey consumer statutes by failing to provide to purchasing consumers certain disclosures required by the New Jersey Furniture Regulations. It is undisputed that plaintiffs suffered no actual damages or in any way relied upon or were impacted by the alleged omissions. Nonetheless, on behalf of a purported class of New Jersey purchasers of Sleep Number beds and bases, plaintiffs seek to recover a \$100 statutory fine for each alleged omission, along with attorneys' fees and costs. Sleep Number removed the case to the United States District Court for the District of New Jersey, which subsequently granted Sleep Number's motion to dismiss. Plaintiffs appealed to the United States Court of Appeals for the Third Circuit, which certified two questions of law to the New Jersey Supreme Court relating to whether plaintiffs who have suffered no actual injury may bring claims. The New Jersey Supreme Court accepted the certified questions and on April 16, 2018, ruled in our favor on one of the two questions, holding that a consumer only has standing to bring a claim under the relevant statute if the consumer has been harmed by the defendant's conduct. The Third Circuit remanded the case to the federal district court, which initially allowed the plaintiffs to file its proposed amended complaint, but thereafter rescinded its order and then denied Plaintiffs' request to file the amended complaint. We plan to ask the Court to dismiss the case.

On September 18, 2018, former Home Delivery Technician, Donald Cassels, and former Field Services Delivery Assistant, Jose Cadenas, filed suit in Superior Court in San Francisco County, California alleging representative claims on a purported class action basis under the California Labor Code Private Attorney General Act. While the two representative plaintiffs were in the Home Delivery workforce, the Complaint does not limit the purported plaintiff class to that group. The plaintiffs allege that Sleep Number failed or refused to adopt adequate practices, policies and procedures relating to wage payments, record keeping, employment disclosures, meal and rest breaks, among other claims, under California law. The plaintiffs purport to represent all former and current Sleep Number employees in the State of California aggrieved by the alleged practices. The Complaint seeks damages in the form of civil penalties and plaintiffs' attorneys' fees, and expressly disclaims the recovery of any purported individual specific relief or underpaid wages. After Sleep Number raised issues with the plaintiffs' choice of venue, the Court

transferred venue from the Superior Court in San Francisco County to Superior Court in Fresno County. We intend to vigorously defend this matter.

#### *Consumer Credit Arrangements*

We refer customers seeking extended financing to certain third-party financiers (Card Servicers). The Card Servicers, if credit is granted, establish the interest rates, fees, and all other terms and conditions of the customer's account based on their evaluation of the creditworthiness of the customer. As the receivables are owned by the Card Servicers, at no time are the receivables purchased or acquired from us. We are not liable to the Card Servicers for our customers' credit defaults.

#### *Commitments*

As of December 29, 2018, we had \$32 million of inventory purchase commitments. As part of the normal course of business, there are a limited number of inventory supply contracts that contain penalty provisions for failure to purchase contracted quantities. We do not currently expect any payments under these provisions. At December 29, 2018, we had entered into 46 lease commitments for future retail store locations. These lease commitments provide for minimum rentals over the next five to 10 years, which if consummated based on current cost estimates, would approximate \$62 million over the initial lease term. The minimum rentals for these lease commitments have been included in the future minimum lease payments in Note 6, *Leases*.

**Summary of Quarterly  
Financial Data (unaudited)**

**12 Months Ended  
Dec. 29, 2018**

**Summary Of Quarterly  
Financial Data Unaudited**

**[Abstract]**

**Summary of Quarterly  
Financial Data (unaudited)**

**(14) Summary of Quarterly Financial Data (unaudited)**

The following is a condensed summary of our quarterly results (in thousands, except net income (loss) per share amounts). Quarterly diluted net income (loss) per share amounts may not total to the respective annual amount due to changes in weighted-average shares outstanding during the year.

	<b>2018</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales		\$388,633	\$316,338	\$414,779	\$411,825	\$1,531,575
Gross profit		237,477	188,888	250,517	251,079	927,961
Operating income		26,901	2,086	25,321	38,120	92,428
Net income		20,548	3,744	18,257	26,990	69,539
Net income per share – diluted		\$ 0.52	\$ 0.10	\$ 0.52	\$ 0.81	\$ 1.92

	<b>2017</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales		\$393,899	\$284,673	\$402,646	\$363,279	\$1,444,497
Gross profit		246,459	176,619	253,465	220,804	897,347
Operating income (loss)		35,828	(3,061)	39,029	20,119	91,915
Net income (loss)		24,461	(778)	25,603	15,791	65,077
Net income (loss) per share – diluted		\$ 0.56	\$ (0.02)	\$ 0.62	\$ 0.39	\$ 1.55

**Schedule II - Valuation and  
Qualifying Accounts**

**12 Months Ended  
Dec. 29, 2018**

**[Valuation And Qualifying Accounts \[Abstract\]](#)**

**[Schedule II - Valuation and Qualifying Accounts](#)**

<b>Description</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Allowance for doubtful accounts			
Balance at beginning of period	\$ 714	\$ 884	\$ 1,039
Additions charged to costs and expenses	815	915	1,224
Deductions from reserves	(830)	(1,085)	(1,379)
Balance at end of period	<u>\$ 699</u>	<u>\$ 714</u>	<u>\$ 884</u>

## Business and Summary of Significant Accounting Policies (Policies)

12 Months Ended

Dec. 29, 2018

### [Accounting Policies](#)

#### [\[Abstract\]](#)

#### [Business and Basis of Presentation](#)

#### *Business & Basis of Presentation*

Sleep Number Corporation and our 100%-owned subsidiaries (Sleep Number or the Company) have a vertically integrated business model and are the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number beds which allows us to offer consumers high-quality, individualized sleep solutions and services. Sleep Number also offers FlexFit adjustable bases, and Sleep Number pillows, sheets and other bedding products.

We generate revenue by marketing our innovations to new and existing customers, and by selling products through two distribution channels. Our Company-Controlled channel, which includes retail, online and phone, sells directly to consumers. Our Wholesale/Other channel sells to and through selected retail and wholesale customers in the United States.

The consolidated financial statements include the accounts of Sleep Number Corporation and our subsidiaries. All significant intra-entity balances and transactions have been eliminated in consolidation.

#### [Fiscal Year](#)

#### *Fiscal Year*

Our fiscal year ends on the Saturday closest to December 31. Fiscal years and their respective fiscal year ends were as follows: fiscal 2018 ended December 29, 2018; fiscal 2017 ended December 30, 2017; and fiscal 2016 ended December 31, 2016. Fiscal years 2018, 2017 and 2016 each had 52 weeks.

#### [Use of Estimates in the Preparation of Financial Statements](#)

#### *Use of Estimates in the Preparation of Financial Statements*

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of sales, expenses and income taxes during the reporting period. Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in these estimates will be reflected in the financial statements in future periods. Our critical accounting policies consist of stock-based compensation, goodwill and indefinite-lived intangible assets, warranty liabilities and revenue recognition.

#### [Cash and Cash Equivalents](#)

#### *Cash and Cash Equivalents*

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. The carrying value of these investments approximates fair value due to their short-term maturity. Our banking arrangements allow us to fund outstanding checks when presented to the financial institution for payment, resulting in book overdrafts. Book overdrafts are included in accounts payable in our consolidated balance sheets and in net increase in short-term borrowings in the financing activities section of our consolidated statements of cash flows. Book overdrafts totaled \$38 million and \$30 million at December 29, 2018 and December 30, 2017, respectively.

#### [Accounts Receivable](#)

#### *Accounts Receivable*

Accounts receivable are recorded net of an allowance for expected losses and consist primarily of receivables from third-party financiers for customer credit card purchases and receivables from wholesale customers. The allowance is recognized in an amount equal to anticipated future write-offs. We estimate future write-offs based on delinquencies, aging trends, industry risk trends, our historical experience and current trends. Account balances are charged off against the allowance when we believe it is probable the receivable will not be recovered.

## [Inventories](#)

### *Inventories*

Inventories include materials, labor and overhead and are stated at the lower of cost or net realizable value. Cost is determined by the first-in, first-out method. We review inventory quantities on hand and record reserves for obsolescence based on historical selling prices, current market conditions and forecasted product demand, to reduce inventory to net realizable value.

## [Property and Equipment](#)

### *Property and Equipment*

Property and equipment, carried at cost, is depreciated using the straight-line method over the estimated useful lives of the assets. The cost and related accumulated depreciation of assets sold or retired is removed from the accounts with any resulting gain or loss included in net income in our consolidated statements of operations. Maintenance and repairs are charged to expense as incurred. Major renewals and betterments that extend useful life are capitalized.

Leasehold improvements are depreciated over the shorter of the estimated useful lives of the assets or the contractual term of the lease, with consideration of lease renewal options if renewal appears probable.

Estimated useful lives of our property and equipment by major asset category are as follows:

Leasehold improvements	5 to 15 years
Furniture and equipment	3 to 15 years
Production machinery	3 to 7 years
Computer equipment and software	3 to 12 years

## [Goodwill and Intangible Assets, Net](#)

### *Goodwill and Intangible Assets, Net*

Goodwill is the difference between the purchase price of a company and the fair market value of the acquired company's net identifiable assets. Our intangible assets include developed technologies and trade names/trademarks. Definite-lived intangible assets are being amortized using the straight-line method over their estimated lives, ranging from 8-10 years.

## [Asset Impairment Charges](#)

### *Asset Impairment Charges*

Long-lived Assets and Definite-lived Intangible Assets - we review our long-lived assets and definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When evaluating long-lived assets for potential impairment, we first compare the carrying value of the asset to the estimated future cash flows (undiscounted and without interest charges - plus proceeds expected from disposition, if any). If the estimated undiscounted cash flows are less than the carrying value of the asset, we calculate an impairment loss. The impairment loss calculation compares the carrying value of the asset to the asset's estimated fair value. When we recognize an impairment loss, the carrying amount of the asset is reduced to estimated fair value based on discounted cash flows, quoted market prices or other valuation techniques. Assets to be disposed of are reported at the lower of the carrying amount of the asset or fair value less costs to sell. We review retail store assets for potential impairment based on historical cash flows, lease termination provisions and expected future retail store operating results. If we recognize an impairment loss for a depreciable long-lived asset, the adjusted carrying amount of the asset becomes its new cost basis and will be depreciated (amortized) over the remaining useful life of that asset.

