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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **February 18, 2020 (February 11, 2020)**

OneWater Marine Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-39213**	**83-4330138**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

6275 Lanier Islands Parkway **Buford, Georgia**	**30518**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(678) 541-6300**

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

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

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

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

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

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Class A Common Stock, par value $0.01 per share	ONEW	The Nasdaq Global Market

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

Underwriting Agreement

As previously disclosed, on February 6, 2020, OneWater Marine Inc., a Delaware corporation (the "Company"), One Water Marine Holdings, LLC, a Delaware limited liability company ("OneWater LLC"), and One Water Assets & Operations, LLC, a Delaware limited liability company ("Opco") entered into an Underwriting Agreement (the "Underwriting Agreement") with Raymond James & Associates, Inc., Robert W. Baird & Co. Incorporated and SunTrust Robinson Humphrey, Inc. (the "Underwriters"), relating to the offer and sale of the Company's Class A common stock, par value $0.01 per share (the "Class A Common Stock").

On February 11, 2020, the Company completed its initial public offering (the "Offering") of 5,307,693 shares of the Company's Class A Common Stock, which includes the exercise in full of the Underwriters' option to purchase up to 692,308 additional shares of Class A Common Stock pursuant to the Underwriting Agreement, at a price to the public of $12.00 per share. The material terms of the Offering are described in the prospectus, dated February 6, 2020 (the "Prospectus"), filed by the Company with the Securities and Exchange Commission on February 10, 2020, which forms a part of the Company's Registration Statement on Form S-1 (File No. 333-232639) (the "Registration Statement").

A description of the Underwriting Agreement is contained in the Company's current report on Form 8-K, filed on February 11, 2020, and is qualified in its entirety by reference to the full text of the Underwriting Agreement, which is attached as Exhibit 1.1 thereto and is incorporated by reference herein.

Registration Rights Agreement

On February 11, 2020, in connection with the closing of the Offering, the Company entered into a registration rights agreement (the "Registration Rights Agreement") with certain stockholders identified on the signature pages thereto. Pursuant to the Registration Rights Agreement, the Company agreed to register the sale of shares of Class A Common Stock under certain circumstances, as described below.

At any time after the 180-day lock-up period described in the Prospectus and subject to the certain limitations, any Holder(s) (as defined in the Registration Rights Agreement) has the right to require the Company to prepare and file a registration statement registering the offer and sale of a certain number of Registrable Securities (as defined in the Registration Rights Agreement). Generally, the Company is required to file such registration statement within 45 business days of such Demand Notice (as defined in the Registration Rights Agreement); or, if the Company is not then eligible to register the Registrable Securities for resale on Form S-3, within 60 business days of such Demand Notice. Subject to certain exceptions, the Company will not be obligated to effect a demand registration within 90 business days after the closing of any underwritten offering of shares of Class A Common Stock requested by a Holder.

The Company is not obligated to file more than three demand registrations for each Holder or its affiliates. The Company is also not obligated to effect any demand registration, among other things, unless the Registrable Securities requested to be included therein have an aggregate value of at least $7.5 million or consist of all of the Registrable Securities then held by the Holder(s) delivering the notice (the "Initiating Holder(s)"), as applicable.

In addition, any Initiating Holder(s) then able to effectuate a demand registration has the right, upon written notice to the Company to require the Company, subject to certain limitations, to effect a distribution of any or all of its shares of Class A Common Stock by means of an underwritten offering; provided, that the Registrable Securities of such Initiating Holder(s) requested to be included in such underwritten offering have an aggregate value of at least equal to $7.5 million or consist of all of the Registrable Securities then held by such Initiating Holder as of such date.

Subject to certain exceptions, if at any time the Company proposes to register an offering of Class A Common Stock or conduct an underwritten offering, whether or not for the Company's own account, then the Company must notify each Holder of such proposal reasonably in advance of the anticipated submission or filing date (in the case of a registration) or the commencement of the offering (in the case of an underwritten offering), to allow such Initiating Holder(s) to include a specified number of their shares of Class A Common Stock in that registration statement or underwritten offering, as applicable.

These registration rights are subject to certain conditions and limitations, including the right of the underwriters to limit the number of shares to be included in a registration or offering and the Company's right to delay or withdraw a registration statement under certain circumstances. Subject to certain limitations, the Company will generally pay all registration expenses in connection with its obligations under the Registration Rights Agreement.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Registration Rights Agreement, which is attached as Exhibit 4.1 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Master Reorganization Agreement

On February 11, 2020, in connection with the Offering, the Company entered into a Master Reorganization Agreement (the "Master Reorganization Agreement") with, among others, OneWater LLC and Opco.

Subject to the terms and conditions set forth in the Master Reorganization Agreement, the parties thereto agreed to effect a series of restructuring transactions in connection with the Offering, as a result of which (a) one Legacy Owner (as defined below) holding a preferred distribution right in OneWater LLC received a cash payment of approximately $3.2 million in exchange for the surrender of the preferred distribution right; (b) OneWater LLC provided certain of the existing owners of OneWater LLC, including Goldman Sachs & Co. LLC and certain of its affiliates (collectively, "Goldman"), affiliates of The Beekman Group ("Beekman") and certain members of the Company's management team, the right to receive a tax distribution to cover taxable income arising as a result of OneWater LLC's operating income through the period ending on the date of the closing of the Offering; (c) OneWater LLC's limited liability company agreement was amended and restated to, among other things, provide for a single class of common units representing ownership interests in OneWater LLC (the "OneWater LLC Units"); the Company's certificate of incorporation and bylaws were amended and restated; and all of the existing membership interests in OneWater LLC held by the existing owners of OneWater LLC (the "Legacy Owners") were exchanged for OneWater LLC Units; (d) Goldman and Beekman received an aggregate of 2,148,806 OneWater LLC Units upon exercise of certain previously held warrants; (e) certain Legacy Owners contributed, directly or indirectly, their OneWater LLC Units to the Company in exchange for 780,213 shares of Class A Common Stock; (f) the Company issued 5,307,693 shares of Class A Common Stock (including the full exercise of the Underwriters' option to purchase additional shares of Class A Common Stock) to purchasers in this Offering in exchange for the proceeds of this Offering; (g) each Legacy Owner that continues to own OneWater LLC Units after the Offering (a "OneWater Unit Holder") received a number of shares of Class B common stock equal to the number of OneWater LLC Units held by such OneWater Unit Holder following this Offering; (h) the Company contributed the net proceeds of this Offering to OneWater LLC in exchange for an additional number of OneWater LLC Units such that the Company holds a total number of OneWater LLC Units equal to the number of shares of Class A Common Stock outstanding following the Offering; (i) OneWater LLC contributed cash to Opco in exchange for additional units therein and (j) Opco used such cash as well as cash on hand and borrowings under the Term and Revolver Credit Facility (as defined below), to redeem all of the outstanding preferred units in Opco held by Goldman and Beekman for cash.

The foregoing transactions were undertaken in reliance on an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(a)(2) thereof.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Master Reorganization Agreement, which is attached as Exhibit 2.1 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Tax Receivable Agreement

On February 11, 2020, in connection with the Offering, the Company entered into a tax receivable agreement (the "Tax Receivable Agreement") with certain of the Legacy Owners that will continue to be OneWater Unit Holders. The Tax Receivable Agreement generally provides for the payment by the Company of 85% of the net cash savings, if any, in U.S. federal, state and local income tax and franchise tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Offering as a result of (i) certain increases in tax basis that occur as a result of the Company's acquisition (or deemed acquisition for U.S. federal income tax purposes) of all or a portion of such OneWater Unit Holder's OneWater LLC Units pursuant to the exercise of the Redemption Right or the Call Right (each as defined in the Tax Receivable Agreement) or that relate to prior transfers of such OneWater LLC Units that will be available to the Company as a result of its acquisitions of those units and (ii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, any payments the Company makes under the Tax Receivable Agreement. The Company will retain the benefit of the remaining 15% of these net cash savings.

If the Company elects to terminate the Tax Receivable Agreement early (or it is terminated early due to the Company's failure to honor a material obligation thereunder or due to certain mergers, asset sales, other forms of business combinations or other changes of control), it would be required to make an immediate payment equal to the present value of the anticipated future payments to be made by it under the Tax Receivable Agreement (based upon certain assumptions and deemed events set forth in the Tax Receivable Agreement) and such payment is expected to be substantial.

The foregoing description and the description contained in the Prospectus are not complete and are qualified in their entirety by reference to the full text of the Tax Receivable Agreement, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Fourth Amended and Restated Limited Liability Company Agreement of One Water Marine Holdings, LLC

On February 11, 2020, in connection with the Offering, the members of OneWater LLC entered into the Fourth Amended and Restated Limited Liability Company Agreement of OneWater LLC (the "OneWater LLC Agreement"). The OneWater LLC Agreement, among other things, (i) converted all of the membership interests of OneWater LLC into a single class of units in OneWater LLC (referred to herein as the OneWater LLC Units) and (ii) admitted the Company as the sole managing member of OneWater LLC. In accordance with the terms of the OneWater LLC Agreement, the holders of OneWater LLC Units generally have the right (the "Redemption Right"), subject to certain limitations, to cause OneWater LLC to redeem all or at least a minimum portion of their OneWater LLC Units for, at OneWater LLC's election, (i) shares of Class A Common Stock at a redemption ratio of one share of Class A Common Stock for each OneWater LLC Unit redeemed, subject to conversion rate adjustments for stock splits, stock dividends and reclassifications or (ii) an equivalent amount of cash. Alternatively, upon the exercise of the Redemption Right, the Company (instead of OneWater LLC) will have the right (the "Call Right") to acquire each such OneWater LLC Unit directly from the exchanging OneWater Unit Holder for, at its election, (x) shares of Class A Common Stock at a redemption ratio of one share of Class A Common Stock for each OneWater LLC Unit acquired, subject to conversion rate adjustments for stock splits, stock dividends and reclassifications or (y) an equivalent amount of cash. In connection with any redemption of OneWater LLC Units pursuant to the Redemption Right or Call Right, the corresponding number of shares of the Company's Class B common stock will be cancelled.

The foregoing description of the OneWater LLC Agreement and the description contained in the Prospectus are not complete and are qualified in their entirety by reference to the full text of the OneWater LLC Agreement, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated in this Item 1.01 by reference.

Amended and Restated Credit and Guaranty Agreement

On February 11, 2020, in connection with the closing of the Offering, the Company entered into the Amended and Restated Credit and Guaranty Agreement (the "Term and Revolver Credit Facility"), by and among OneWater LLC, OpCo, Singleton Assets & Operations, LLC, a Georgia limited liability company, Legendary Assets & Operations, LLC, a Florida limited liability company, South Florida Assets & Operations, LLC, a Florida limited liability company, Midwest Assets & Operations, LLC, a Delaware limited liability company, Bosun's Assets & Operations, LLC, a Delaware limited liability company and South Shore Lake Erie Assets & Operations, LLC, a Delaware limited liability company (collectively, the "Companies"), certain other subsidiaries of the Company and OneWater LLC, as Guarantors, Goldman Sachs Specialty Lending Group, L.P., as administrative agent and collateral agent ("GSSLG") and the lenders party thereto from time to time. The Term and Revolver Credit Facility amends and restates the prior credit agreement, dated as of October 28, 2016, by and among OneWater LLC, the Companies, GSSLG and the lenders party thereto, and, among other things, extends the term of the agreement and provides for an increase in the amount of borrowings available. All capitalized words used but not defined herein have the meanings assigned in the Term and Revolver Credit Facility.