Goodwill and Indefinite-lived Intangible Assets - goodwill and indefinite-lived intangible assets are not amortized but are tested for impairment annually or when there are indicators of impairment using a fair value approach. The Financial Accounting Standards Board's (FASB) guidance allows us to perform either a quantitative assessment or a qualitative assessment before calculating the fair value of a reporting unit. We have elected to perform the quantitative assessment. The quantitative goodwill impairment test is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step reflects impairment, then the loss would be measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of fair value of the reporting unit over the fair value of all identified assets and liabilities. Fair value is determined using a market-based approach utilizing widely accepted valuation techniques, including quoted market prices and our market capitalization. Indefinite-lived intangible assets are assessed for impairment by comparing the carrying value of an asset with its fair value. If the carrying value exceeds fair value, an impairment loss is recognized in an amount equal to the excess. Based on our 2018 assessments, we determined there was no impairment.

## Warranty Liabilities

### *Warranty Liabilities*

We provide a limited warranty on most of the products we sell. The estimated warranty costs, which are expensed at the time of sale and included in cost of sales, are based on historical trends and warranty claim rates incurred by us and are adjusted for any current trends as appropriate. The majority of our warranty claims are incurred within the first year. Our warranty liability contains uncertainties because our warranty obligations cover an extended period of time and require management to make estimates for claim rates and the projected cost of materials and freight associated with sending replacement parts to customers. We regularly assess and adjust the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs.

We classify as non-current those estimated warranty costs expected to be paid out in greater than one year. The activity in the accrued warranty liabilities account was as follows (in thousands):

	<b>2018</b>	<b>2017</b>	<b>2016</b>
Balance at beginning of period	\$ 9,320	\$ 8,633	\$ 10,028
Additions charged to costs and expenses for current-year sales	12,385	12,214	9,034
Deductions from reserves	(11,743)	(10,752)	(10,016)
Changes in liability for pre-existing warranties during the current year, including expirations	427	(775)	(413)
Balance at end of period	<u>\$ 10,389</u>	<u>\$ 9,320</u>	<u>\$ 8,633</u>

## Fair Value Measurements

### *Fair Value Measurements*

Fair value measurements are reported in one of three levels based on the lowest level of significant input used:

- Level 1 – observable inputs such as quoted prices in active markets;
- Level 2 – inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
- Level 3 – unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

We generally estimate fair value of long-lived assets, including our retail stores, using the income approach, which we base on estimated future cash flows (discounted and with interest charges). The inputs used to determine fair value relate primarily to future assumptions regarding sales volumes, gross profit rates, retail store operating expenses and applicable probability weightings regarding future alternative uses. These inputs are categorized as Level 3 inputs under the fair value measurements guidance. The inputs used represent management's assumptions about what

information market participants would use in pricing the assets and are based upon the best information available at the balance sheet date.

## Dividends

### *Dividends*

We are not restricted from paying cash dividends under our credit agreement so long as we are not in default under the credit agreement, our leverage ratio (as defined in our credit agreement) after giving effect to such restricted payments (as defined in our credit agreement) would not exceed 3.75:1.00 and no default or event of default (as defined in our credit agreement) would result therefrom. However, we have not historically paid, and have no current plans to pay, cash dividends on our common stock.

## Revenue Recognition

### *Revenue Recognition*

We recognize revenue when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Revenue recognized excludes sales taxes. Amounts billed to customers for delivery and setup are included in net sales. For most products, we receive payment before or promptly after, the products or services are delivered to the customer.

Our beds sold with SleepIQ technology contain multiple performance obligations including the bed and SleepIQ hardware and software. We analyze our multiple performance obligation(s) to determine whether they are distinct and can be separated or whether they must be accounted for as a single performance obligation. We determined that the beds sold with the SleepIQ technology have two performance obligations consisting of: (i) the bed; and (ii) SleepIQ hardware and software. SleepIQ hardware and software are not separable as the hardware and related software are not sold separately and the software is integral to the hardware's functionality. We determine the transaction price for multiple performance obligations based on their relative standalone selling prices. The performance obligation related to the bed is satisfied at a point in time. The performance obligation related to SleepIQ technology is satisfied over time based on the ongoing access and usage by the customer of software essential to the functionality of SleepIQ technology. The deferred revenue and costs related to SleepIQ technology are recognized on a straight-line basis over the product's estimated life of four years because our inputs are generally expended evenly throughout the performance period.

We accept sales returns during a 100-night trial period. Accrued sales returns represent a refund liability for the amount of consideration that we do not expect to be entitled to because it will be refunded to customers. The refund liability estimate is based on historical return rates and is adjusted for any current trends as appropriate. Each reporting period we remeasure the liability to reflect changes in the estimate, with a corresponding adjustment to net sales.

## Expenses

The following tables summarize the primary costs classified in each major expense category (the classification of which may vary within our industry):



### Cost of Sales

- Costs associated with purchasing, manufacturing, shipping, handling and delivering our products to our retail stores and customers;
- Physical inventory losses, scrap and obsolescence;
- Related occupancy and depreciation expenses;
- Costs associated with returns and exchanges; and
- Estimated costs to service customer warranty claims.

### G&A

- Payroll and benefit costs for corporate employees, including information technology, legal, human resources, finance, sales and marketing administration, investor relations and risk management;
- Occupancy costs of corporate facilities;
- Depreciation related to corporate assets;
- Information hardware, software and maintenance;
- Insurance;
- Investor relations costs; and
- Other overhead costs.

### Sales & Marketing

- Advertising, marketing and media production;
- Marketing and selling materials such as brochures, videos, websites, customer mailings and in-store signage;
- Payroll and benefits for sales and customer service staff;
- Store occupancy costs;
- Store depreciation expense;
- Credit card processing fees; and
- Promotional financing costs.

### R&D(1)

- Internal labor and benefits related to research and development activities;
- Outside consulting services related to research and development activities; and
- Testing equipment related to research and development activities.

(1) Costs incurred in connection with R&D are charged to expense as incurred.

## Operating Lessees

### *Operating Lessees*

We lease our retail, office and manufacturing space under operating leases which, in addition to the minimum lease payments, may require payment of a proportionate share of the real estate taxes and certain building operating expenses. Our retail store leases generally provide for an initial lease term of five to 10 years. In addition, our mall-based retail store leases may require payment of contingent rent based on net sales in excess of certain thresholds. Certain retail store leases may contain options to extend the term of the original lease.

Minimum rent expense, which excludes contingent rents, is recognized on a straight-line basis over the lease term, after consideration of rent escalations and rent holidays. We record any difference between the straight-line rent amounts and amounts payable under the leases as part of deferred rent, in other current liabilities or other non-current liabilities, as appropriate. The lease term for purposes of the calculation begins on the earlier of the lease commencement date or the date we take possession of the property. During lease renewal negotiations that extend beyond the original lease term, we estimate straight-line rent expense based on current market conditions. Deferred rent is included in our consolidated balance sheets as follows (in thousands):

	December 29, 2018	December 30, 2017
Deferred rent included in:		
Other current liabilities	\$ 1,408	\$ 1,447
Other non-current liabilities	11,452	9,555
	<u>\$ 12,860</u>	<u>\$ 11,002</u>

Contingent rent expense is recorded when it is probable the expense has been incurred and the amount is reasonably estimable. Future payments for real estate taxes and certain building operating expenses for which we are obligated are not included in minimum lease payments.

Leasehold improvements that are funded by landlord incentives or allowances under an operating lease are recorded as deferred lease incentives, in other current liabilities or other non-current liabilities, as appropriate and amortized as reductions to rent expense over the lease term.

Deferred lease incentives are included in our consolidated balance sheets as follows (in thousands):

	December 29, 2018	December 30, 2017
Deferred lease incentives included in:		
Other current liabilities	\$ 2,842	\$ 2,784
Other non-current liabilities	11,930	9,688
	<u>\$ 14,772</u>	<u>\$ 12,472</u>

## Pre-Opening Costs

### *Pre-Opening Costs*

Costs associated with the start-up and promotion of new retail store openings are expensed as incurred.

## Advertising Costs

### *Advertising Costs*

We incur advertising costs associated with print, digital and broadcast advertisements. Advertising costs are charged to expense when the ad first runs. Advertising expense was \$210 million, \$194 million and \$190 million in 2018, 2017 and 2016, respectively. Advertising costs deferred and included in prepaid expenses in our consolidated balance sheets were \$2 million and \$2 million as of December 29, 2018 and December 30, 2017, respectively.

## Insurance

### *Insurance*

We are self-insured for certain losses related to health and workers' compensation claims, although we obtain third-party insurance coverage to limit exposure to these claims. We estimate our self-insured liabilities using a number of factors including historical claims experience and analysis of incurred but not reported claims. Our self-insurance liability was \$8 million and \$9 million at December 29, 2018 and December 30, 2017, respectively. At December 29, 2018, and December 30, 2017, \$5 million and \$6 million, respectively, were included in compensation and benefits in our consolidated balance sheets and \$3 million and \$3 million, respectively, were included in other non-current liabilities in our consolidated balance sheets.

## Software Capitalization

### *Software Capitalization*

For software developed or obtained for internal use, we capitalize direct external costs associated with developing or obtaining internal-use software. In addition, we capitalize certain payroll and payroll-related costs for employees who are directly involved with the development of such applications. Capitalized costs related to internal-use software under development are treated as construction-in-progress until the program, feature or functionality is ready for its intended use, at which time depreciation commences. We expense any data conversion or training costs as incurred.

We capitalize costs incurred with the implementation of a cloud computing arrangement, that is a service contract, consistent with our policy for software developed or obtained for internal use. The capitalized implementation costs of cloud computing arrangements are expensed over the term of the cloud computing arrangement in the same line item in the statement of operations as the associated fees.

## Share-Based Compensation

### *Stock-Based Compensation*

We compensate officers, directors and key employees with stock-based compensation under stock plans approved by our shareholders and administered under the supervision of our Board of Directors (Board). At December 29, 2018, a total of 2.3 million shares were available for future grant. These plans include non-qualified stock options and stock awards.

We record stock-based compensation expense based on the award's fair value at the grant date and the awards that are expected to vest. We recognize stock-based compensation expense over

the period during which an employee is required to provide services in exchange for the award. We reduce compensation expense by estimated forfeitures. Forfeitures are estimated using historical experience and projected employee turnover. Beginning in 2017, we include, as part of cash flows from operating activities, the benefit of tax deductions in excess of recognized stock-based compensation expense. In addition, excess tax benefits or deficiencies that in prior years were recorded in additional paid-in capital are now recorded as discrete adjustments to income tax expense.

Stock Options - stock option awards are granted at exercise prices equal to the closing price of our stock on the grant date. Generally, options vest proportionally over three years and expire after 10 years. Compensation expense is recognized ratably over the vesting period.

We determine the fair value of stock options granted and the resulting compensation expense at the date-of-grant using the Black-Scholes-Merton option-pricing model. Descriptions of significant assumptions used to estimate the expected volatility, risk-free interest rate and expected term are as follows:

*Expected Volatility* – expected volatility was determined based on implied volatility of our traded options and historical volatility of our stock price.

*Risk-Free Interest Rate* – the risk-free interest rate was based on the implied yield available on U.S. Treasury zero-coupon issues at the date of grant with a term equal to the expected term.

*Expected Term* – expected term represents the period that our stock-based awards are expected to be outstanding and was determined based on historical experience and anticipated future exercise patterns, giving consideration to the contractual terms of unexercised stock-based awards.

Stock Awards - we issue stock awards to certain employees in conjunction with our stock-based compensation plan. The stock awards generally vest over three years based on continued employment (time-based). Compensation expense related to stock awards, except for stock awards with a market condition, is determined on the grant date based on the publicly quoted closing price of our common stock and is charged to earnings on a straight-line basis over the vesting period. Stock awards with a market condition are valued using a Monte Carlo simulation model. The significant assumptions used to estimate the expected volatility and risk-free interest rate are similar to those described above in *Stock Options*.

Certain time-based stock awards have a performance condition (performance-based). The final number of shares earned for performance-based stock awards and the related compensation expense is adjusted up or down to the extent the performance target is met as of the last day of the performance period. The actual number of shares that will ultimately be awarded range from 0% - 200% of the targeted amount for the 2018, 2017 and 2016 awards. We evaluate the likelihood of meeting the performance targets at each reporting period and adjust compensation expense, on a cumulative basis, based on the expected achievement of each of the performance targets. For performance-based stock awards granted in 2018, 2017 and 2016, the performance targets are based on growth in net sales and in operating profit, and the performance periods are fiscal 2018 through 2020, 2017 through 2019, and fiscal 2016 through 2018, respectively.

## Income Taxes

### *Income Taxes*

We recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is established for any portion of deferred tax assets that are not considered more likely than not to be realized. We evaluate all available positive and negative evidence,

including our forecast of future taxable income, to assess the need for a valuation allowance on our deferred tax assets.

We record a liability for unrecognized tax benefits from uncertain tax positions taken, or expected to be taken, in our tax returns. We follow a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely of being realized upon ultimate settlement. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments, and may not accurately forecast actual outcomes.

We classify net interest and penalties related to income taxes as a component of income tax expense in our consolidated statements of operations.

## Net Income Per Share

### *Net Income Per Share*

We calculate basic net income per share by dividing net income by the weighted-average number of common shares outstanding during the period. We calculate diluted net income per share based on the weighted-average number of common shares outstanding adjusted by the number of potentially dilutive common shares as determined by the treasury stock method. Potentially dilutive shares consist of stock options and stock awards.

## Sources of Supply

### *Sources of Supply*

We currently obtain materials and components used to produce our beds from outside sources. As a result, we are dependent upon suppliers that in some instances, are our sole source of supply. We are continuing our efforts to dual-source key components. The failure of one or more of our suppliers to provide us with materials or components on a timely basis could significantly impact our consolidated results of operations and net income per share. We believe we can obtain these raw materials and components from other sources of supply in the ordinary course of business, although an unexpected loss of supply over a short period of time may not allow us to replace these sources in the ordinary course of business.

## New Accounting Pronouncements

### *New Accounting Pronouncements*

#### Recently Adopted Accounting Guidance

##### *Adoption of ASC Topic 230, Restricted Cash*

Effective December 31, 2017, we adopted ASC Topic 230, *Restricted Cash*, which requires amounts generally described as restricted cash and restricted cash equivalents be included with cash and cash equivalents when reconciling the total beginning and ending amounts for the periods shown on the statement of cash flows. Amounts for prior periods have been retrospectively adjusted to conform to the current period presentation.

##### *Adoption of ASC Topic 606, Revenue from Contracts with Customers*

On December 31, 2017, we adopted ASC Topic 606, *Revenue from Contracts with Customers*, using the modified retrospective method applied to those contracts which were not completed as of December 30, 2017. Results for reporting periods beginning after December 30, 2017 are presented under the new guidance, while prior period amounts are not restated.

The cumulative effect of the changes made to our consolidated balance sheet as of December 31, 2017 resulting from the adoption of the new revenue guidance was not material and did not

impact opening retained earnings. The impact on the timing of net sales for 2018, as a result of applying the new guidance, was not material.

Practical expedients and exemptions permissible under ASC Topic 606 that we elected are as follows: we do not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less; and (ii) contracts for which we recognize revenue at the amount to which we have the right to invoice for services performed.

See Note 9, *Revenue Recognition*, for further details regarding our revenue recognition policy.

#### Accounting Guidance Issued but Not Yet Adopted as of December 29, 2018

We are the lessee under various agreements for facilities, equipment and vehicles that are currently accounted for as operating leases. In February 2016, the FASB issued ASC Topic 842, *Leases*, that requires most leases to be recognized on the balance sheet and expands disclosure requirements. Leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement.

This new guidance is effective for us beginning December 30, 2018 (fiscal 2019). The provisions of this new guidance require a modified-retrospective approach, with elective reliefs. The new guidance will apply to all leases existing at the date of initial application. We have the option to choose either (1) the effective date, or (2) the beginning of the earliest comparative period presented in the financial statements as the date of initial application. We expect to adopt the new standard using the effective date option.

The new guidance establishes a right-of-use model (ROU) that requires a lessee to recognize a ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. On adoption, we expect to recognize additional lease liabilities and corresponding ROU assets of approximately \$300 million based on the present value of the remaining minimum rental payments for existing operating leases.

The new guidance provides a number of optional practical expedients in transition. We expect to elect the package of practical expedients, which permits us to not reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We do not expect to elect the use of hindsight. The new guidance also provides practical expedients for an entity's ongoing accounting. We expect to elect the short-term lease recognition exemption for all leases that qualify, primarily small equipment leases. This means, for those leases that qualify, we will not recognize ROU assets or lease liabilities, and this includes not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also expect to elect the practical expedient option to not separate lease and non-lease components for all of our leases.

We will be providing significant new disclosures about our leasing activities and have implemented a new lease accounting system in connection with the adoption. We also expect that adoption of the new guidance will require changes to our internal controls over financial reporting. We continue to evaluate the effect of the new standard on our consolidated financial statements and related disclosures.

#### Repurchases of Common Stock

There is no expiration date governing the period over which we can repurchase shares. Any repurchased shares are constructively retired and returned to an unissued status. The cost of stock repurchases is first charged to additional paid-in-capital. Once additional paid-in capital is reduced to zero, any additional amounts are charged to retained earnings.

**Business and Summary of  
Significant Accounting  
Policies (Tables)**

**12 Months Ended  
Dec. 29, 2018**

[Accounting Policies \[Abstract\]](#)

[Estimated Useful Lives of Property  
and Equipment](#)

Estimated useful lives of our property and equipment by major asset category are as follows:

Leasehold improvements	5 to 15 years
Furniture and equipment	3 to 15 years
Production machinery	3 to 7 years
Computer equipment and software	3 to 12 years

[Schedule of Product Warranty  
Liability](#)

The activity in the accrued warranty liabilities account was as follows (in thousands):

	<b>2018</b>	<b>2017</b>	<b>2016</b>
Balance at beginning of period	\$ 9,320	\$ 8,633	\$ 10,028
Additions charged to costs and expenses for current-year sales	12,385	12,214	9,034
Deductions from reserves	(11,743)	(10,752)	(10,016)
Changes in liability for pre-existing warranties during the current year, including expirations	427	(775)	(413)
Balance at end of period	<u>\$ 10,389</u>	<u>\$ 9,320</u>	<u>\$ 8,633</u>

[Summary of Deferred Rent](#)

Deferred rent is included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred rent included in:		
Other current liabilities	\$ 1,408	\$ 1,447
Other non-current liabilities	11,452	9,555
	<u>\$ 12,860</u>	<u>\$ 11,002</u>

[Summary of Deferred Lease  
Incentives](#)

Deferred lease incentives are included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred lease incentives included in:		
Other current liabilities	\$ 2,842	\$ 2,784
Other non-current liabilities	11,930	9,688
	<u>\$ 14,772</u>	<u>\$ 12,472</u>

## Inventories (Tables)

**12 Months Ended  
Dec. 29, 2018**

### [Inventory Disclosure \[Abstract\]](#)

#### [Schedule of Inventories](#)

Inventories consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Raw materials	\$ 4,549	\$ 6,577
Work in progress	3	170
Finished goods	80,330	77,551
	<u>\$ 84,882</u>	<u>\$ 84,298</u>

#### [Schedule of Finished Goods Inventories](#)

Finished goods inventories consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Finished beds, including retail display beds and deliveries in-transit to those customers who have utilized home delivery services	\$ 25,313	\$ 24,825
Finished components that were ready for assembly for the completion of beds	38,665	34,709
Retail accessories	16,352	18,017
	<u>\$ 80,330</u>	<u>\$ 77,551</u>

**Property and Equipment  
(Tables)**

**12 Months Ended  
Dec. 29, 2018**

[Property And Equipment](#)

[\[Abstract\]](#)

[Property, Plant and Equipment](#)

Property and equipment consisted of the following (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Land	\$ 1,999	\$ 1,999
Leasehold improvements	109,722	102,495
Furniture and equipment	108,841	94,265
Production machinery, computer equipment and software	238,659	224,758
Construction in progress	10,385	5,661
Less: Accumulated depreciation and amortization	(263,975)	(220,532)
	<u>\$ 205,631</u>	<u>\$ 208,646</u>