The Term and Revolver Credit Facility provides for loans up to an aggregate principal amount of up to $110.0 million, which consists of a $100.0 million senior secured multi-draw term loan facility, a $10.0 million senior secured revolving credit facility and an uncommitted and discretionary multi-draw term loan accordion feature of up to $20.0 million. The Term and Revolver Credit Facility has a five-year term with a maturity date of February 11, 2025.

The Term and Revolver Credit Facility will bear interest at a rate that is equal to, at the Company's option, (i) LIBOR for such interest period (subject to a 1.50% floor) plus an applicable margin of up to 7.00%, subject to step-downs to be determined based on certain financial leverage ratio measures, or (ii) a base rate (subject to a 4.50% floor) plus an applicable margin of up to 6.00%, subject to step-downs to be determined based on certain financial leverage ratio measures. Interest will be payable quarterly for base rate borrowings and up to quarterly for LIBOR borrowings.

For a twelve-month period after entry into the Term and Revolver Credit Facility, we may elect to repay interest on borrowings in kind, subject to a 2.00% premium on the interest rate for such amounts repayable in kind. The Term and Revolver Credit Facility is subject to certain conditions, including the maintenance of certain financial covenants related to minimum fixed charge coverage, maximum senior leverage ratio, minimum availability or liquidity at all times and maximum total leverage ratio. The Term and Revolver Credit Facility also contains various covenants and restrictive provisions that, among other things, limit the ability of the Company and its subsidiaries to (i) incur additional debt, guarantees or liens; (ii) consolidate, merge or transfer all or substantially all of its assets; (iii) make certain investments, acquisitions or other restricted payments; (iv) modify certain material agreements or organizational documents and (v) engage in certain types of transactions with affiliates or shareholders.

The Term and Revolver Credit Facility is collateralized by certain real, personal and mixed property (including Capital Stock) of the Company and its subsidiaries in which liens are granted under the Collateral Documents. The collateral under the Term and Revolver Credit Facility does not include inventory of the Company's subsidiaries financed under the Inventory Financing Facility (defined below). On February 11, 2020, in connection with the execution of the Term and Revolver Credit Facility, the Companies, OneWater LLC, the Company and certain subsidiaries of the Company from time to time party thereto also entered into the Amended and Restated Pledge and Security Agreement with GSSLG, pursuant to which the Company and its subsidiaries, as grantors thereunder, agreed to secure their obligations under the Credit Documents by certain of their assets (including Capital Stock).

A portion of the borrowings under the Term and Revolver Credit Facility was used, together with cash on hand and the net proceeds of the offering, to redeem certain preferred units in OpCo held by Goldman and Beekman. Goldman is an affiliate of GSSLG and is also a stockholder of the Company. For additional information, see "Certain Relationships and Related Party Transactions" in the Prospectus.

The foregoing description is qualified in its entirety by reference to the full text of the Term and Revolver Credit Facility, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Sixth Amended and Restated Inventory Financing Agreement

On February 11, 2020, in connection with the Offering, the Company and certain of its subsidiaries (the "Dealers") entered into the Sixth Amended and Restated Inventory Financing Agreement (the "Inventory Financing Facility") with Wells Fargo Commercial Distribution Finance, LLC as agent (the "Agent") for the lenders thereto from time to time and for itself as a lender, and such lenders. All capitalized words used but not defined herein have the meanings assigned in the Inventory Financing Facility.

The Inventory Financing Facility amends and restates the Fifth Amended and Restated Inventory Financing Agreement, dated as of November 26, 2019, to, among other things, permit certain payments and transactions contemplated by or in connection with the Offering, including payments under the Tax Receivable Agreement.

Under the Inventory Financing Facility, the lenders may extend loans to the Dealers from time to time to enable the Dealers to purchase new inventory from certain manufacturers and to purchase pre-owned inventory. The maximum amount of borrowing available under the Inventory Financing Facility is $392.5 million, and the Inventory Financing Facility has a termination date of September 28, 2021.

The interest rate for amounts outstanding under the Inventory Financing Facility is calculated using the one month LIBOR plus an applicable margin of 2.75% to 5.00% for new boats and for rental units and at the new boat rate plus 0.25% for pre-owned boats. The collateral for the Inventory Financing Facility consists primarily of our inventory that is financed through the Inventory Financing Facility and related assets, including accounts receivable, bank accounts, and proceeds of the foregoing, and excludes the collateral that underlies the Term and Revolver Credit Facility.

The Inventory Financing Facility contains certain affirmative covenants that, among other things, require the Dealers to keep all collateral at specified locations and to provide Agent with certain notices and information. The Inventory Financing Facility also limits the Dealers' abilities to take certain actions without the Agent's prior written consent, including disposing of or transferring collateral, undergoing a merger, consolidation or restructuring, completing acquisitions, entering into additional financing arrangements, incurring additional liens and making certain payments, such as dividends to holders of any Dealer's or guarantor's capital stock, redemptions of such stock, and management fees. Additionally, under the Inventory Financing Facility, the Company's Funded Debt to EBITDA Ratio must not exceed 2.00 to 1.00, and its Fixed Charge Coverage Ratio must not be less than 1.50 to 1.00.

The foregoing description is qualified in its entirety by reference to the full text of the Inventory Financing Facility, which is filed as Exhibit 10.4 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

2020 Omnibus Incentive Plan

The description of the OneWater Marine Inc. 2020 Omnibus Incentive Plan (the "OIP") provided below under Item 5.02 is incorporated in this Item 1.01 by reference. A copy of the OIP is attached as Exhibit 10.5 to this Current Report on Form 8-K and is incorporated in this Item 1.01 by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On February 11, 2020, in connection with the closing of the Offering, the Company completed the reorganization transactions contemplated by the Master Reorganization Agreement. The information set forth in Item 1.01 hereto under "Master Reorganization Agreement" is incorporated herein by reference.

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

The information set forth in Item 1.01 hereto under "Amended and Restated Credit and Guaranty Agreement" and "Sixth Amended and Restated Inventory Financing Agreement" is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 hereto under "Master Reorganization Agreement" is incorporated herein by reference.

Item 3.03 Material Modifications to Rights of Security Holders.

The information set forth in Item 1.01 hereto under "Registration Rights Agreement" and Item 5.03 hereto is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

2020 Omnibus Incentive Plan

On February 6, 2020, the board of directors of the Company (the "Board") adopted the OIP for the benefit of officers, employees and directors of the Company and its affiliates and certain other persons who provide services to the Company or its affiliates. The OIP provides for the grant of the following types of awards: (i) incentive stock options, except that incentive stock options may only be granted to a person who is an employee of the Company or its affiliate; (ii) stock options that do not qualify as incentive stock options; (iii) stock appreciation rights; (iv) restricted stock; (v) restricted stock units; (vi) dividend equivalents; (vii) other stock-based awards; (viii) cash awards; (ix) substitute awards and (x) performance awards. Subject to adjustment in accordance with the terms of the OIP, 10% of the fully diluted shares of the Company's outstanding Class A Common Stock, which is currently 1,385,799 shares of Class A Common Stock, has been reserved for issuance pursuant to awards under the OIP. Class A Common Stock subject to an award that expires or is cancelled, forfeited, exchanged, settled in cash or otherwise terminated without delivery of shares (including forfeiture of restricted stock awards) and shares withheld to satisfy exercise prices or tax withholding obligations will be available for delivery pursuant to other awards under the OIP. The OIP will be administered by the Board, except to the extent that the Board elects a committee of directors of the Board to administer the OIP.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the OIP, which is filed as Exhibit 10.5 to this Current Report on Form 8-K and incorporated in this Item 5.02 by reference.

Grant of Awards to Officers

In connection with the consummation of the Offering, the Company granted to its named executive officers equity-based awards under the OIP, which consist of (i) 17,333 restricted stock units subject to time-based vesting ("RSUs") for each of Messrs. Singleton and Aisquith, and (ii) 10,000 RSUs for Mr. Ezzell.

Employment Agreements

Singleton Employment Agreement

On February 11, 2020, in connection with the Offering, OneWater LLC entered into an employment agreement with Philip Austin Singleton, Jr. (the "Singleton Employment Agreement"), pursuant to which Mr. Singleton will continue to serve as the Chief Executive Officer of the Company from February 11, 2020 until February 11, 2024 unless sooner terminated as provided in the Singleton Employment Agreement.

Beginning on February 11, 2020 and continuing through September 30, 2022, Mr. Singleton will be paid a base salary of $670,000 per year, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Company's Compensation Committee of the Board. Mr. Singleton will be eligible to receive an annual incentive bonus each fiscal year which is a percentage or multiple of $520,000 to be determined based on certain performance criteria specified in the Singleton Employment Agreement. Pursuant to the Singleton Employment Agreement, Mr. Singleton will also receive annual equity grants, beginning with the Company's fiscal year that began on October 1, 2019.

Upon termination without cause or resignation for good reason, Mr. Singleton will continue to receive base salary for a period of two years and may receive an annual incentive bonus for two years following termination. No severance will be paid if Mr. Singleton is terminated for cause or resigns without good reason. Pursuant to the Singleton Employment Agreement, Mr. Singleton will not compete against the Company or solicit any of its employees for a period of two years following the date of his departure.

The foregoing description of the Singleton Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the Singleton Employment Agreement which is filed as Exhibit 10.6 to this Current Report on Form 8-K and is incorporated in this Item 5.02 by reference.

Aisquith Employment Agreement

On February 11, 2020, in connection with the Offering, OneWater LLC entered into an employment agreement with Anthony Aisquith (the "Aisquith Employment Agreement"), pursuant to which Mr. Aisquith will continue to serve as the President and Chief Operating Officer of the Company from February 11, 2020 until February 11, 2024 unless sooner terminated as provided in the Aisquith Employment Agreement.

Beginning on February 11, 2020 and continuing through September 30, 2022, Mr. Aisquith will be paid a base salary of $670,000 per year, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Company's Compensation Committee. Mr. Aisquith will be eligible to receive an annual incentive bonus each fiscal year which is a percentage or multiple of $520,000 to be determined based on certain performance criteria specified in the Aisquith Employment Agreement. Pursuant to the Aisquith Employment Agreement, Mr. Aisquith will also receive annual equity grants, beginning with the Company's fiscal year that began on October 1, 2019.

Upon termination without cause or resignation for good reason, Mr. Aisquith will continue to receive base salary for a period of two years and may receive an annual incentive bonus for two years following termination. No severance will be paid if Mr. Aisquith is terminated for cause or resigns without good reason. Pursuant to the Aisquith Employment Agreement, Mr. Aisquith will not compete against the Company or solicit any of its employees for a period of two years following the date of his departure.

The foregoing description of the Aisquith Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the Aisquith Employment Agreement which is filed as Exhibit 10.7 to this Current Report on Form 8-K and is incorporated in this Item 5.02 by reference.

Ezzell Employment Agreement

On February 11, 2020, in connection with the Offering, OneWater LLC amended its existing employment agreement with Jack Ezzell (as amended, the "Ezzell Employment Agreement"), pursuant to which Mr. Ezzell will continue to serve as the Chief Financial Officer of the Company from February 11, 2020 until February 11, 2024 unless sooner terminated as provided in the Ezzell Employment Agreement.

Beginning on February 11, 2020 and continuing through September 30, 2022, Mr. Ezzell will be paid a base salary of $400,000 per year, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Company's Compensation Committee. Mr. Ezzell will be eligible to receive an annual incentive bonus each fiscal year which is a percentage or multiple of $100,000 to be determined based on certain performance criteria specified in the Ezzell Employment Agreement. Pursuant to the Ezzell Employment Agreement, Mr. Ezzell will also receive annual equity grants, beginning with the Company's fiscal year that began on October 1, 2019.