**Goodwill and Intangible  
Assets, Net (Tables)**

**12 Months Ended  
Dec. 29, 2018**

**Goodwill And Intangible Assets Disclosure**

**[Abstract]**

**Schedule of Gross Carrying Amount and Related  
Accumulated Amortization of Our Definite-Lived  
Intangible Assets**

The following table provides the gross carrying amount and related accumulated amortization of our definite-lived intangible assets (in thousands):

	<u>December 29, 2018</u>		<u>December 30, 2017</u>	
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>
Developed technologies	\$ 18,851	\$ 8,886	\$ 18,851	\$ 6,705
Trade names/ trademarks	101	101	101	101
	<u>\$ 18,952</u>	<u>\$ 8,987</u>	<u>\$ 18,952</u>	<u>\$ 6,806</u>

**Schedule of Annual Amortization for Definite-Lived  
Intangible Assets**

Annual amortization for definite-lived intangible assets for subsequent years are as follows (in thousands):

2019	\$ 2,180
2020	2,213
2021	2,181
2022	2,181
2023	1,210
Thereafter	—
Total future amortization for definite-lived intangible assets	<u>\$ 9,965</u>

Leases (Tables)

12 Months Ended  
Dec. 29, 2018

[Leases \[Abstract\]](#)  
[Schedule of Rent Expense](#)

Rent expense was as follows (in thousands):

Facility Rents:	2018	2017	2016
Minimum rents	\$71,851	\$66,239	\$59,002
Contingent rents	1,847	2,845	3,099
Total	<u>\$73,698</u>	<u>\$69,084</u>	<u>\$62,101</u>
Equipment Rents	<u>\$ 5,692</u>	<u>\$ 4,935</u>	<u>\$ 5,316</u>

[Schedule of Aggregate Minimum Rental Commitments Under Operating Leases for Subsequent Years](#)

The aggregate minimum rental commitments under operating leases for subsequent years are as follows (in thousands):

2019	\$ 78,337
2020	73,331
2021	66,491
2022	59,515
2023	51,076
Thereafter	149,318
Total future minimum lease payments	<u>\$ 478,068</u>

## Credit Agreement (Tables)

**12 Months Ended**  
**Dec. 29, 2018**

### [Debt Disclosure \[Abstract\]](#)

### [Schedule of Borrowings Under Credit Facility](#)

The following tables summarizes our borrowings under the credit facility (\$ in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Outstanding borrowings	\$ 199,600	\$ 24,500
Outstanding letters of credit	\$ 3,497	\$ 3,150
Additional borrowing capacity	\$ 96,903	\$ 125,500
Weighted-average interest rate	4.2%	3.1%

**Shareholders' Equity  
(Tables)**

**12 Months Ended  
Dec. 29, 2018**

[Shareholders Equity](#)

[\[Abstract\]](#)

[Stock-based Compensation  
Expense](#)

Total stock-based compensation expense was as follows (in thousands):

	2018	2017	2016
Stock options	\$ 2,482	\$ 2,344	\$ 2,344
Stock awards	8,930	13,419	13,419
Total stock-based compensation expense <sup>(1)</sup>	11,412	15,763	15,763
Income tax benefit	2,750	5,249	5,249
Total stock-based compensation expense, net of tax	\$ 8,662	\$ 10,514	\$ 10,514

(1) Decrease in 2018 stock-based compensation expense reflects the cumulative impact of the change in the expected achievements of certain performance targets.

[Summary of Stock Option  
Activity](#)

A summary of our stock option activity was as follows (in thousands, except per share amounts and years):

	Stock Options	Weighted- Average Exercise Price per Share	Weighted- Average Remaining Contractual Term (years)	Ag In Va
Balance at December 30, 2017	1,355	\$ 20.23	6.2	\$
Granted	170	33.72		
Exercised	(186)	14.96		
Canceled/Forfeited	(17)	26.43		
Outstanding at December 29, 2018	1,322	\$ 22.64	5.9	\$
Exercisable at December 29, 2018	898	\$ 20.76	4.8	\$
Vested and expected to vest at December 29, 2018	1,295	\$ 22.55	5.9	\$

(1) Aggregate intrinsic value includes only those options where the current share price is equal to or greater than the share price on the date of grant.

[Other Information Pertaining  
to Options](#)

Other information pertaining to options was as follows (in thousands, except per share amounts):

	2018	2017	2016
Weighted-average grant date fair value of stock options granted	\$ 13.96	\$ 10.33	\$ 10.33
Total intrinsic value (at exercise) of stock options exercised	\$ 3,459	\$ 3,586	\$ 3,586

[Assumptions Used to  
Calculate Fair Value of  
Market-based Stock Options  
Granted Using Monte Carlo  
Simulation Model](#)

The assumptions used to calculate the fair value of market-based stock options granted using the Monte Carlo simulation model were as follows:

Valuation Assumptions	2018	2017	2016
Expected dividend yield	NA	NA	NA
Expected volatility	NA	NA	NA
Risk-free interest rate	NA	NA	NA

The assumptions used to calculate the fair value of options granted using the Black-Scholes-Merton option-pricing model were as follows:

Valuation Assumptions	2018	2017	2016
Expected dividend yield	0%	0%	0%
Expected volatility	43%	46%	46%
Risk-free interest rate	2.7%	2.0%	2.0%
Expected term (in years)	5.0	5.1	5.1

[Stock Award Activity](#)

Stock award activity was as follows (in thousands, except per share amounts):

	Time- Based Stock Awards	Weighted- Average Grant Date Fair Value	Performance- and Market- Based Stock Awards	W A G r a n t F a i r
Outstanding at December 30, 2017	395	\$ 23.77	1,063	\$
Granted	222	33.53	200	
Vested	(172)	24.28	(151)	
Canceled/Forfeited	(62)	26.76	(51)	
Outstanding at December 29, 2018	383	\$ 28.66	1,061	\$

[Assumptions Used to Calculate Fair Value of Performance-based Stock Awards Using Monte Carlo Simulation Model](#)

The assumptions used to calculate the fair value of the 2018 and 2017 performance-based stock awards with condition, using the Monte Carlo simulation model, were as follows:

Valuation Assumptions	2018	2017	
Expected dividend yield	0%	0%	
Expected volatility	43%	46%	
Risk-free interest rate	2.6%	1.5%	

[Repurchase of Common Stock](#) Repurchases of our common stock were as follows (in thousands):

	2018	2017	2016
Amount repurchased under Board-approved share repurchase program	\$ 279,101	\$ 150,000	\$ 200,000
Amount repurchased in connection with the vesting of employee restricted stock grants	3,344	5,245	
Total amount repurchased	\$ 282,445	\$ 155,245	\$ 200,000

[Net Income per Common Share](#)

The components of basic and diluted net income per share were as follows (in thousands, except per share amounts):

	2018	2017	2016
Net income	\$ 69,539	\$ 65,077	\$ 65,077
<b>Reconciliation of weighted-average shares outstanding:</b>			
Basic weighted-average shares outstanding	35,256	41,212	41,212
Dilutive effect of stock-based awards	909	873	
Diluted weighted-average shares outstanding	36,165	42,085	41,212
Net income per share – basic	\$ 1.97	\$ 1.58	\$ 1.58
Net income per share – diluted	\$ 1.92	\$ 1.55	\$ 1.55

**Revenue Recognition  
(Tables)**

[Revenue Recognition \[Abstract\]](#)  
[Schedule of Deferred Contract Liabilities  
and Deferred Contract Assets](#)

**12 Months Ended  
Dec. 29, 2018**

**(9) Revenue Recognition**

Deferred contract liabilities and deferred contract assets are included in our consolidated balance sheets as follows (in thousands):

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred Contract Liabilities included in:		
Other current liabilities	\$ 32,395	\$ 29,534
Other non-current liabilities	42,194	43,159
	\$ 74,589	\$ 72,693

	<b>December 29, 2018</b>	<b>December 30, 2017</b>
Deferred Contract Assets included in:		
Other current assets	\$ 20,553	\$ 17,208
Other non-current assets	29,456	25,772
	\$ 50,009	\$ 42,980

[Disaggregation of Revenue](#)

Net sales from each of our channels was as follows (in thousands):

	<b>2018</b>	<b>2017</b>
Retail	\$ 1,401,991	\$ 1,324,690
Online and phone	115,831	101,145
Company-Controlled channel	1,517,822	1,425,835
Wholesale/Other channel	13,753	18,662
Total	\$ 1,531,575	\$ 1,444,497

[Schedule of Sales Return Liability](#)

The activity in the sales returns liability account for 2018 and 2017 was as follows (in thousands):

	<b>2018</b>	<b>2017</b>
Balance at beginning of year	\$ 19,270	\$ 15,222
Additions that reduce net sales	79,326	77,226
Deduction from reserves	(78,689)	(73,178)
Balance at end of period	\$ 19,907	\$ 19,270

**Other (Expense) Income, Net  
(Tables)**

**12 Months Ended  
Dec. 29, 2018**

**Other Income And Expenses [Abstract]**

**Schedule of Other (Expense) Income, Net**

Other expense, net, consisted of the following (in thousands):

	<u>2018</u>	<u>2017</u>	<u>2016</u>
Interest expense	\$ 5,911	\$ 975	\$ 811
Interest income	(4)	(98)	(94)
Other expense, net	<u>\$ 5,907</u>	<u>\$ 877</u>	<u>\$ 717</u>

## Income Taxes (Tables)

**12 Months Ended  
Dec. 29, 2018**

### [Income Tax Disclosure \[Abstract\]](#)

#### [Summary of Income Tax Expense \(Benefit\)](#)

Income tax expense consisted of the following (in thousands):

	2018	2017	2016
<b>Current:</b>			
Federal	\$ 12,483	\$ 19,153	\$ 21,634
State	2,871	4,046	5,289
	<u>15,354</u>	<u>23,199</u>	<u>26,923</u>
<b>Deferred:</b>			
Federal	708	2,734	(105)
State	920	28	(2,302)
	<u>1,628</u>	<u>2,762</u>	<u>(2,407)</u>
<b>Income tax expense</b>	<u>\$ 16,982</u>	<u>\$ 25,961</u>	<u>\$ 24,516</u>

#### [Reconciliation of Income Tax Expense \(Benefit\) at the Statutory Federal Rate](#)

The following table provides a reconciliation between the statutory federal income tax rate and our effective income tax rate:

	2018	2017	2016
Statutory federal income tax	21.0%	35.0%	35.0%
State income taxes, net of federal benefit	3.3	2.5	2.6
Manufacturing deduction	—	(3.5)	(3.3)
Tax Cuts and Jobs Act effects	(3.9)	(1.9)	—
Changes in unrecognized tax benefits	1.2	(0.6)	1.2
R&D tax credits	(2.0)	(1.1)	(1.4)
Other	—	(1.9)	(1.8)
<b>Effective income tax rate</b>	<u>19.6%</u>	<u>28.5%</u>	<u>32.3%</u>

#### [Summary of Deferred Income Taxes](#)

The tax effects of temporary differences that give rise to deferred income taxes were as follows (in thousands):

	2018	2017
<b>Deferred tax assets:</b>		
Stock-based compensation	\$ 7,633	\$ 6,940
Deferred rent and lease incentives	6,994	6,007
Warranty and returns liabilities	6,857	6,602
Net operating loss carryforwards and credits	2,324	3,240
Compensation and benefits	3,699	3,315
Other	3,406	3,321
<b>Total gross deferred tax assets</b>	<u>30,913</u>	<u>29,425</u>
Valuation allowance	(615)	(615)
<b>Total gross deferred tax assets after valuation allowance</b>	<u>30,298</u>	<u>28,810</u>
<b>Deferred tax liabilities:</b>		
Property and equipment	29,912	21,475
Deferred revenue	1,749	723
Other	3,459	3,987
<b>Total gross deferred tax liabilities</b>	<u>35,120</u>	<u>26,185</u>
<b>Net deferred tax (liabilities) assets</b>	<u>\$ (4,822)</u>	<u>\$ 2,625</u>

#### [Summary of Reconciliations Unrecognized Tax Benefits](#)

Reconciliations of the beginning and ending amounts of unrecognized tax benefits were as follows (in thousands):



	<b>Federal and State Tax</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Beginning balance	\$ 2,839	\$ 3,460	\$ 2,077
Increases related to current-year tax positions	778	330	326
Increases related to prior-year tax positions	595	87	1,594
Decreases related to prior-year tax positions	—	(1,038)	—
Lapse of statute of limitations	(333)	—	(333)
Settlements with taxing authorities	(13)	—	(204)
Ending balance	<u>\$ 3,866</u>	<u>\$ 2,839</u>	<u>\$ 3,460</u>

**Summary of Quarterly  
Financial Data (unaudited)  
(Tables)**

**12 Months Ended**

**Dec. 29, 2018**

**[Summary Of Quarterly  
Financial Data Unaudited](#)**

**[\[Abstract\]](#)**

**[Summary of Quarterly  
Financial Data \(unaudited\)](#)**

The following is a condensed summary of our quarterly results (in thousands, except net income (loss) per share amounts). Quarterly diluted net income (loss) per share amounts may not total to the respective annual amount due to changes in weighted-average shares outstanding during the year.

	<b>2018</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales		\$388,633	\$316,338	\$414,779	\$411,825	\$1,531,575
Gross profit		237,477	188,888	250,517	251,079	927,961
Operating income		26,901	2,086	25,321	38,120	92,428
Net income		20,548	3,744	18,257	26,990	69,539
Net income per share – diluted		\$ 0.52	\$ 0.10	\$ 0.52	\$ 0.81	\$ 1.92

	<b>2017</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Fiscal Year</b>
Net sales		\$393,899	\$284,673	\$402,646	\$363,279	\$1,444,497
Gross profit		246,459	176,619	253,465	220,804	897,347
Operating income (loss)		35,828	(3,061)	39,029	20,119	91,915
Net income (loss)		24,461	(778)	25,603	15,791	65,077
Net income (loss) per share – diluted		\$ 0.56	\$ (0.02)	\$ 0.62	\$ 0.39	\$ 1.55

**Business and Summary of  
Significant Accounting  
Policies - Fiscal Year -  
Additional Information  
(Details)**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**[Accounting Policies \[Abstract\]](#)**

**[Fiscal Years](#)**

364 days

364 days

364 days

**Business and Summary of  
Significant Accounting  
Policies - Cash and Cash  
Equivalents - Additional  
Information (Details) - USD  
(\$)  
\$ in Millions**

**Dec. 29, 2018 Dec. 30, 2017**

[Accounts Payable](#)

[Cash and Cash Equivalents \[Line Items\]](#)

[Book Overdrafts](#)

\$ 38

\$ 30

**Business and Summary of  
Significant Accounting  
Policies Property and  
Equipment - Estimated  
Useful Lives of Property and  
Equipment (Details)**

**12 Months Ended**

**Dec. 29, 2018**

[Leasehold Improvements | Minimum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 5 years

[Leasehold Improvements | Maximum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 15 years

[Furniture and Fixtures | Minimum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 3 years

[Furniture and Fixtures | Maximum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 15 years

[Production Machinery | Minimum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 3 years

[Production Machinery | Maximum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 7 years

[Computer Equipment and Software | Minimum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 3 years

[Computer Equipment and Software | Maximum](#)

[Property and equipment \[Line Items\]](#)

[Property, Plant and Equipment, Useful Life](#) 12 years

**Business and Summary of  
Significant Accounting  
Policies - Definite-Lived  
Intangible Assets -  
Additional Information  
(Details)**

**12 Months Ended**

**Dec. 29, 2018**

Minimum

**Definite-Lived Intangible Assets [Line Items]**

Finite-Lived Intangible Asset, Useful Life 8 years

Maximum

**Definite-Lived Intangible Assets [Line Items]**

Finite-Lived Intangible Asset, Useful Life 10 years

**Business and Summary of  
Significant Accounting  
Policies - Schedule of  
Product Warranty Liability  
(Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended**

	<b>Dec. 29, 2018</b>	<b>Dec. 30, 2017</b>	<b>Dec. 31, 2016</b>
<b><u>Movement in Standard Product Warranty Accrual [Roll Forward]</u></b>			
<u>Balance at beginning of period</u>	\$ 9,320	\$ 8,633	\$ 10,028
<u>Additions charged to costs and expenses for current-year sales</u>	12,385	12,214	9,034
<u>Deductions from reserves</u>	(11,743)	(10,752)	(10,016)
<u>Changes in liability for pre-existing warranties during the current year, including expirations</u>	427	(775)	(413)
<u>Balance at end of period</u>	\$ 10,389	\$ 9,320	\$ 8,633

**Business and Summary of 12 Months Ended  
Significant Accounting  
Policies - Dividends -  
Additional Information Dec. 29, 2018  
(Details)**

[Accounting Policies \[Abstract\]](#)

[Leverage Ratio](#) 375.00%



**Business and Summary of  
Significant Accounting  
Policies - Operating Leases - Dec. 29, 2018  
Additional Information  
(Details)**

Minimum

Property and equipment [Line Items]

Lessee, Operating Lease, Term of Contract 5 years

Maximum

Property and equipment [Line Items]

Lessee, Operating Lease, Term of Contract 10 years

**Business and Summary of  
Significant Accounting  
Policies - Operating Leases -  
Summary of Deferred Rent  
(Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Operating Leased Assets [Line Items]**

Deferred rent liabilities \$ 12,860 \$ 11,002

Other Current Liabilities

**Operating Leased Assets [Line Items]**

Deferred rent liabilities, Current 1,408 1,447

Other Non-current Liabilities

**Operating Leased Assets [Line Items]**

Deferred rent liabilities, Non-current \$ 11,452 \$ 9,555

**Business and Summary of  
Significant Accounting  
Policies - Operating Leases -  
Summary of Deferred Lease  
Incentives (Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Operating Leased Assets [Line Items]**

Deferred lease incentives \$ 14,772 \$ 12,472

Other Current Liabilities

**Operating Leased Assets [Line Items]**

Deferred lease incentives, Current 2,842 2,784

Other Non-current Liabilities

**Operating Leased Assets [Line Items]**

Deferred lease incentives, Non-current \$ 11,930 \$ 9,688

**Business and Summary of  
Significant Accounting  
Policies - Advertising Costs -  
Additional Information**      **12 Months Ended**  
**(Details) - USD (\$)**      **Dec. 29, 2018** **Dec. 30, 2017** **Dec. 31, 2016**  
**\$ in Millions**

<a href="#">Advertising Expense</a>	\$ 210	\$ 194	\$ 190
<a href="#">Prepaid Expenses</a>			
<a href="#">Prepaid Advertising</a>	\$ 2	\$ 2	

**Business and Summary of  
Significant Accounting  
Policies - Insurance -  
Additional Information  
(Details) - USD (\$)  
\$ in Millions**

**Dec. 29, 2018 Dec. 30, 2017**

<a href="#">Self-Insurance Liability</a>	\$ 8	\$ 9
<a href="#">Compensation and Benefits</a>		
<a href="#">Self-Insurance Liability, Current</a>	5	6
<a href="#">Other Non-current Liabilities</a>		
<a href="#">Self-Insurance Liability, Noncurrent</a>	\$ 3	\$ 3

**Business and Summary of  
Significant Accounting  
Policies - Stock-Based  
Compensation - Additional  
Information (Details) -  
shares  
shares in Millions**

**12 Months Ended**

**Dec. 29,    Dec. 30,    Dec. 31,  
2018        2017        2016**

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Number of Shares Available for Grant 2.3  
Employee Stock Option

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Award Option Vesting Period 3 years  
Award Expiration Period 10 years

Performance-Based Stock Award [Member] | Minimum | 2018 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 0.00%  
Performance-Based Stock Award [Member] | Minimum | 2017 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 0.00%  
Performance-Based Stock Award [Member] | Minimum | 2016 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 0.00%  
Performance-Based Stock Award [Member] | Maximum | 2018 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 200.00%  
Performance-Based Stock Award [Member] | Maximum | 2017 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 200.00%  
Performance-Based Stock Award [Member] | Maximum | 2016 Performance  
Stock Award Grant [Member]

**Share Based Compensation Arrangement By Share Based Payment Award  
[Line Items]**

Stock Awards - Shares Awarded - Increase (Decrease), Percentage 200.00%

**Business and Summary of  
Significant Accounting  
Policies - New Accounting  
Pronouncements -  
Additional Information  
(Details)  
\$ in Millions**