Upon termination without cause or resignation for good reason, Mr. Ezzell will continue to receive base salary for a period of one year and may receive an annual incentive bonus for one year following termination. No severance will be paid if Mr. Ezzell is terminated for cause or resigns without good reason. Pursuant to the Ezzell Employment Agreement, Mr. Ezzell will not compete against the Company or solicit any of its employees for a period of one year following the date of his departure.

The foregoing description of the Ezzell Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the Ezzell Employment Agreement which is filed as Exhibit 10.8 to this Current Report on Form 8-K and is incorporated in this Item 5.02 by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year.

Amended and Restated Certificate of Incorporation

On February 11, 2020, prior to the closing of the Offering, the Company filed with the Secretary of State of the State of Delaware its Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"). A description of the Certificate of Incorporation is contained in the section of the Prospectus entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Certificate of Incorporation, which is attached as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

Amended and Restated Bylaws

On February 11, 2020, in connection with the Offering, the Company amended and restated its Bylaws (as amended and restated, the "Bylaws"). A description of the Bylaws is contained in the section of the Prospectus entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Bylaws, which are attached as Exhibit 3.2 to this Current Report on Form 8-K and are incorporated in this Item 5.03 by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
2.1¥	Master Reorganization Agreement, dated as of February 11, 2020, by and among One Water Marine Holdings, LLC, One Water Assets & Operations, LLC, OneWater Marine Inc. and the other parties thereto.
3.1	Amended and Restated Certificate of Incorporation of OneWater Marine Inc., as filed with the Secretary of State of the State of Delaware on February 11, 2020.
3.2	Amended and Restated Bylaws of OneWater Marine Inc., effective as of February 11, 2020.
4.1	Registration Rights Agreement, dated as of February 11, 2020, by and among OneWater Marine Inc. and the stockholders named therein.
10.1	Tax Receivable Agreement, dated as of February 11, 2020, by and among OneWater Marine Inc. and the TRA Holders and the Agents named therein.
10.2	Fourth Amended and Restated Limited Liability Company Agreement of One Water Marine Holdings, LLC, dated as of February 11, 2020.
10.3#¥	Amended and Restated Credit and Guaranty Agreement, dated as of February 11, 2020, by and among the Company, certain of its subsidiaries, the various lenders from time to time party thereto and Goldman Sachs Specialty Lending Group, L.P., as administrative agent, collateral agent, syndication agent, documentation agent and lead arranger.
10.4#¥	Sixth Amended and Restated Inventory Financing Agreement, dated as of February 11, 2020, by and among the Company, certain of its subsidiaries, the lenders party thereto from time to time and Wells Fargo Commercial Distribution Finance, LLC, in its individual capacity and as agent for the lenders and for itself.
10.5†	OneWater Marine Inc. 2020 Omnibus Incentive Plan.
10.6†	Employment Agreement, dated as of February 11, 2020, between One Water Marine Holdings, LLC and Philip A. Singleton, Jr.
10.7†	Employment Agreement, dated as of February 11, 2020, between One Water Marine Holdings, LLC and Anthony Aisquith.
10.8†	Employment Agreement, dated as of February 11, 2020, between One Water Marine Holdings, LLC and Jack Ezzell.

† Compensatory plan or arrangement.

Specific terms in this exhibit (indicated therein by asterisks) have been omitted because such terms are both not material and would likely cause competitive harm to the Company if publicly disclosed.

¥ Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission on request.

SIGNATURES

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

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

Dated: February 18, 2020

Exhibit 2.1

Execution Version

MASTER REORGANIZATION AGREEMENT

by and among

One Water Marine Holdings, LLC,

One Water Assets & Operations, LLC,

OneWater Marine Inc.

and the other parties hereto

February 11, 2020

TABLE OF CONTENTS

MASTER REORGANIZATION AGREEMENT

This Master Reorganization Agreement (this "Agreement"), dated as of February 11, 2020, is entered into by and among One Water Marine Holdings, LLC, a Delaware limited liability company ("OWMH"), One Water Assets & Operations, LLC, a Delaware limited liability company ("OWAO"), OneWater Marine Inc., a Delaware corporation ("PubCo"), and the Persons set forth on the signature pages hereto (each signatory to this Agreement, a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the Parties wish to facilitate an initial public offering (the "IPO") of PubCo, which will be effected utilizing an "Up-C" structure that entails, among other things, offering shares of Class A common stock, par value $0.01 per share, of PubCo (the "PubCo Class A Common Stock") to the public, pursuant to, and as more fully described in, a registration statement filed with the U.S. Securities and Exchange Commission, Registration No. 333-232639; and

WHEREAS, in connection with the IPO, the Parties desire to effect the restructurings and other transactions set forth in this Agreement, which will occur in the sequence and on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows, and further agree that the actions set forth in Article II will be deemed to take place in the sequence in which they appear in Article II except as otherwise expressly set forth herein.

ARTICLE I
DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. In addition to terms defined in the body of this Agreement, the following capitalized terms have the following meanings:

"Beekman" means OWM BIP Investor, LLC, a Delaware limited liability company.

"Beekman LLC Agreement" means the Limited Liability Company Agreement of Beekman, dated as of October 13, 2016, as amended, restated, amended and restated, modified or supplemented from time to time.

"Bosun's" means Bosun's Assets & Operations, LLC, a Delaware limited liability company.

"Bosun's LLC Agreement" means the First Amended and Restated Limited Liability Company Agreement of Bosun's, dated as of June 1, 2018, as amended, restated, amended and restated, modified or supplemented from time to time.

"Bosun's Marine" means Bosun's Marine, Inc., a Massachusetts corporation.

"Bosun's Marine Bylaws" means the Bylaws of Bosun's Marine, as currently in effect as of the date hereof, as amended, restated, amended and restated, modified or supplemented from time to time.

"Certificate of Incorporation of PubCo" means the Certificate of Incorporation of PubCo filed with the Secretary of State of the State of Delaware on April 3, 2019, as amended, restated, amended and restated, modified or supplemented from time to time.

"Common Blocker" means OWM TBG Corporation, a Delaware corporation.

"Common Blocker Bylaws" means the Bylaws of Common Blocker, dated as of October 13, 2016, as amended, restated, amended and restated, modified or supplemented from time to time.

"Equity Securities" means all equity securities or other equity interests authorized from time to time, and any other securities, options, interests, participations or other equivalents (however designated) of or in an entity, whether voting or nonvoting, including options, warrants, phantom equity, equity appreciation rights, convertible notes or debentures, equity purchase rights and all agreements, instruments, documents and securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

"Exchanging Owners" means any holders of New OWMH Common Units who elect to exchange such New OWMH Common Units for PubCo Class A Common Stock.

"Goldman" means Special Situations Investing Group II, LLC, a Delaware limited liability company.

"Goldman LLC Agreement" means the Limited Liability Company of Goldman, as currently in effect as of the date hereof, as amended, restated, amended and restated, modified or supplemented from time to time.

"Governmental Authority" means the United States of America and any foreign country, any state, commonwealth, territory or possession thereof and any political subdivision or quasi-governmental authority of any of the same, including any court, tribunal, department, commission, board, bureau, agency, county, municipality, province, parish or other instrumentality of any of the foregoing.

"Law" means any applicable federal, state, provincial, municipal, local or foreign statute, law, treaty, ordinance, regulation, rule, code, order or rule of common law.

"LMI Members" means Teresa D. Bos 2015 Trust; Pete Knowles, an individual; Peter H. Bos, III, an individual; Mitchell W. Legler, an individual; J. Clarke Legler, II, an individual; and Kenneth M. Kirschner, an individual.

"Mack" means Thomas W. Mack, an individual.

"Other One Water Owners" means any holders of New OWMH Common Units who do not elect to exchange such New OWMH Common Units for PubCo Class A Common Stock.

"OWAO Common Units" means the limited liability company interests in OWAO designated as "Common Units".

"OWAO LLC Agreement" means the First Amended and Restated Limited Liability Company Agreement of OWAO, dated as of October 28, 2016, as amended, restated, amended and restated, modified or supplemented from time to time.

"OWAO Preferred Units" means the limited liability company interests in OWAO designated as "Preferred Units".

"OWMH LLC Agreement" means the Third Amended and Restated Limited Liability Company Agreement of OWMH, dated as of March 1, 2017, as amended, restated, amended and restated, modified or supplemented from time to time.

"OWMH Membership Interests" means the limited liability company interests in OWMH.

"OWMH Warrants" means warrants to purchase New OWMH Common Units, represented by (i) that certain Warrant Agreement, dated as of October 28, 2016, by and between OWMH and Goldman, as may be amended, restated or otherwise modified from time to time in accordance with the terms thereof and (ii) that certain Warrant Agreement, dated as of October 28, 2016, by and between OWMH and Beekman, as may be amended, restated, or otherwise modified from time to time in accordance with the terms thereof.

"Person" means any natural person, limited liability company, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust or other organization, whether or not a legal entity, and any government or agency or political subdivision thereof.

"PubCo Bylaws" means the Bylaws of PubCo, dated as of April 3, 2019, as amended, restated, amended and restated, modified or supplemented from time to time.

"PubCo Class B Common Stock" means Class B common stock, par value $0.01 per share, of PubCo.

"PubCo Merger Sub" means OneWater Merger Sub Inc., a Delaware corporation.

"PubCo Merger Sub Bylaws" means the Bylaws of PubCo Merger Sub, dated as of February 10, 2020, as amended, restated, amended and restated, modified or supplemented from time to time.

"South Shore" means South Shore Lake Erie Assets & Operations, LLC, a Delaware limited liability company.

"South Shore LLC Agreement" means the First Amended and Restated Limited Liability Company Agreement of South Shore, dated as of August 1, 2017, as amended, restated, amended and restated, modified or supplemented from time to time.

"TRA Party" and collectively the "TRA Parties" means the Other One Water Owners, Goldman and Beekman.

Section 1.2. Effective Time; Closing Time. This Agreement is effective at 12:01 a.m. Eastern Time as of the date hereof. References to the "Closing Time" in this Agreement refer to 12:01 a.m. Eastern Time on the date of the initial closing of the IPO (the "Initial Closing", and such date, the "Initial Closing Date").

Section 1.3. Heading; References; Interpretation. Unless otherwise indicated to the contrary herein by the context or use thereof: (a) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the Schedules and Exhibits, and not to any particular section, subsection paragraph, subparagraph or clause contained in this Agreement; (b) words importing the singular shall also include the plural, and vice versa; (c) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation"; (d) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement; (e) the word "or" is disjunctive but not necessarily exclusive; (f) references to any Person include the successors and permitted assigns of that Person; (g) references from or through any date mean, unless otherwise specified, from and including or through and including, respectively; and (h) the words "dollar" or "$" shall mean U.S. dollars.

ARTICLE II
RESTRUCTURING ACTIONS AND RELATED MATTERS

Section 2.1. LMI Priority Distribution of OWMH and Tax Distribution. Effective as of the Closing Time:

(a) OWMH shall pay by wire transfer of immediately available funds to the accounts designated in writing by the LMI Members the amounts set forth on Schedule 2.1(a) in complete satisfaction of the LMI Priority Distribution (as such term is defined in the OWMH LLC Agreement).

(b) OWMH shall distribute to each unitholder of OWMH at such time the right to receive the tax distribution to which such unitholder would have been entitled, if any, if the board of managers of OWMH had caused OWMH to make such distributions at such time pursuant to Section 6.2 of the OWMH LLC Agreement (the "Pre-IPO Related Tax Distributions"). Notwithstanding anything set forth in Section 6.2 of the OWMH LLC Agreement, OWMH shall, to the extent permissible under Section 706 of the Internal Revenue Code of 1986, as amended (the "Code"), use an interim closing of the books as of the date of the IPO to determine the unitholders' items of income, gain, loss, deduction and credit for purposes of determining the Pre-IPO Related Tax Distributions, and OWMH may use such assumptions, estimated amounts and other information to determine the amount of the Pre-IPO Related Tax Distributions as OWMH deems necessary in its sole discretion. This Section 2.1(b) shall survive the closing of the IPO and the amendment and restatement of the OWMH LLC Agreement as set forth in Section 2.2.

Section 2.2. Fourth Amended and Restated LLC Agreement of OWMH.

(a) Immediately following the transactions described in Section 2.1, the OWMH LLC Agreement shall be, and hereby is, amended and restated substantially in the form attached hereto as Exhibit A (the "A&R OWMH LLC Agreement") in order to (a) recapitalize the OWMH Membership Interests to consist solely of a single class of common units, (b) provide for future redemptions of such common units (along with the cancellation of PubCo Class B Common Stock) by OWMH for PubCo Class A Common Stock (collectively, the "OWMH Recapitalization") and (c) effect the other provisions set forth therein. The aggregate number of common units of OWMH outstanding immediately after the OWMH Recapitalization and the ownership of such common units shall be as set forth on Exhibit A to Exhibit A.

(b) Immediately following the OWMH Recapitalization, each holder of common units of OWMH shall, and hereby does, exchange such common units held by such holder for the number of common units of OWMH set forth on Schedule 2.2(b) (the "OWMH Unit Exchange," and such exchanged common units, the "New OWMH Common Units"), which exchange shall be made proportionally among the holders of common units of OWMH based on the common units held by them immediately prior to the OWMH Unit Exchange.

Section 2.3. Amended and Restated Certificate of Incorporation and PubCo Bylaws. Immediately following the OWMH Unit Exchange, the Certificate of Incorporation of PubCo shall be, and hereby is, amended and restated substantially in the form attached hereto as Exhibit B, which shall be filed with the Delaware Secretary of State and become effective at 12:02 a.m. Eastern time on the Initial Closing Date, and the PubCo Bylaws shall be, and hereby are, amended and restated substantially in the form attached hereto as Exhibit C (the "A&R PubCo Bylaws").

Section 2.4. Exchange of Warrants. Immediately following the amendment and restatement of the Certificate of Incorporation and PubCo Bylaws, each holder of OWMH Warrants shall, and hereby does, exchange the OWMH Warrant held by such holder for the number of New OWMH Common Units set forth on Schedule 2.4 (the "Warrant Exchange").

Section 2.5. Distribution to Blocker Corporations. Immediately following the Warrant Exchange, Beekman shall, and hereby does, cause to be distributed New OWMH Common Units to Common Blocker in the amount set forth on Schedule 2.5 (the "Blocker Distribution").

Section 2.6. Common Blocker Mergers.

(a) Pursuant to, and in accordance with the terms and conditions of, the Agreement and Plan of Merger, substantially in the form attached hereto as Exhibit D, and the Certificate of Merger attached thereto as Exhibit A, which will be filed with the Delaware Secretary of State and become effective at 12:03 a.m. Eastern Time on the Initial Closing Date, PubCo Merger Sub shall, and hereby does, merge with and into Common Blocker, with Common Blocker surviving the merger (the "First Merger").

(b) Pursuant to, and in accordance with the terms and conditions of, the Agreement and Plan of Merger, substantially in the form attached hereto as Exhibit E, and the Certificate of Merger attached thereto as Exhibit A, which will be filed with the Delaware Secretary of State and become effective at 12:04 a.m. Eastern Time on the Initial Closing Date, Common Blocker shall, and hereby does, merge with and into PubCo, with PubCo surviving the merger (the "Second Merger"). Upon the consummation of the Second Merger, all shares of common stock in PubCo held by OWMH shall be, and hereby are, cancelled.

Section 2.7. Contribution Transactions.

(a) Immediately following the effective time of the Second Merger, (i) pursuant to Section 3.4(e) of the South Shore LLC Agreement, Mack shall, and hereby does, contribute all of his limited liability company interests in South Shore to OWMH and, in consideration therefor, OWMH shall, and hereby does, issue New OWMH Common Units to Mack, in the amounts set forth on Schedule 2.7(a), and (ii) pursuant to Section 3.4(d) of the Bosun's LLC Agreement, Bosun's Marine shall, and hereby does, contribute all of its limited liability company interests in Bosun's to OWMH and, in consideration therefor, OWMH shall, and hereby does, issue New OWMH Common Units to Bosun's Marine, in the amounts set forth on Schedule 2.7(a) (collectively, the "Mack and Bosun's Marine Contributions").

(b) Immediately following the Mack and Bosun's Marine Contributions, OWMH shall, and hereby does, contribute all of the limited liability company interests received by OWMH pursuant to the Mack and Bosun's Marine Contributions to OWAO and, in consideration therefor, OWAO shall, and hereby does, issue OWAO Common Units to OWMH, in the amounts set forth on Schedule 2.7(b) (the "OWMH Contribution").

(c) Immediately following the OWMH Contribution, the Exchanging Owners shall, and hereby do, contribute all of the New OWMH Common Units held by such Exchanging Owners to PubCo and, in consideration therefor, PubCo shall, and hereby does, issue a pro rata portion of shares of PubCo Class A Common Stock to each of the Exchanging Owners, in the amounts set forth on Schedule 2.7(c).

ARTICLE III
INITIAL PUBLIC OFFERING AND RELATED MATTERS

Section 3.1. Underwriting Agreement. Prior to the Closing Time, each of PubCo, OWMH and OWAO shall have entered into an underwriting agreement relating to the IPO (the "Underwriting Agreement"), with Goldman and Raymond James & Associates, Inc. as representatives of the several underwriters named therein, subject to the right of each party to elect to not enter into an Underwriting Agreement at it sole discretion.

Section 3.2. Registration Rights Agreement. Effective immediately following the transactions described in Article II, PubCo, Beekman and Goldman shall, and hereby do, enter into a Registration Rights Agreement substantially in the form attached hereto as Exhibit F (the "Registration Rights Agreement").

Section 3.3. Use of IPO Proceeds; Preferred Redemption.

(a) Immediately following the Initial Closing, PubCo shall, and hereby does, contribute cash in the amount set forth on Schedule 3.3(a) (the "IPO Cash Proceeds") to OWMH and, in consideration therefor, OWMH shall, and hereby does, issue the number of New OWMH Common Units set forth on Schedule 3.3(a) to PubCo (the "PubCo Contribution").

(b) Immediately following the PubCo Contribution, OWMH shall, and hereby does, contribute the IPO Cash Proceeds to OWAO and, in consideration therefor, OWAO shall, and hereby does, issue the number of OWAO Common Units set forth on Schedule 3.3(b) to OWMH (the "OWMH Cash Contribution").

(c) Immediately following the OWMH Cash Contribution, OWAO shall, and hereby does, redeem all of the OWAO Preferred Units held by Goldman and Beekman in exchange for (i) first, the IPO Cash Proceeds and (ii) second, the cash received from the lender set forth on Schedule 3.3(c), in the amount set forth on Schedule 3.3(c) (the "OWAO Preferred Redemption"). Immediately following the OWAO Preferred Redemption, the OWAO LLC Agreement shall be, and hereby is, amended and restated substantially in the form attached hereto as Exhibit G (the "A&R OWAO LLC Agreement" and such amendment and restatement the "OWAO Amendment and Restatement").

(d) Immediately following the OWAO Amendment and Restatement, PubCo shall, and hereby does, issue and contribute the number of shares of PubCo Class B Common Stock set forth on Schedule 3.3(d) to OWMH (the "PubCo Class B Contribution").

(e) Immediately following the PubCo Class B Contribution, OWMH shall, and hereby does, distribute the number of shares of PubCo Class B Common Stock set forth on Schedule 3.3(e) to the unitholders of OWMH (the "OWMH Class B Distribution").

Section 3.4. **Final OWMH Capitalization**. The aggregate number of New OWMH Common Units outstanding immediately after the OWMH Class B Distribution and the ownership of the New OWMH Common Units shall be as set forth on Schedule 3.4.

Section 3.5. **Tax Receivable Agreement**. Immediately following the OWMH Class B Distribution, PubCo and each TRA Party shall, and hereby do, enter into a Tax Receivable Agreement substantially in the form attached hereto as Exhibit H.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants, solely with respect to itself, to the other Parties as follows:

Section 4.1. **Organization**. Such Party, if an entity, is a corporation, limited partnership or limited liability company, as applicable, duly organized, validly existing and in good standing (where such concept exists) under the Laws of the jurisdiction of its organization, and has all requisite corporate, partnership or limited liability company, as applicable, power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to have such power, authority and governmental approvals would not have, individually or in the aggregate, a material adverse effect on such Party or on the consummation of the transactions contemplated hereby.

Section 4.2. **Authorization of Transactions**. If an entity, the execution, delivery and performance of this Agreement and the ancillary agreement contemplated hereby (the "Ancillary Agreements") to which such Party will be a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or equivalent action on behalf of such Party. No other proceeding or action on the part of such Party is necessary to approve and authorize such Party's execution and delivery of this Agreement or any other Ancillary Agreement to which such Party is or will be a party or the performance of such Party's obligations hereunder or thereunder, including the consummation of the transactions contemplated hereby and thereby. Such Party has duly and validly executed and delivered this Agreement and each of the other Ancillary Agreements to which such Party is or will be a party. Assuming the due authorization, execution and delivery by each of the other parties to this Agreement and the other Ancillary Agreements, this Agreement constitutes, and each of the other Ancillary Agreements to which such Party will be a party will when executed constitute, a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with their respective terms and conditions, except as enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting creditor's rights generally or under general principles of equity and limitations on availability of equitable remedies.

Section 4.3. **Consents and Approvals; No Violations**. None of the execution, delivery or performance of this Agreement by such Party, or compliance by it with any of the provisions hereof, do, nor will, (a) conflict with or result in any breach of any provision of the certificate of incorporation and bylaws, partnership agreement, limited liability company agreement or similar organizational documents of such Party, as applicable, (b) require any filing with, or the obtaining of any permit, authorization, consent or approval of, any Governmental Authority or (c) violate any Law applicable to such Party or any of its properties or assets, excluding from the foregoing clauses (b) and (c) such filings, permits, authorizations, consents, violations, breaches, defaults, rights, obligations or encumbrances which would not, individually or in the aggregate, have a material adverse effect on such Party or on the consummation of the transactions contemplated hereby.

Section 4.4. **Ownership of Interests**. Each Party contributing, issuing, delivering or exchanging Equity Securities hereby owns all such Equity Securities free and clear of all liens, encumbrances, security interest, equities, charges or claims. There are no preferential rights to purchase, rights of first refusal or similar rights that are applicable to the contribution, issuance, delivery or exchange of such interests in connection with the transactions contemplated hereby which have not been waived by the Person holding such rights.

Section 4.5. **Bankruptcy**. There are no bankruptcy, reorganization, receivership or other insolvency type proceedings pending, being contemplated by or, to such Party's knowledge, threatened against such Party.

Section 4.6. **Litigation**. No suit, action or litigation by any Person by or before any tribunal or Governmental Authority is pending or, to such Party's knowledge, threatened against such Party or its affiliates that would, individually or in the aggregate, reasonably be expected to have a material adverse effect upon the ability of such Party to perform its obligations hereunder or consummate the transactions contemplated hereby.

Section 4.7. **Independent Investigation**. Each Party has reviewed with, or has had the opportunity to consult with, their own independent legal and tax advisors regarding the transactions contemplated hereby, including the U.S. federal, state, local, foreign and other tax consequences of the transactions contemplated hereby and hereby acknowledges that neither PubCo nor its advisors (including Vinson & Elkins L.L.P.) has provided to such Party any such legal or tax advice regarding the transactions contemplated hereby.