**Dec. 29, 2018  
USD (\$)**

**Accounting Policies [Abstract]**

Operating Lease, Right-of-Use Asset \$ 300

Operating Lease, Liability \$ 300

**Fair Value Measurements**  
**(Details) - Recurring - Level**  
**1 - USD (\$)**  
**\$ in Millions**

**Dec. 29,**      **Dec. 30,**  
**2018**              **2017**

[Other Non-current Assets | Available-for-sale Securities](#)

**[Fair Value, Assets and Liabilities Measured on Recurring and Nonrecurring Basis](#)**

**[\[Line Items\]](#)**

<a href="#">Marketable securities assets funding the deferred compensation plan</a>	\$ 6	\$ 4
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[Other Noncurrent Liabilities](#)

**[Fair Value, Assets and Liabilities Measured on Recurring and Nonrecurring Basis](#)**

**[\[Line Items\]](#)**

<a href="#">Deferred compensation plan liability</a>	\$ 6	\$ 4
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**Inventories - Schedule of  
Inventories (Details) - USD**  
(**\$**)  
**\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**[Inventory Disclosure \[Abstract\]](#)**

<u><a href="#">Raw materials</a></u>	\$ 4,549	\$ 6,577
<u><a href="#">Work in progress</a></u>	3	170
<u><a href="#">Finished goods</a></u>	80,330	77,551
<u><a href="#">Inventories</a></u>	\$ 84,882	\$ 84,298

**Inventories - Schedule of  
Finished Goods Inventories  
(Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, Dec. 30,  
2018 2017**

**Inventory Disclosure [Abstract]**

<u>Finished beds, including retail display beds and deliveries in-transit to those customers who have utilized home delivery services</u>	\$ 25,313	\$ 24,825
<u>Finished components that were ready for assembly for the completion of beds</u>	38,665	34,709
<u>Retail accessories</u>	16,352	18,017
<u>Finished Goods Inventory</u>	\$ 80,330	\$ 77,551

**Property and Equipment  
(Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Property and equipment [Line Items]**

Less: Accumulated depreciation and amortization \$ (263,975) \$ (220,532)

Property and equipment, net 205,631 208,646

Land

**Property and equipment [Line Items]**

Property and equipment, gross 1,999 1,999

Leasehold Improvements

**Property and equipment [Line Items]**

Property and equipment, gross 109,722 102,495

Furniture and Fixtures

**Property and equipment [Line Items]**

Property and equipment, gross 108,841 94,265

Production machinery, computer equipment and software

**Property and equipment [Line Items]**

Property and equipment, gross 238,659 224,758

Construction in Progress

**Property and equipment [Line Items]**

Property and equipment, gross \$ 10,385 \$ 5,661

**Goodwill and Intangible  
Assets, Net - Additional  
Information (Details) - USD  
(\$)  
\$ in Millions**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**Goodwill And Intangible Assets [Line Items]**

<u>Goodwill</u>	\$ 64.0	\$ 64.0	
<u>Amortization expense definite-lived intangible assets</u>	2.0	3.0	\$ 2.0
<u>Trade Names</u>			
<b><u>Goodwill And Intangible Assets [Line Items]</u></b>			
<u>Indefinite-lived trade name/trademarks</u>	\$ 1.4	\$ 1.4	

**Goodwill and Intangible  
Assets, Net - Schedule of  
Gross Carrying Amount and  
Related Accumulated  
Amortization of Our  
Definite-Lived Intangible  
Assets (Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Definite-Lived Intangible Assets [Line Items]**

<u>Gross Carrying Amount</u>	\$ 18,952	\$ 18,952
<u>Accumulated Amortization</u>	8,987	6,806

Developed Technologies

**Definite-Lived Intangible Assets [Line Items]**

<u>Gross Carrying Amount</u>	18,851	18,851
<u>Accumulated Amortization</u>	8,886	6,705

Trade names/trademarks

**Definite-Lived Intangible Assets [Line Items]**

<u>Gross Carrying Amount</u>	101	101
<u>Accumulated Amortization</u>	\$ 101	\$ 101

**Goodwill and Intangible  
Assets, Net - Schedule of  
Annual Amortization for  
Definite-Lived Intangible  
Assets (Details)  
\$ in Thousands**

**Dec. 29, 2018  
USD (\$)**

**Goodwill And Intangible Assets Disclosure [Abstract]**

<u>2019</u>	\$ 2,180
<u>2020</u>	2,213
<u>2021</u>	2,181
<u>2022</u>	2,181
<u>2023</u>	1,210
<u>Total future amortization for definite-lived intangible assets</u>	\$ 9,965

**Leases - Schedule of Rent  
Expense (Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

Facility Rents

Operating Leased Assets [Line Items]

<u>Minimum rents</u>	\$ 71,851	\$ 66,239	\$ 59,002
<u>Contingent rents</u>	1,847	2,845	3,099
<u>Total</u>	73,698	69,084	62,101

Equipment Rents

Operating Leased Assets [Line Items]

<u>Total</u>	\$ 5,692	\$ 4,935	\$ 5,316
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**Leases - Schedule of  
Aggregate Minimum Rental  
Commitments Under  
Operating Leases for  
Subsequent Years (Details)  
\$ in Thousands**

**Dec. 29, 2018  
USD (\$)**

**Operating Leases, Future Minimum Payments Due [Abstract]**

<u>2019</u>	\$ 78,337
<u>2020</u>	73,331
<u>2021</u>	66,491
<u>2022</u>	59,515
<u>2023</u>	51,076
<u>Thereafter</u>	149,318
<u>Total future minimum lease payments</u>	\$ 478,068



**Leases - Additional  
Information (Details)  
\$ in Millions**

**Dec. 29, 2018  
USD (\$)**

[Leases \[Abstract\]](#)

[Capital lease commitments](#)

\$ 0.9

**Credit Agreement -  
Additional Information  
(Details) - USD (\$)  
\$ in Millions**

**Feb. 28, 2019 Dec. 29, 2018**

February 2018 Amendment

**Line Of Credit Facility [Line Items]**

Current borrowing capacity \$ 300

February 2019 Amendment | Subsequent Event

**Line Of Credit Facility [Line Items]**

Current borrowing capacity \$ 450

Maximum Borrowing Capacity \$ 600

Expiration Date Feb. 29, 2024

**Credit Agreement - Schedule  
of Borrowings Under Credit  
Facility (Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Line Of Credit Facility [Line Items]**

Borrowings under revolving credit facility \$ 199,600 \$ 24,500

February 2018 Amendment

**Line Of Credit Facility [Line Items]**

Borrowings under revolving credit facility 199,600

Outstanding letters of credit 3,497

Additional borrowing capacity \$ 96,903

Weighted-average interest rate 4.20%

February 2017 Amendment

**Line Of Credit Facility [Line Items]**

Borrowings under revolving credit facility 24,500

Outstanding letters of credit 3,150

Additional borrowing capacity \$ 125,500

Weighted-average interest rate 3.10%

**Shareholders' Equity -  
Stock-based Compensation  
Expense (Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29,    Dec. 30,    Dec. 31,  
2018        2017        2016**

**Share-based Compensation Arrangement by Share-based Payment**

**Award [Line Items]**

<u>Total stock-based compensation expense</u>	\$ 11,412 <sup>[1]</sup>	\$ 15,763	\$ 11,961
<u>Income tax benefit</u>	2,750	5,249	3,947
<u>Total stock-based compensation expense, net of tax</u>	8,662	10,514	8,014

Employee Stock Option

**Share-based Compensation Arrangement by Share-based Payment**

**Award [Line Items]**

<u>Total stock-based compensation expense</u>	2,482	2,344	2,281
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Time-based, Performance-based and Market-based Stock Awards

**Share-based Compensation Arrangement by Share-based Payment**

**Award [Line Items]**

<u>Total stock-based compensation expense</u>	\$ 8,930	\$ 13,419	\$ 9,680
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[1] Decrease in 2018 stock-based compensation expense reflects the cumulative impact of the change in the expected achievements of certain performance targets.

**Shareholders' Equity -  
Summary of Stock Option  
Activity (Details) - Employee  
Stock Option - USD (\$)  
\$/ shares in Units, shares in  
Thousands, \$ in Thousands**

**12 Months Ended**

**Dec. 29, 2018                  Dec. 30, 2017**

**Stock Options**

<u>Balance at December 30, 2017</u>	1,355	
<u>Granted</u>	170	
<u>Exercised</u>	(186)	
<u>Canceled/Forfeited</u>	(17)	
<u>Outstanding at December 29, 2018</u>	1,322	1,355
<u>Exercisable at December 29, 2018</u>	898	
<u>Vested and expected to vest at December 29, 2018</u>	1,295	
<b><u>Weighted- Average Exercise Price per Share</u></b>		
<u>Balance at December 30, 2017</u>	\$ 20.23	
<u>Granted</u>	33.72	
<u>Exercised</u>	14.96	
<u>Canceled/Forfeited</u>	26.43	
<u>Outstanding at December 29, 2018</u>	22.64	\$ 20.23
<u>Exercisable at December 29, 2018</u>	20.76	
<u>Vested and expected to vest at December 29, 2018</u>	\$ 22.55	
<b><u>Weighted- Average Remaining Contractual Term</u></b>		
<u>Weighted-Average Remaining Contractual Term (years) - Outstanding</u>	5 years 10 months 24 days	6 years 2 months 12 days
<u>Weighted-Average Remaining Contractual Term (years) - Exercisable</u>	4 years 9 months 18 days	
<u>Weighted-Average Remaining Contractual Term (years) - Vested and expected to vest</u>	5 years 10 months 24 days	
<b><u>Aggregate Intrinsic Value</u></b>		
<u>Aggregate Intrinsic Value - Outstanding</u>	[1] \$ 13,009	\$ 23,515
<u>Aggregate Intrinsic Value - Exercisable</u>	[1] 10,332	
<u>Aggregate Intrinsic Value - Vested and expected to vest</u>	[1] \$ 12,841	

[1] Aggregate intrinsic value includes only those options where the current share price is equal to or greater than the share price on the date of grant

**Shareholders' Equity - Other  
Information Pertaining to  
Options (Details) - Employee  
Stock Option - USD (\$)  
\$ / shares in Units, \$ in  
Thousands**

**12 Months Ended**

<b>Dec. 29, 2018</b>	<b>Dec. 30, 2017</b>	<b>Dec. 31, 2016</b>
--------------------------	--------------------------	--------------------------

**Share-based Compensation Arrangement by Share-based Payment  
Award [Line Items]**

<u>Weighted-average grant date fair value of stock options granted</u>	\$ 13.96	\$ 10.33	\$ 8.85
<u>Total intrinsic value (at exercise) of stock options exercised</u>	\$ 3,459	\$ 3,586	\$ 2,088

**Shareholders' Equity -  
Additional Information  
(Details) - USD (\$)  
\$ / shares in Units, \$ in  
Millions**

**12 Months Ended**

**Dec. 29, 2018**

**Dec. 30, Dec. 31, Jan. 02,  
2017 2016 2016**

Employee Stock Option

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Proceeds from stock options exercised</u>	\$ 2.8		
<u>Tax benefit from exercise of stock options</u>	0.8		
<u>Stock-based compensation expense related to non-vested awards</u>	\$ 2.7		
<u>Weighted average period to recognize remaining expense over</u>	1 year 8 months 12 days		
<u>Stock options, granted</u>	170,000		
<u>Weighted-average grant date fair value</u>	\$ 13.96	\$ 10.33	\$ 8.85
<u>Fair value assumptions, method used</u>	Black-Scholes-Merton option-pricing model.		