Section 4.8. **No Tax Representations**. Each Party acknowledges and agrees that OWMH and PubCo are making no representation or warranty as to the U.S. federal, state, local, foreign or other tax consequences to any Party as a result of the transactions contemplated by this Agreement. Each Party understands that such Party (and not OWMH or PubCo) will be responsible for such Party's own tax liability that may arise as a result of the transactions contemplated hereby.

ARTICLE V
MISCELLANEOUS

Section 5.1. **Consents; Waivers; Deemed Amendments**. To the extent required under applicable Law or the governing documents of any of the Parties (including the OWMH LLC Agreement, the A&R OWMH LLC Agreement, the OWAO LLC Agreement, the A&R OWAO LLC Agreement, the PubCo Bylaws, the A&R PubCo Bylaws, the Beekman LLC Agreement, the Goldman LLC Agreement, the Bosun's LLC Agreement, the Bosun's Marine Bylaws, the South Shore LLC Agreement, the PubCo Merger Sub Bylaws, the Common Blocker Bylaws, the governing documents, if any, of the Exchanging Owners and the governing documents of the Other One Water Owners) or any documents to which they are party, each Party hereby acknowledges that this Agreement constitutes the written consent of such Party to each of the agreements and transactions described herein, including in its capacity as a member, manager or stockholder of any other Party. Without limiting the foregoing:

(a) this Agreement shall constitute the written consent of the board of managers of OWMH under the OWMH LLC Agreement, PubCo as the managing member of OWMH under the A&R OWMH LLC Agreement, OWMH as the managing member of OWAO under the OWAO LLC Agreement, OWMH as the sole member of OWAO under the A&R OWAO LLC Agreement, the Preferred Members of OWAO (as defined in the OWAO LLC Agreement) under the OWAO LLC Agreement, OWMH as the sole stockholder of PubCo, the board of managers of Beekman, the applicable governing body of Goldman, OWAO as the managing member of Bosun's, the board of directors of Bosun's Marine, OWAO as the managing member of South Shore, PubCo as the sole stockholder of PubCo Merger Sub, the sole stockholder of Common Blocker, the board of directors of Common Blocker, the governing bodies, if any, of the Exchanging Owners, and the governing bodies, if any, of the Other One Water Owners;

(b) each applicable Party hereby agrees that the transfers, both directly and indirectly through upstream transfers, of New OWMH Common Units, OWAO Preferred Units, limited liability company interests of South Shore and limited liability company interests of Bosun's referenced in Sections 2.5, 2.7(a), 2.7(b) and 2.7(c) are deemed to be permitted transfers under the A&R OWMH LLC Agreement, the OWAO LLC Agreement, the South Shore LLC Agreement and the Bosun's LLC Agreement, as applicable, and hereby waives any and all rights with respect thereto; and

(c) each applicable Party hereby agrees that, to the extent this Agreement is inconsistent with or covers applicable items not otherwise provided under the OWMH LLC Agreement, the A&R OWMH LLC Agreement, the OWAO LLC Agreement, the A&R OWAO LLC Agreement, the Bosun's LLC Agreement, the South Shore LLC Agreement and the PubCo Merger Sub Bylaws, this Agreement shall be deemed to amend such agreements.

Section 5.2. **No Registration Rights**. Each Party further acknowledges and agrees that except as set forth in the Registration Rights Agreement, following the consummation of the transactions contemplated by Sections 2.1 through 3.5, no Party shall have any registration rights, preemptive rights or similar rights with respect to the Equity Securities of OWMH, PubCo, or any of their respective affiliates, except as may be entered into between such parties in the future.

Section 5.3. **Deed; Bill of Sale; Assignment**. To the extent required and permitted by applicable Law, this Agreement will also constitute a "deed," "bill of sale" "stock power" or "assignment" of the assets, shares and membership and other interests referenced herein, as well as an amendment of the relevant agreements, without the need for any further assignment or transfer document.

Section 5.4. **FIRPTA Certificate and Form W-9**. Prior to the Initial Closing, (i) each Exchanging Owner shall deliver to PubCo, OWMH, South Shore and Bosun's an affidavit executed by such Exchanging Owner that satisfies the requirements of Code Section 1445(b)(2) and Code Section 1446(f) evidencing its non-foreign status and (ii) each of Beekman, Goldman and Common Blocker shall deliver to OWMH and OWAO a Form W-9 executed by such person that satisfies the requirements of Code Section 1446(f) evidencing its non-foreign status.

Section 5.5. **Further Assurances**. Each Party hereby agrees to execute, acknowledge and deliver all such additional assignments, stock powers, conveyances, instruments, notices and other documents, and to do all such other acts and things, all in accordance with applicable Law, as may be necessary or appropriate (a) to more fully assure that the applicable Parties own all of the properties, rights, titles, interests, estates, remedies, powers and privileges granted by this Agreement, or which are intended to be so granted, (b) to more fully and effectively vest in the applicable Parties and their respective successors and assigns beneficial and record title to the interests and shares contributed and assigned by this Agreement or intended to be so and (c) to more fully and effectively carry out the purposes and intent of this Agreement.

Section 5.6. **Termination.** This Agreement shall terminate and be of no further force or effect if the IPO has not been completed by 11:59 p.m. Eastern Time on February 29, 2020.

Section 5.7. **Notices**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be personally delivered, sent by nationally recognized overnight courier, mailed by registered or certified mail or be sent by facsimile or electronic mail to such Party at the address set forth on its signature page to this Agreement (or such other address as shall be specified by like notice).

Section 5.8. **Successors and Assigns; No Third Party Rights**. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement is not intended to, and does not, create rights in any other Person, and no Person is or is intended to be a third-party beneficiary of any of the provisions of this Agreement.

Section 5.9. **Severability**. If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the Laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity will not invalidate the entire Agreement. Instead, this Agreement will be construed as if it did not contain the particular provision or provisions held to be invalid, and an equitable adjustment will be made and necessary provision added so as to give effect to the intention of the Parties as expressed in this Agreement at the time of execution of this Agreement.

Section 5.10. **Waivers and Amendments**. Any waiver of any term or condition of this Agreement, or any amendment or supplement to this Agreement, will be effective only if in writing and signed by the Parties. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement will not in any way affect, limit or waive a Party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

Section 5.11. **Entire Agreement; Survival**. This Agreement, together with the agreements and other documents referenced herein, constitutes the entire agreement among the Parties pertaining to the transactions contemplated hereby and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining thereto. The provisions of this Agreement (including the representations and warranties hereunder) shall survive the Initial Closing, and shall continue indefinitely.

Section 5.12. **Governing Law**. This Agreement will be governed by, and construed in accordance with, the Laws of the State of Delaware.

Section 5.13. **Counterparts**. This Agreement may be executed in any number of counterparts (including by facsimile or other electronic means) with the same effect as if all Parties had signed the same document.

Section 5.14. **OWMH Member Signatory Capacities**. Each signatory hereto that is a member of OWMH is executing this Agreement with respect to all classes of Membership Interests (as defined in the OWMH LLC Agreement) held by such member in OWMH.

* * * * *

IN WITNESS WHEREOF, this Agreement has been duly executed by each of the Parties as of the date first written above.

[*Signature Pages Follow*]

[SIGNATURE PAGES TO MASTER REORGANIZATION AGREEMENT]

ADC Investments, LLC

By: /s/ A. Derrill Crowe
Name: A. Derrill Crowe
Title: President

/s/ Anthony Aisquith
Anthony Aisquith

Auburn OWMH, LLLP

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Member

Bosun's Assets & Operations, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

/s/ Scott Cunningham
Scott Cunningham

/s/ Donnie Drummonds
Donnie Drummonds

/s/ Jack Ezzell
Jack Ezzell

/s/ Alan Giddens
Alan Giddens

/s/ Michael Gold
Michael Gold

[Signature pages to Master Reorganization Agreement]

JBL Investment Holdings, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Group

/s/ Kenneth M. Kirschner
Kenneth M. Kirschner

/s/ Pete Knowles
Pete Knowles

L13, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Management, LLC

/s/ Mitchell W. Legler
Mitchell W. Legler

/s/ J. Clarke Legler, II
J. Clarke Legler, II

Landis Marine Holdings, LLC

By: /s/ Michael C. Smith
Name: Michael C. Smith
Title: Manager

[Signature pages to Master Reorganization Agreement]

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

ONE WATER ASSETS & OPERATIONS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Manager

OWM BIP INVESTOR, LLC

By: /s/ John G. Troiano
Name: John G. Troiano
Title: Manager

ONEWATER MARINE, INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

OWM TBG CORPORATION

By: /s/ John G. Troiano
Name: John G. Troiano
Title: President

[SIGNATURE PAGES TO MASTER REORGANIZATION AGREEMENT]

ONEWATER MERGER SUB, INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

/s/ Peter H. Bos, III

PETER H. BOS, III

PHILIP SINGLETON IRREVOCABLE TRUST DATED DECEMBER 24, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

AUSTIN SINGLETON IRREVOCABLE TRUST DATED DECEMBER 30, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

/s/ Keith Style

KEITH STYLE

[SIGNATURE PAGES TO MASTER REORGANIZATION AGREEMENT]

TERESA D. BOS 2015 TRUST

By: /s/ Pete Knowles
Name: Pete Knowles
Title: Trustee

/s/ Cindy Thompson
CINDY THOMPSON

/s/ Dave Witty
DAVE WITTY

BOSUN'S MARINE, INC.

By: /s/ Timothy W. Leedham
Name: Timothy W. Leedham
Title: President

/s/ Thomas W. Mack
THOMAS W. MACK

SPECIAL SITUATIONS INVESTING GROUP II, LLC

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

[SIGNATURE PAGES TO MASTER REORGANIZATION AGREEMENT]

Exhibit A

Form of Fourth A&R LLC Agreement of OWMH

See attached.

Exhibit B

Form of A&R Certificate of Incorporation of PubCo

See attached.

Exhibit C

Form of A&R PubCo Bylaws

See attached.

Exhibit D

Form of Agreement and Plan of Merger

See attached.

Exhibit E

Form of Agreement and Plan of Merger

See attached.

Exhibit F

Form of Registration Rights Agreement

See attached.

Exhibit G

Form of Second A&R LLC Agreement of OWAO

See attached.

Exhibit H

Form of Tax Receivable Agreement

See attached.

Schedule 2.1(a)

LMI Priority Distribution

Schedule 2.2(b)

OWMH Unit Exchange

Schedule 2.4

Warrant Exchange

Schedule 2.5

Blocker Distribution

Schedule 2.7(a)

Mack and Bosun's Marine Contributions

Schedule 2.7(b)

OWMH Contribution

Schedule 2.7(c)

Exchanging Owners Contribution

Schedule 3.3(a)

PubCo Contribution

Schedule 3.3(b)

OWMH Cash Contribution

Schedule 3.3(c)

OWAO Preferred Redemption

Schedule 3.3(d)

PubCo Class B Contribution

Schedule 3.3(e)

OWMH Class B Distribution

Schedule 3.4

Final OWMH Capitalization

Exhibit 3.1

Execution Version

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ONEWATER MARINE INC.

OneWater Marine Inc. (the "**Corporation**"), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "**DGCL**"), hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation (the "**Original Certificate of Incorporation**") was filed with the Secretary of State of the State of Delaware on April 3, 2019.

2. This Amended and Restated Certificate of Incorporation (this "**Amended and Restated Certificate of Incorporation**"), which restates and amends the Original Certificate of Incorporation, has been declared advisable by the board of directors of the Corporation (the "**Board**"), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by an authorized officer of the Corporation in accordance with Sections 103, 228, 242 and 245 of the DGCL.

3. This Amended and Restated Certificate of Incorporation shall become effective at 12:02 a.m. Eastern Time on February 11, 2020 (the "**Effective Time**").

4. The Original Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is OneWater Marine Inc.

SECOND: The address of its registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL as it currently exists or may hereafter be amended.

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is 51,000,000 shares of stock, classified as (i) 1,000,000 shares of preferred stock, par value $0.01 per share ("**Preferred Stock**"), (ii) 40,000,000 shares of Class A common stock, par value $0.01 per share ("**Class A Common Stock**"), and (iii) 10,000,000 shares of Class B common stock, par value $0.01 per share ("**Class B Common Stock**" and, together with the Class A Common Stock, the "**Common Stock**").

1. **Provisions Relating to Preferred Stock**.

(a) Preferred Stock may be issued from time to time in one or more classes or series, the shares of each series to have such designations and powers, preferences and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereafter prescribed (a "**Preferred Stock Designation**").

(b) Subject to any limitations prescribed by law and the rights of any series of the Preferred Stock then outstanding, if any, authority is hereby expressly granted to and vested in the Board to authorize the issuance of Preferred Stock from time to time in one or more classes or series, and with respect to each series of Preferred Stock, to fix and state by the Preferred Stock Designation the designations and powers, preferences, rights, qualifications, limitations and restrictions relating to each series of Preferred Stock, including, but not limited to, the following:

(i) whether or not the series is to have voting rights, full, special or limited, or is to be without voting rights, and whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

(ii) the number of shares to constitute the series and the designations thereof;

(iii) the preferences, and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any series;

(iv) whether or not the shares of any series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(v) whether or not the shares of a series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

(vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

(vii) the preferences, if any, and the amounts thereof which the holders of any series thereof shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;

(viii) whether or not the shares of any series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable or redeemable for, the shares of any other class or classes or of any other series of the same or any other class or classes or series of stock, securities or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange or redemption may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

(ix) such other powers, preferences, rights, qualifications, limitations and restrictions with respect to any series as may to the Board seem advisable.

(c) The shares of each series of Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects.

2. **Provisions Relating to Common Stock**.

(a) Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, each share of Common Stock shall have identical rights and privileges in every respect. Common Stock shall be subject to the express terms of Preferred Stock and any series thereof. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, in a Preferred Stock Designation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share on all matters which to the stockholders are entitled to vote. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, in a Preferred Stock Designation or by applicable law, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and on all other matters upon which the stockholders are entitled to vote, and the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders, other than as provided in the applicable Preferred Stock Designation. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law on all matters put to a vote of the stockholders of the Corporation. Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, the holders of Common Stock and the Preferred Stock shall vote together as a single class).

(b) Notwithstanding the foregoing, except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation) or pursuant to the DGCL.

(c) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares of Class A Common Stock held by them such dividends and distributions (payable in cash, stock or otherwise), if any, as may be declared thereon by the Board at any time and from time to time out of any funds of the Corporation legally available therefor. Dividends and other distributions shall not be declared or paid on the Class B Common Stock unless (i) the dividend consists of shares of Class B Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable or redeemable for shares of Class B Common Stock paid proportionally with respect to each outstanding share of Class B Common Stock and (ii) a dividend consisting of shares of Class A Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable or redeemable for shares of Class A Common Stock on equivalent terms is simultaneously paid to the holders of Class A Common Stock. If dividends are declared on the Class A Common Stock or the Class B Common Stock that are payable in shares of Common Stock, or securities convertible or exercisable into or exchangeable or redeemable for Common Stock, the dividends payable to the holders of Class A Common Stock shall be paid only in shares of Class A Common Stock (or securities convertible or exercisable into or exchangeable or redeemable for Class A Common Stock), the dividends payable to the holders of Class B Common Stock shall be paid only in shares of Class B Common Stock (or securities convertible or exercisable into or exchangeable or redeemable for Class B Common Stock), and such dividends shall be paid in the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively (or securities convertible or exercisable into or exchangeable or redeemable for the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively). In no event shall the shares of either Class A Common Stock or Class B Common Stock be split, divided, or combined unless the outstanding shares of the other class shall be proportionately split, divided or combined.

(d) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock held by them. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A dissolution, liquidation or winding-up of the Corporation, as such terms are used in this paragraph (d), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation.

(e) Shares of Class B Common Stock shall be redeemable for shares of Class A Common Stock on the terms and subject to the conditions set forth in the Amended and Restated Limited Liability Company Agreement of One Water Marine Holdings, LLC, as it may be amended, restated, supplemented and otherwise modified from time to time (the "**LLC Agreement**"). The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon redemption of the outstanding shares of Class B Common Stock for Class A Common Stock pursuant to the LLC Agreement, such number of shares of Class A Common Stock that shall be issuable upon any such redemption pursuant to the LLC Agreement; provided that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such redemption of shares of Class B Common Stock pursuant to the LLC Agreement by delivering to the holder of shares of Class B Common Stock upon such redemption, cash in lieu of shares of Class A Common Stock in the amount permitted by and provided in the LLC Agreement or shares of Class A Common Stock which are held in the treasury of the Corporation. All shares of Class A Common Stock that shall be issued upon any such redemption will, upon issuance in accordance with the LLC Agreement, be validly issued, fully paid and non-assessable.

(f) The number of authorized shares of Class A Common Stock, Class B Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of Class A Common Stock, Class B Common Stock or Preferred Stock voting separately as a class shall be required therefor.

(g) No stockholder shall, by reason of the holding of shares of any class or series of capital stock of the Corporation, have any preemptive or preferential right to acquire or subscribe for any shares or securities of any class, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless specifically provided for in the terms of a series of Preferred Stock and except for an exercise of redemption rights in accordance with the LLC Agreement.

FIFTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the initial term of office of the first class to expire at the first annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, the initial term of office of the second class to expire at the second annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, and the initial term of office of the third class to expire at the third annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, with each director to hold office until his successor shall have been duly elected and qualified, subject, however, to such director’s earlier death, resignation, disqualification or removal, and the Board shall be authorized to assign members of the Board, other than those directors who may be elected by the holders of any series of Preferred Stock, to such classes at the time such classification becomes effective. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his successor shall have been duly elected and qualified, subject, however, to such director’s earlier death, resignation, disqualification or removal.

Subject to applicable law and the rights of the holders of any series of Preferred Stock then outstanding, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, resignation, disqualification or removal of any director or from any other cause shall, unless otherwise required by law or by resolution of the Board, be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director, and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation thereunder), any director may be removed only for cause, upon the affirmative vote of the holders of at least 66 2/3% of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, this Amended and Restated Certificate of Incorporation and the bylaws of the Corporation. Except as applicable law otherwise provides, cause for the removal of a director shall be deemed to exist only if the director whose removal is proposed: (1) has been convicted of a felony (excluding traffic violations not giving rise to material personal injury or death) by a court of competent jurisdiction and that conviction is no longer subject to direct appeal; (2) has been found to have been guilty of willful misconduct in the performance of his duties to the Corporation in any matter of substantial importance to the Corporation by a court of competent jurisdiction; or (3) has been adjudicated by a court of competent jurisdiction to be mentally incompetent, which mental incompetency directly affects his ability to serve as a director of the Corporation.

Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. Unless and except to the extent that the bylaws of the Corporation so provide, the election of directors need not be by written ballot.

SIXTH: Subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

SEVENTH: Special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies. The authorized person(s) calling a special meeting may fix the date, time and place, if any, of such meeting. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled by the Board.

EIGHTH: In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the bylaws of the Corporation without any action on the part of the stockholders of the Corporation. Stockholders shall also have the power to adopt, amend or repeal the bylaws; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, any bylaw adopted or amended by the Board, and any powers thereby conferred, may be amended, altered or repealed by the affirmative vote of holders of not less than 66 2⁄3% in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

NINTH: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now exists. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the preceding sentence, a director of the Corporation shall not be liable to the fullest extent permitted by any amendment to the DGCL hereafter enacted that further limits the liability of a director.

Any amendment, repeal or modification of this Article Ninth shall be prospective only and shall not affect any limitation on liability of a director for acts or omissions occurring prior to the date of such amendment, repeal or modification.

TENTH: The Corporation shall have the right, subject to any express provisions or restrictions contained in this Amended and Restated Certificate of Incorporation or bylaws of the Corporation, from time to time, to amend this Amended and Restated Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by applicable law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by this Amended and Restated Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation.

ELEVENTH: Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation (and in addition to any other vote that may be required by applicable law, this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation), the affirmative vote of the holders of at least 66 2⁄3% in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation.

TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Corporation's bylaws, or (iv) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Twelfth.

If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legal and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. The provisions of this Article Twelfth shall not apply to actions brought to enforce any liability or duty created by the Securities Act of 1933, the Securities Exchange Act of 1934 or any other claim for which the federal courts have exclusive jurisdiction.

To the fullest extent permitted by law, if any action the subject matter of which is within the scope of the first paragraph of this Article Twelfth is filed in a court other than a court located within the State of Delaware (a "**Foreign Action**") in the name of any stockholder, such stockholder shall be deemed to have consented to (A) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the first paragraph of this Article Twelfth (an "**FSC Enforcement Action**") and (B) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of 12:01 a.m. Eastern Time on February 10, 2020.

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

[Signature Page to Amended and Restated Certificate of Incorporation]

Exhibit 3.2

AMENDED AND RESTATED BYLAWS
OF
ONEWATER MARINE INC.
Incorporated under the Laws of the State of Delaware

Date of Adoption: February 11, 2020

PREAMBLE

These bylaws ("**Bylaws**") are subject to, and governed by, the General Corporation Law of the State of Delaware (the "**DGCL**") and the Amended and Restated Certificate of Incorporation, as it may be amended, restated, supplemented and otherwise modified from time to time (the "**Certificate of Incorporation**") of OneWater Marine Inc., a Delaware corporation (the "**Corporation**").

ARTICLE I
OFFICES AND RECORDS

Section 1.1 **Registered Office**. The registered office of the Corporation in the State of Delaware shall be as set forth in the Certificate of Incorporation, and the name of the Corporation's registered agent at such address is as set forth in the Certificate of Incorporation. The registered office and registered agent of the Corporation may be changed from time to time by the board of directors of the Corporation (the "**Board**") in the manner provided by applicable law.

Section 1.2 **Other Offices**. The Corporation may have such other offices, either within or without the State of Delaware, as the Board may designate or as the business of the Corporation may from time to time require.

Section 1.3 **Books and Records**. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board.

ARTICLE II
STOCKHOLDERS

Section 2.1 **Annual Meeting**. As required by applicable law, an annual meeting of the stockholders of the Corporation shall be held at such date, time and place, if any, either within or without the State of Delaware, and time as may be fixed by resolution of the Board. Any other proper business may be transacted at the annual meeting. The Board may, at any time prior to the holding of an annual meeting of stockholders, and for any reason, postpone, reschedule or cancel any annual meeting of stockholders.

Section 2.2 **Special Meeting**. Special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies. The authorized person(s) calling a special meeting may fix the date, time and place, if any, of such meeting. Except as otherwise required by law and subject to the rights of the holders of any series of preferred stock of the Corporation ("**Preferred Stock**"), the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation. The Board may, at any time prior to the holding of a special meeting of stockholders, and for any reason, postpone, reschedule or cancel any special meeting of the stockholders previously scheduled by the Board.

Section 2.3 **Record Date**.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment or recess thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or recess of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned or recessed meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned or recessed meeting the same date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned or recessed meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, exchange or redemption of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by applicable law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by applicable law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

Section 2.4 **Stockholder List**. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at any meeting of stockholders (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. The stock list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of the stockholders.