Market-Based Stock Option

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Stock options, granted</u>	0	30,500	0
<u>Weighted-average grant date fair value</u>		\$ 10.25	

Restricted Stock

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Stock-based compensation expense related to non-vested awards</u>	\$ 4.2		
<u>Weighted average period to recognize remaining expense over</u>	1 year 9 months 18 days		
<u>Performance-based stock award, granted</u>	222,000		
<u>Weighted-average grant date fair value</u>	\$ 33.53		

Performance-Based and Market-Based Stock Award

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Stock-based compensation expense related to non-vested awards</u>	\$ 12.4		
<u>Weighted average period to recognize remaining expense over</u>	1 year 10 months 24 days		
<u>Performance-based stock award, granted</u>	200,000		
<u>Weighted-average grant date fair value</u>	\$ 34.46		

Performance-Based Stock Award with a Market Condition

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Fair value assumptions, method used</u>	Monte Carlo simulation model	
<u>Performance-based stock award, granted</u>	5,027	270,895
<u>Weighted-average grant date fair value</u>	\$ 35.97	\$ 22.40



**Shareholders' Equity -  
Assumptions Used to  
Calculate Fair Value of  
Market-based Stock Options  
Granted Using Monte Carlo  
Simulation Model (Details) -  
Market-Based Stock Option**

**12 Months Ended**

**Dec. 31, 2016**

**Share-based Compensation Arrangement by Share-based Payment Award [Line Items]**

<u>Expected dividend yield</u>	0.00%
<u>Expected volatility</u>	50.00%
<u>Risk-free interest rate</u>	1.80%

**Shareholders' Equity -  
Assumptions Used to  
Calculate Fair Value of  
Options Granted Using  
Black-Scholes-Merton  
Option-Pricing Model  
(Details) - Employee Stock  
Option**

**12 Months Ended**

**Dec. 29,  
2018      Dec. 30, 2017      Dec. 31, 2016**

**Share-based Compensation Arrangement by Share-based  
Payment Award [Line Items]**

<u>Expected dividend yield</u>	0.00%	0.00%	0.00%
<u>Expected volatility</u>	43.00%	46.00%	50.00%
<u>Risk-free interest rate</u>	2.70%	2.00%	1.40%
<u>Expected term (in years)</u>	5 years	5 years 1 month 6 days	5 years 2 months 12 days

**Shareholders' Equity - Stock  
Award Activity (Details)  
shares in Thousands**

**12 Months Ended  
Dec. 29, 2018  
\$ / shares  
shares**

Restricted Stock

**Stock awards [Roll Forward]**

<u>Outstanding at December 30, 2017   shares</u>	395
<u>Granted   shares</u>	222
<u>Vested   shares</u>	(172)
<u>Canceled/Forfeited   shares</u>	(62)
<u>Outstanding at December 29, 2018   shares</u>	383
<b><u>Weighted-Average Grant Date Fair Value</u></b>	
<u>Outstanding at December 30, 2017   \$ / shares</u>	\$ 23.77
<u>Granted   \$ / shares</u>	33.53
<u>Vested   \$ / shares</u>	24.28
<u>Canceled/Forfeited   \$ / shares</u>	26.76
<u>Outstanding at December 29, 2018   \$ / shares</u>	\$ 28.66

Performance-Based and Market-Based Stock Award

**Stock awards [Roll Forward]**

<u>Outstanding at December 30, 2017   shares</u>	1,063
<u>Granted   shares</u>	200
<u>Vested   shares</u>	(151)
<u>Canceled/Forfeited   shares</u>	(51)
<u>Outstanding at December 29, 2018   shares</u>	1,061
<b><u>Weighted-Average Grant Date Fair Value</u></b>	
<u>Outstanding at December 30, 2017   \$ / shares</u>	\$ 23.41
<u>Granted   \$ / shares</u>	34.46
<u>Vested   \$ / shares</u>	33.34
<u>Canceled/Forfeited   \$ / shares</u>	27.44
<u>Outstanding at December 29, 2018   \$ / shares</u>	\$ 23.91

**Shareholders' Equity -  
Assumptions Used to  
Calculate Fair Value of  
Performance-based Stock  
Awards Using Monte Carlo  
Simulation Model (Details) -  
Performance-Based Stock  
Award with a Market  
Condition**

**12 Months Ended**

**Dec. 29,  
2018**      **Dec. 30,  
2017**

**Share-based Compensation Arrangement by Share-based Payment Award [Line  
Items]**

<u>Expected dividend yield</u>	0.00%	0.00%
<u>Expected volatility</u>	43.00%	46.00%
<u>Risk-free interest rate</u>	2.60%	1.50%

**Shareholders' Equity -  
Repurchase of Common  
Stock (Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended**

	<b>Dec. 29, 2018</b>	<b>Dec. 30, 2017</b>	<b>Dec. 31, 2016</b>
<b><u>Repurchase Of Common Stock [Abstract]</u></b>			
<u>Amount repurchased under Board-approved share repurchase program</u>	\$ 279,101	\$ 150,000	\$ 125,000
<u>Amount repurchased in connection with the vesting of employee restricted stock grants</u>	3,344	5,245	1,693
<u>Total amount repurchased</u>	282,445	\$ 155,245	\$ 126,693
<u>Remaining authorization stock purchase plan</u>	\$ 186,000		

Shareholders' Equity - Components of Basic and Diluted Net Income per Share (Details) - USD (\$) \$/ shares in Units, \$ in Thousands	3 Months Ended								12 Months Ended		
	Dec. 29, 2018	Sep. 29, 2018	Jun. 30, 2018	Mar. 31, 2018	Dec. 30, 2017	Sep. 30, 2017	Jul. 01, 2017	Apr. 01, 2017	Dec. 29, 2018	Dec. 30, 2017	Dec. 31, 2016
<u>Antidilutive Securities Excluded from Computation of Earnings Per Share [Line Items]</u>											
<u>Net income</u>	\$ 26,990	\$ 18,257	\$ 3,744	\$ 20,548	\$ 15,791	\$ 25,603	\$ (778)	\$ 24,461	\$ 69,539	\$ 65,077	\$ 51,417
<u>Basic weighted-average shares outstanding</u>									35,256,000	41,212,000	46,154,000
<u>Dilutive effect of stock-based awards</u>									909,000	873,000	748,000
<u>Diluted weighted-average shares outstanding</u>									36,165,000	42,085,000	46,902,000
<u>Net income per share – basic</u>									\$ 1.97	\$ 1.58	\$ 1.11
<u>Net income per share – diluted</u>	\$ 0.81	\$ 0.52	\$ 0.10	\$ 0.52	\$ 0.39	\$ 0.62	\$ (0.02)	\$ 0.56	\$ 1.92	\$ 1.55	\$ 1.10
<u>Employee Stock Option Antidilutive Securities Excluded from Computation of Earnings Per Share [Line Items]</u>											
<u>Antidilutive securities excluded from computation of earnings per share, amount</u>									200,000	400,000	600,000

**Revenue Recognition -  
Schedule of Deferred  
Contract Liabilities and  
Deferred Contract Assets  
(Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Disaggregation Of Revenue [Line Items]**

<u>Deferred Contract Liabilities</u>	\$ 74,589	\$ 72,693
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<u>Deferred Contract Assets</u>	50,009	42,980
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Other Current Liabilities

**Disaggregation Of Revenue [Line Items]**

<u>Deferred Contract Liabilities</u>	32,395	29,534
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Other Non-current Liabilities

**Disaggregation Of Revenue [Line Items]**

<u>Deferred Contract Liabilities</u>	42,194	43,159
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Other Current Assets

**Disaggregation Of Revenue [Line Items]**

<u>Deferred Contract Assets</u>	20,553	17,208
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Other Non-current Assets

**Disaggregation Of Revenue [Line Items]**

<u>Deferred Contract Assets</u>	\$ 29,456	\$ 25,772
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**Revenue Recognition -  
Additional Information**  
(Details) - USD (\$)  
\$ in Millions

**12 Months Ended**  
**Dec. 29, 2018 Dec. 30, 2017**

**Disaggregation Of Revenue [Line Items]**

Revenue recognized, included in beginning deferred contract liability balance \$ 30

Transferred at Point in Time

**Disaggregation Of Revenue [Line Items]**

Revenue from goods and services transferred to customers at a point in time 98.00% 98.00%