Section 2.5 **Place of Meeting**. The Board, the Chairman of the Board or the Chief Executive Officer, as the case may be, may designate the place of meeting for any annual meeting or for any special meeting of the stockholders. If no designation is so made, the place of meeting shall be the principal executive offices of the Corporation. The Board, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the DGCL and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communication. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication.

Section 2.6 **Notice of Meeting**. Written or printed notice, stating the place, if any, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting, in a manner pursuant to Section 7.7 hereof, to each stockholder of record entitled to vote at such meeting. The notice shall specify (i) the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), (ii) the place, if any, date and time of such meeting, (iii) the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, (iv) in the case of a special meeting, the purpose or purposes for which such meeting is called and (v) such other information as may be required by applicable law or as may be deemed appropriate by the Board, the Chairman of the Board or the Chief Executive Officer or the Secretary of the Corporation. If the stockholder list referred to in Section 2.4 of these Bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If the meeting of stockholders is to be held solely by means of electronic communications, the notice of meeting must provide the information required to access such stockholder list during the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. The Corporation may provide stockholders with notice of a meeting by electronic transmission provided such stockholders have consented to receiving electronic notice in accordance with the DGCL. Such further notice shall be given as may be required by applicable law. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the notice of meeting. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 7.4 of these Bylaws.

Section 2.7 **Quorum and Adjournment of Meetings**.

(A) Except as otherwise provided by applicable law or by the Certificate of Incorporation, the holders of a majority of the outstanding shares of stock of the Corporation entitled to vote at the meeting, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. For the avoidance of doubt, abstentions and broker non-votes shall be treated as present for purposes of determining the presence or absence of a quorum. The presiding person at the meeting or a majority of the shares so represented may adjourn or recess the meeting at any time and for any reason, whether or not there is such a quorum. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until the meeting is adjourned or recessed, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(B) Any meeting of stockholders, annual or special, may adjourn or recess from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned or recessed meeting if the time and place thereof are announced at the meeting at which the adjournment or recess is taken; provided, however, that if the adjournment or recess is for more than thirty (30) days, a notice of the adjourned or recessed meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned or recessed meeting, the Corporation may transact any business that might have been transacted at the original meeting.

Section 2.8 **Proxies**. At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such other manner prescribed by the DGCL) by the stockholder or by his duly authorized attorney-in-fact. Any copy, facsimile transmission or other reliable reproduction of the writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission. No proxy may be voted or acted upon after the expiration of three (3) years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation.

Section 2.9 **Notice of Stockholder Business and Nominations**.

(A) **Annual Meetings of Stockholders**.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board or any committee thereof or (c) by any stockholder of the Corporation who (i) was a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures and other requirements set forth in these Bylaws and applicable law. Section 2.9(A)(1)(c) of these Bylaws shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and included in the Corporation's notice of meeting and proxy statement for such meeting) before an annual meeting of the stockholders. In addition, if the proposal is made on behalf of a beneficial owner other than the stockholder of record, such beneficial owner must be the beneficial owner of stock of the Corporation both at the time of giving of notice provided for in this Section 2.9 and at the time of the annual meeting. For purposes of these Bylaws, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Exchange Act and the rules and regulations thereunder.

(2) For any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.9(A)(1)(c) of these Bylaws, (x) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (y) such other business must otherwise be a proper matter for stockholder action under the DGCL and (z) the record stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made, must have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by these Bylaws. To be timely, a stockholder's notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided*, *however*, that subject to the following sentence, in the event that the date of the annual meeting is scheduled for a date that is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment, recess or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 2.9(A)(2) or Section 2.9(B)) to the Secretary of the Corporation must:

(a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such stockholder's Stockholder Associated Person (as defined in Section 2.9(C)(2)), if any, (ii) (A) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and such Stockholder Associated Person, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of stock of the Corporation or otherwise (a "**Derivative Instrument**"), directly or indirectly owned beneficially by such stockholder or by any Stockholder Associated Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation held by such stockholder or by any Stockholder Associated Person, (C) a complete and accurate description of any agreement, arrangement or understanding between or among such stockholder and such stockholder's Stockholder Associated Person and any other person or persons in connection with such stockholder's director nomination and the name and address of any other person(s) or entity or entities known to the stockholder to support such nomination, (D) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote, directly or indirectly, any shares of any security of the Corporation, (E) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of these Bylaws, a person shall be deemed to have a "short interest" in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (F) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or by any Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (H) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household, (iii) any other information relating to such stockholder and any Stockholder Associated Person, if any, that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting, and (v) a representation as to whether or not such stockholder or any Stockholder Associated Person will deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding stock required to approve or adopt the proposal or, in the case of a nomination or nominations, at least the percentage of the voting power of the Corporation's outstanding stock reasonably believed by the stockholder or Stockholder Associated Person, as the case may be, to be sufficient to elect such nominee or nominees (such representation, a "**Solicitation Statement**");

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and Stockholder Associated Person, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment) and (iii) a complete and accurate description of all agreements, arrangements and understandings between or among such stockholder and such stockholder's Stockholder Associated Person, if any, and the name and address of any other person(s) or entity or entities in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and Stockholder Associated Person, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant, and (iii) a representation that such person intends to serve a full term, if elected as director; and

(d) with respect to each nominee for election or reelection to the Board, include (i) a completed and signed questionnaire, representation and agreement in a form provided by the Corporation, which form the stockholder must request from the Secretary of the Corporation in writing with no less than 7 days advance notice, and (ii) a written representation and agreement (in the form provided by the Secretary of the Corporation upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (C). in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee; and

(3) A stockholder providing notice of a nomination or proposal of other business to be brought before a meeting shall further update and supplement such notice, so that the information provided or required to be provided in such notice shall be true and correct (a) as of the record date for the meeting and (b) as of the date that is ten (10) business days prior to the meeting or any adjournment, recess, cancellation, rescheduling or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven (7) business days prior to the date for the meeting or any postponement or adjournment thereof, if practicable (or, if not practicable, on the first practicable date prior to any adjournment, recess or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment, recess or postponement thereof)).

(B) **Special Meetings of Stockholders.**

Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to a notice of meeting (1) by or at the direction of the Board or any committee thereof or (2) if the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (a) is a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the special meeting, (b) is entitled to vote at the meeting, and (c) complies with the notice procedures set forth in these Bylaws and applicable law. Such notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall any adjournment, recess or postponement or the announcement thereof of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) **General**.

(1) Only such persons who are nominated in accordance with the procedures set forth in these Bylaws and applicable law shall be eligible to serve as directors, and only such business shall be conducted at a meeting of stockholders as has been brought before the meeting in accordance with the procedures set forth in these Bylaws and applicable law. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the presiding person at the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and applicable law and, if any proposed nomination or business is not in compliance with these Bylaws and applicable law, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of these Bylaws, "**public announcement**" shall mean disclosure in a press release reported by Dow Jones News Service, the Associated Press, or any other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder, and "**Stockholder Associated Person**" shall mean, for any stockholder, (a) any person or entity controlling, directly or indirectly, or acting in concert with, such stockholder, (b) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or (c) any person or entity controlling, controlled by or under common control with any person or entity referred to in the preceding clauses (a) or (b).

(3) Notwithstanding the foregoing provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; *provided*, *however*, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.9(A) or Section 2.9(B) of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors if and to the extent provided for under applicable law, the Certificate of Incorporation or these Bylaws.

(4) Unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) making a nomination or proposal under this Section 2.9 does not appear at a meeting of stockholders to present such nomination or proposal, the nomination shall be disregarded and the proposed business shall not be transacted, as the case may be, notwithstanding that proxies in favor thereof may have been received by the Corporation. For purposes of this Section 2.9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

Section 2.10 **Conduct of Business**. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate in its sole discretion. The Chairman of the Board, if one shall have been elected, or in the Chairman of the Board's absence or if one shall not have been elected, the director or officer designated by the majority of the Board, shall preside at all meetings of the stockholders. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and for any or no reason to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person at the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person at the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; and (vi) restrictions on the use of audio or visual recording devices at the meeting. The presiding person at a meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding at the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.11 **Required Vote**. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, at any meeting at which directors are to be elected, so long as a quorum is present, the directors shall be elected by a plurality of votes cast by the holders of shares entitled to vote in the election. Unless otherwise provided in the Certificate of Incorporation, cumulative voting for the election of directors shall be prohibited. Except as otherwise provided by applicable law, the rules and regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation, or these Bylaws, in all matters other than the election of directors and certain non-binding advisory votes described below, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders. In non-binding advisory matters with more than two possible vote choices, the affirmative vote of a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the recommendation of the stockholders. If a quorum is present at the beginning of a meeting, it shall be deemed present for the entire meeting notwithstanding any departure from the meeting of shareholders or their proxy holders during the meeting.

Section 2.12 **Treasury Stock**. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it or any other corporation, if a majority of shares entitled to vote in the election of directors of such corporation is held, directly or indirectly by the Corporation, and such shares will not be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or such other corporation, to vote stock of the Corporation held in a fiduciary capacity.

Section 2.13 **Inspectors of Elections; Opening and Closing the Polls**. At any meeting at which a vote is taken by ballots, the Board by resolution may, and when required by applicable law, shall, appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders and the appointment of an inspector is required by applicable law, the presiding person at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his ability. The inspectors shall have the duties prescribed by applicable law.

Section 2.14 **Stockholder Action by Written Consent**. Subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

ARTICLE III
BOARD OF DIRECTORS

Section 3.1 **General Powers**. The business and affairs of the Corporation shall be managed by or under the direction of the Board elected in accordance with these Bylaws. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. The directors shall act only as a Board or a committee thereof, and the individual directors shall have no power as such.

Section 3.2 **Number, Tenure and Qualifications**. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board; provided that the initial number of directors shall be seven. The election and term of directors shall be as set forth in the Certificate of Incorporation.

Section 3.3 **Regular Meetings**. Subject to Section 3.5, regular meetings of the Board shall be held on such dates, and at such times and places, as are determined from time to time by resolution of the Board.

Section 3.4 **Special Meetings**. Special meetings of the Board shall be called at the request of the Chairman of the Board, the Chief Executive Officer or a majority of the Board then in office. The person or persons authorized to call special meetings of the Board may fix the place, if any, date and time of the meetings. Any business may be conducted at a special meeting of the Board.

Section 3.5 **Notice**. Notice of any meeting of directors shall be given to each director at his business or residence in writing by hand delivery, first-class or overnight mail, courier service or facsimile or electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 24 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 24 hours prior to the time set for the meeting and shall be confirmed by facsimile or electronic transmission that is sent promptly thereafter. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting, except for amendments to these Bylaws, as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 7.4 of these Bylaws.

Section 3.6 **Action by Consent of Board**. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, including by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

Section 3.7 **Conference Telephone Meetings**. Members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting, except where such person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.8 **Quorum**. Subject to Section 3.9, a whole number of directors equal to at least a majority of the Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice unless (i) the date, time and place, if any, of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 3.5 of these Bylaws shall be given to each director, or (ii) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (i) shall be given to those directors not present at the announcement of the date, time and place of the adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 3.9 **Vacancies**. Subject to applicable law and the rights of holders of any series of Preferred Stock then outstanding, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled in accordance with the Certificate of Incorporation.

Section 3.10 **Removal**. Directors of the Corporation may be removed in the manner provided in the Certificate of Incorporation and applicable law.

Section 3.11 **Records**. The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

Section 3.12 **Compensation**. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses. The Corporation will cause each non-employee director serving on the Board to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him in connection with such service.