Revenue Recognition - Disaggregation of Revenue (Details) - USD (\$) \$ in Thousands	3 Months Ended								12 Months Ended		
	Dec. 29, 2018	Sep. 29, 2018	Jun. 30, 2018	Mar. 31, 2018	Dec. 30, 2017	Sep. 30, 2017	Jul. 01, 2017	Apr. 01, 2017	Dec. 29, 2018	Dec. 30, 2017	Dec. 31, 2016
<a href="#">Disaggregation Of Revenue</a> <a href="#">[Line Items]</a>											
<a href="#">Net Sales</a>	\$ 411,825	\$ 414,779	\$ 316,338	\$ 388,633	\$ 363,279	\$ 402,646	\$ 284,673	\$ 393,899	\$ 1,531,575	\$ 1,444,497	\$ 1,311,291
<a href="#">Retail</a>											
<a href="#">Disaggregation Of Revenue</a> <a href="#">[Line Items]</a>											
<a href="#">Net Sales</a>									1,401,991	1,324,690	
<a href="#">Online and Phone</a>											
<a href="#">Disaggregation Of Revenue</a> <a href="#">[Line Items]</a>											
<a href="#">Net Sales</a>									115,831	101,145	
<a href="#">Company-Controlled Channel</a>											
<a href="#">Disaggregation Of Revenue</a> <a href="#">[Line Items]</a>											
<a href="#">Net Sales</a>									1,517,822	1,425,835	
<a href="#">Wholesale/Other Channel</a>											
<a href="#">Disaggregation Of Revenue</a> <a href="#">[Line Items]</a>											
<a href="#">Net Sales</a>									\$ 13,753	\$ 18,662	

**Revenue Recognition -  
Schedule of Sales Return  
Liability (Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended  
Dec. 29, 2018 Dec. 30, 2017**

**Sales Return Liability [Roll Forward]**

<u>Balance at beginning of year</u>	\$ 19,270	\$ 15,222
<u>Additions that reduce net sales</u>	79,326	77,226
<u>Deduction from reserves</u>	(78,689)	(73,178)
<u>Balance at end of period</u>	\$ 19,907	\$ 19,270

**Profit Sharing and 401(k)  
Plan - Additional  
Information (Details) - USD  
( $\$$ )**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**$\$$  in Millions**

**[Profit Sharing And 401 K Plan \[Abstract\]](#)**

[Employee compensation deferral \(in hundredths\)](#) 50.00%

[Employer Contributions](#) \$ 5 \$ 5 \$ 5

**Other (Expense) Income, Net**  
**- Schedule of Other**  
**(Expense) Income, Net**  
**(Details) - USD (\$)**  
**\$ in Thousands**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**Other Income And Expenses [Abstract]**

<u>Interest expense</u>	\$ 5,911	\$ 975	\$ 811
<u>Interest income</u>	(4)	(98)	(94)
<u>Other expense, net</u>	\$ 5,907	\$ 877	\$ 717

**Income Taxes - Summary of** **12 Months Ended**  
**Income Tax Expense**  
**(Benefit) (Details) - USD (\$)** **Dec. 29, 2018** **Dec. 30, 2017** **Dec. 31, 2016**  
**\$ in Thousands**

**Current:**

<u>Federal</u>	\$ 12,483	\$ 19,153	\$ 21,634
<u>State</u>	2,871	4,046	5,289
<u>Current income tax expense</u>	15,354	23,199	26,923

**Deferred:**

<u>Federal</u>	708	2,734	(105)
<u>State</u>	920	28	(2,302)
<u>Deferred income tax expense</u>	1,628	2,762	(2,407)
<u>Income tax expense</u>	\$ 16,982	\$ 25,961	\$ 24,516

**Income Taxes -  
Reconciliation of Income Tax  
Expense (Benefit) at the  
Statutory Federal Rate  
(Details)**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**Income Tax Disclosure [Abstract]**

<u>Statutory federal income tax</u>	21.00%	35.00%	35.00%
<u>State income taxes, net of federal benefit</u>	3.30%	2.50%	2.60%
<u>Manufacturing deduction</u>	(0.00%)	(3.50%)	(3.30%)
<u>Tax Cuts and Jobs Act effects</u>	(3.90%)	(1.90%)	(0.00%)
<u>Changes in unrecognized tax benefits</u>	1.20%	(0.60%)	1.20%
<u>R&amp;D tax credits</u>	(2.00%)	(1.10%)	(1.40%)
<u>Other</u>	0.00%	(1.90%)	(1.80%)
<u>Effective income tax rate</u>	19.60%	28.50%	32.30%

**Income Taxes - Additional  
Information (Details) - USD  
(\$)  
\$ in Thousands**

**12 Months Ended**

	<b>Dec. 29, 2018</b>	<b>Dec. 30, 2017</b>	<b>Dec. 31, 2016</b>
<b><u>Income Taxes [Line Items]</u></b>			
<u>2017 TCJA provisional tax benefit</u>		\$ 1,700	
<u>Statutory federal income tax</u>	21.00%	35.00%	35.00%
<u>Tax Cuts And Jobs Act Of 2017 Measurement Period Adjustment Income</u>			
<u>Tax Expense Benefit</u>	\$ 2,900		
<u>Valuation allowance</u>	615	\$ 615	
<u>Unrecognized tax benefits that would impact effective tax rate</u>	4,000	\$ 3,000	
<u>Federal</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards</u>	\$ 1,000		
<u>Federal   Minimum</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards, expiration year</u>	2025		
<u>Federal   Maximum</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards, expiration year</u>	2027		
<u>State</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards</u>	\$ 6,000		
<u>State   Minimum</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards, expiration year</u>	2028		
<u>State   Maximum</u>			
<b><u>Income Taxes [Line Items]</u></b>			
<u>Operating loss carryforwards, expiration year</u>	2038		

**Income Taxes - Summary of  
Deferred Income Taxes  
(Details) - USD (\$)  
\$ in Thousands**

**Dec. 29, 2018 Dec. 30, 2017**

**Deferred Tax Assets [Abstract]**

<u>Stock-based compensation</u>	\$ 7,633	\$ 6,940
<u>Deferred rent and lease incentives</u>	6,994	6,007
<u>Warranty and returns liabilities</u>	6,857	6,602
<u>Net operating loss carryforwards and credits</u>	2,324	3,240
<u>Compensation and benefits</u>	3,699	3,315
<u>Other</u>	3,406	3,321
<u>Total gross deferred tax assets</u>	30,913	29,425
<u>Valuation allowance</u>	(615)	(615)
<u>Total gross deferred tax assets after valuation allowance</u>	30,298	28,810

**Deferred Tax Liabilities [Abstract]**

<u>Property and equipment</u>	29,912	21,475
<u>Deferred revenue</u>	1,749	723
<u>Other</u>	3,459	3,987
<u>Total gross deferred tax liabilities</u>	35,120	26,185
<u>Net deferred tax assets</u>		\$ 2,625
<u>Net deferred tax (liabilities)</u>	\$ (4,822)	



**Income Taxes - Summary of  
Reconciliations  
Unrecognized Tax Benefits  
(Details) - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29, Dec. 30, Dec. 31,  
2018 2017 2016**

**Reconciliation of Unrecognized Tax Benefits, Excluding Amounts Pertaining to  
Examined Tax Returns [Roll Forward]**

<u>Beginning balance</u>	\$ 2,839	\$ 3,460	\$ 2,077
<u>Increases related to current-year tax positions</u>	778	330	326
<u>Increases related to prior-year tax positions</u>	595	87	1,594
<u>Decreases related to prior-year tax positions</u>	0	(1,038)	0
<u>Lapse of statute of limitations</u>	(333)	0	(333)
<u>Settlements with taxing authorities</u>		0	
<u>Settlements with taxing authorities</u>	(13)		(204)
<u>Ending balance</u>	\$ 3,866	\$ 2,839	\$ 3,460

**Commitments and  
Contingencies (Details)  
\$ in Millions**

**12 Months Ended  
Dec. 29, 2018  
USD (\$)  
lease\_commitment**

**Purchase Commitment, Excluding Long-term Commitment [Line Items]**

Inventory Purchase Commitments \$ 32

Purchase Commitment | Future Retail Sites

**Purchase Commitment, Excluding Long-term Commitment [Line Items]**

Number of future retail store lease commitments | lease\_commitment 46

Future retail store leases, Rent Expense, Minimum Rentals \$ 62

Minimum | Purchase Commitment | Future Retail Sites

**Purchase Commitment, Excluding Long-term Commitment [Line Items]**

Future retail store lease commitments term 5 years

Maximum | Purchase Commitment | Future Retail Sites

**Purchase Commitment, Excluding Long-term Commitment [Line Items]**

Future retail store lease commitments term 10 years

**Summary of Quarterly  
Financial Data (unaudited)  
(Details) - USD (\$)  
\$ / shares in Units, \$ in  
Thousands**

**3 Months Ended**

**12 Months Ended**

	Dec. 29, 2018	Sep. 29, 2018	Jun. 30, 2018	Mar. 31, 2018	Dec. 30, 2017	Sep. 30, 2017	Jul. 01, 2017	Apr. 01, 2017	Dec. 29, 2018	Dec. 30, 2017	Dec. 31, 2016
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**Summary Of Quarterly  
Financial Data Unaudited  
[Abstract]**

<u>Net sales</u>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
	411,825	414,779	316,338	388,633	363,279	402,646	284,673	393,899	1,531,575	1,444,497	1,311,291
<u>Gross profit</u>	251,079	250,517	188,888	237,477	220,804	253,465	176,619	246,459	927,961	897,347	810,160
<u>Operating income (loss)</u>	38,120	25,321	2,086	26,901	20,119	39,029	(3,061)	35,828	92,428	91,915	76,650
<u>Net income (loss)</u>	\$	\$	\$ 3,744	\$	\$	\$	\$ (778)	\$	\$ 69,539	\$ 65,077	\$ 51,417
	26,990	18,257		20,548	15,791	25,603		24,461			
<u>Net income (loss) per share – diluted</u>	\$ 0.81	\$ 0.52	\$ 0.10	\$ 0.52	\$ 0.39	\$ 0.62	\$ (0.02)	\$ 0.56	\$ 1.92	\$ 1.55	\$ 1.10

**Schedule II - Valuation and  
Qualifying Accounts  
(Details) - Allowance for  
Doubtful Accounts - USD (\$)  
\$ in Thousands**

**12 Months Ended**

**Dec. 29, 2018 Dec. 30, 2017 Dec. 31, 2016**

**Movement in Valuation Allowances and Reserves [Roll Forward]**

<u>Balance at beginning of period</u>	\$ 714	\$ 884	\$ 1,039
<u>Additions charged to costs and expenses</u>	815	915	1,224
<u>Deductions from reserves</u>	(830)	(1,085)	(1,379)
<u>Balance at end of period</u>	\$ 699	\$ 714	\$ 884