Section 3.13 **Regulations; Director Agreement**. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate. Each director shall be required to execute and deliver a director agreement in a form approved by the Board.

ARTICLE IV
COMMITTEES

Section 4.1 **Designation; Powers**. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent permitted by applicable law and to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 4.2 **Procedure; Meetings; Quorum**. Any committee designated pursuant to Section 4.1 shall choose its own chairman by a majority vote of the members then in attendance at a meeting of the committee so long as a quorum is present in the event the chairman has not been selected by the Board, shall keep regular minutes of its proceedings, and shall meet at such times and at such place or places as may be provided by the charter of such committee or by resolution of such committee or resolution of the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting where a quorum is present shall be necessary for the adoption by it of any resolution. The Board shall adopt a charter for each committee for which a charter is required by applicable laws, regulations or stock exchange rules, may adopt a charter for any other committee, and may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these Bylaws or any such charter, and each committee may adopt its own rules and regulations of governance, to the extent not inconsistent with these Bylaws or any charter or other rules and regulations adopted by the Board.

Section 4.3 **Substitution of Members**. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of the absent or disqualified member.

ARTICLE V
OFFICERS

Section 5.1 **Officers**. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers as the Board from time to time may deem proper. The Chairman of the Board shall be chosen from among the directors. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article V. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any committee thereof. The Board or any committee thereof may from time to time elect, or the Chairman of the Board or Chief Executive Officer may appoint, such other officers (including one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board or such committee thereof or by the Chairman of the Board or Chief Executive Officer, as the case may be.

Section 5.2 **Election and Term of Office**. The officers of the Corporation shall be elected or appointed from time to time by the Board. Each officer shall hold office until his successor shall have been duly elected or appointed and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time by the affirmative vote of a majority of the Board or, except in the case of an officer or agent elected by the Board, by the Chairman of the Board or Chief Executive Officer. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

Section 5.3 **Chairman of the Board**. The Chairman of the Board shall preside at all meetings of the Board. The Chairman of the Board shall be responsible for the general management of the affairs of the Board and its policies and shall perform all duties incidental to his office that may be required by law and all such other duties as are properly required of him by the Board. The Chairman of the Board may also serve as Chief Executive Officer, if so elected by the Board.

Section 5.4 **Chief Executive Officer**. The Chief Executive Officer shall act in a general executive capacity and shall assist the Chairman of the Board in the performance of the Chairman's duties and shall oversee, subject to the policies of the Board, the administration and operation of the Corporation's business and general supervision of its policies and affairs. If the Chief Executive Officer is also a director, the Chief Executive Officer shall, in the absence of or because of the inability to act of the Chairman of the Board, perform all duties of the Chairman of the Board. The Chief Executive Officer shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation.

Section 5.5 **President**. The President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if any and if he or she shall be a director) shall preside when present at all meetings of the Board.

Section 5.6 **Senior Vice Presidents and Vice Presidents**. Each Senior Vice President and Vice President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board.

Section 5.7 **Treasurer**. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Corporation to be deposited in such banks as may be authorized by the Board, or in such banks as may be designated as depositaries in the manner provided by resolution of the Board. He shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him from time to time by the Board, the Chairman of the Board or the Chief Executive Officer.

Section 5.8 **Secretary**. The Secretary shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders; he shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by applicable law; he shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal; and he shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, he shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board or the Chief Executive Officer.

Section 5.9 **Vacancies**. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chairman of the Board or the Chief Executive Officer because of death, resignation, or removal may be filled by the Chairman of the Board or the Chief Executive Officer.

Section 5.10 **Action with Respect to Securities of Other Corporations**. Unless otherwise directed by the Board, the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers that the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE VI
STOCK CERTIFICATES AND TRANSFERS

Section 6.1 **Stock Certificates and Transfers**. The interest of each stockholder of the Corporation evidenced by certificates for shares of stock shall be in such form as the appropriate officers of the Corporation may from time to time prescribe, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. The shares of the stock of the Corporation shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares. Subject to the provisions of the Certificate of Incorporation, the shares of the stock of the Corporation shall be transferred on the books of the Corporation, which may be maintained by a third-party registrar or transfer agent, by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require or upon receipt of proper transfer instructions from the registered holder of uncertificated shares and upon compliance with appropriate procedures for transferring shares in uncertificated form, at which time the Corporation shall issue a new certificate to the person entitled thereto (if the stock is then represented by certificates), cancel the old certificate and record the transaction upon its books.

Any share of stock that is certificated shall be signed, countersigned and registered in such manner as the Board may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 6.2 **Lost, Stolen or Destroyed Certificates**. No certificate for shares or uncertificated shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or his discretion require.

Section 6.3 **Ownership of Shares**. The Corporation shall be entitled to treat the holder of record of any share or shares of stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 6.4 **Regulations Regarding Certificates**. The Board shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of stock of the Corporation. The Corporation may enter into additional agreements with stockholders to restrict the transfer of stock of the Corporation in any manner not prohibited by the DGCL.

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.1 **Fiscal Year**. The fiscal year of the Corporation shall begin on the first day of October and end on the thirtieth day of September of each year.

Section 7.2 **Dividends**. Except as otherwise provided by law or the Certificate of Incorporation, the Board may from time to time declare, and the Corporation may pay, dividends on its outstanding shares of stock, which dividends may be paid in either cash, property or shares of stock of the Corporation. A member of the Board, or a member of any committee designated by the Board, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 7.3 **Seal**. If the Board determines that the Corporation shall have a corporate seal, the corporate seal shall have enscribed thereon the words "Corporate Seal," the year of incorporation and around the margin thereof the words "OneWater Marine Inc. — Delaware."

Section 7.4 **Waiver of Notice**. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, including by electronic transmission, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 7.5 **Resignations**. Any director or any officer, whether elected or appointed, may resign at any time by giving written notice, including by electronic transmission, of such resignation to the Chairman of the Board, the Chief Executive Officer, the President, if any, or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer, the President, if any, or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board or the stockholders to make any such resignation effective.

Section 7.6 **Indemnification and Advancement of Expenses**.

(A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**proceeding**") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (a "**Covered Person**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding.

(B) The Corporation shall, to the fullest extent not prohibited by applicable law as it presently exists or may hereafter be amended, pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; provided, however, that to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal (hereinafter, a "**final adjudication**") that the Covered Person is not entitled to be indemnified under this Section 7.6 or otherwise.

(C) The rights to indemnification and advancement of expenses under this Section 7.6 shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 7.6, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

(D) If a claim for indemnification under this Section 7.6 (following the final disposition of such proceeding) is not paid in full within sixty (60) days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Section 7.6 is not paid in full within thirty (30) days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim, or a claim brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. In (1) any suit brought by a Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (2) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Section 7.6 or otherwise shall be on the Corporation.

(E) The rights conferred on any Covered Person by this Section 7.6 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, any provision of the Certificate of Incorporation, these Bylaws, any agreement or vote of stockholders or disinterested directors or otherwise.

(F) This Section 7.6 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

(G) Any Covered Person entitled to indemnification and/or advancement of expenses, in each case pursuant to this Section 7.6, may have certain rights to indemnification, advancement and/or insurance provided by one or more persons with whom or which such Covered Person may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with respect to any proceeding, expense, liability or matter that is the subject of this Section 7.6, (ii) the Corporation shall be primarily liable for all such obligations and any indemnification afforded to a Covered Person in respect of a proceeding, expense, liability or matter that is the subject of this Section 7.6, whether created by law, organizational or constituent documents, contract or otherwise, (iii) any obligation of any persons with whom or which a Covered Person may be associated to indemnify such Covered Person and/or advance expenses or liabilities to such Covered Person in respect of any proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify each Covered Person and advance expenses to each Covered Person hereunder to the fullest extent provided herein without regard to any rights such Covered Person may have against any other person with whom or which such Covered Person may be associated or insurer of any such person, and (v) the Corporation irrevocably waives, relinquishes and releases any other person with whom or which a Covered Person may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder.

(H) The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 7.7 **Notices**. Except as otherwise specifically provided herein or required by applicable law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, provided that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the DGCL. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his last known address as the same appears on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the stockholder; and (5) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 7.8 **Facsimile and Electronic Signatures**. In addition to the provisions for use of facsimile or electronic signatures elsewhere specifically authorized in these Bylaws, facsimile or electronic signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof or the Chief Executive Officer.

Section 7.9 **Time Periods**. Except as otherwise explicitly set forth in these Bylaws, in applying any provision of these Bylaws that require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 7.10 **Reliance Upon Books, Reports and Records**. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 7.11 **Severability**. Whenever possible, each provision or portion of any provision of these Bylaws will be interpreted in such manner as to be effective and valid under applicable law, but if any provision or portion of any provision of these Bylaws is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such provision or portion of any provision shall be severable and the invalidity, illegality or unenforceability will not affect any other provision or portion of any provision in such jurisdiction, and these Bylaws will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

ARTICLE VIII
AMENDMENTS

Section 8.1 **Amendments**. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be amended, altered or repealed by resolution adopted by a majority of the directors present at any special or regular meeting of the Board at which a quorum is present if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting. Stockholders shall also have the power to adopt, amend or repeal these Bylaws; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, these Bylaws may be adopted, altered, amended or repealed by the stockholders of the Corporation only by the affirmative vote of holders of not less than 66 2⁄3% in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

Notwithstanding the foregoing, no amendment, alteration or repeal of Section 7.6 shall adversely affect any right or protection existing under these Bylaws immediately prior to such amendment, alteration or repeal, including any right or protection of a present or former director, officer or employee thereunder in respect of any act or omission occurring prior to the time of such amendment.

Exhibit 4.1

Execution Version

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "**Agreement**") is made and entered into as of February 11, 2020, by and among OneWater Marine Inc., a Delaware corporation (the "**Company**"), and each of the other parties listed on the signature pages hereto (the "**Initial Holders**" and, together with the Company, the "**Parties**").

WHEREAS, in connection with, and in consideration of, the transactions contemplated by the Company's Registration Statement on Form S-1 (File No. 333-232639), the Initial Holders have requested, and the Company has agreed to provide, registration rights with respect to the Registrable Securities (as hereinafter defined) as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the Parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms have the meanings indicated:

"**Affiliate**" of any specified Person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control" of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For the avoidance of doubt, for purposes of this Agreement, the Holders shall not be considered Affiliates of the Company.

"**Agreement**" has the meaning set forth in the preamble.

"**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined under Rule 405.

"**Beekman**" means Beekman Investment Advisors and (i) its Affiliates and (ii) investment funds and investment vehicles (including OWM BIP Investor, LLC) it is Affiliated with or manages.

"**Blackout Period**" has the meaning set forth in Section 3(o).

"**Board**" means the board of directors of the Company.

"**Business Day**" means any day other than a Saturday, Sunday, any federal holiday or any other day on which banking institutions in the State of New York are authorized or required to be closed by law or governmental action.

"**Class A Common Stock**" means the Class A common stock, par value $0.01 per share, of the Company, and any other equity interests of the Company or equity interests in any successor of the Company issued in respect of such Class A Common Stock by reason of or in connection with any stock dividend, stock split, combination, reorganization, recapitalization, conversion to another type of entity or similar event involving a change in the capital structure of the Company.

"**Commission**" means the Securities and Exchange Commission or any other federal agency then administering the Securities Act or Exchange Act.

"**Company**" has the meaning set forth in the preamble.

"**Company Securities**" means any equity interest of any class or series in the Company.

"**Demand Notice**" has the meaning set forth in Section 2(b)(i).

"**Demand Registration**" has the meaning set forth in Section 2(b)(i).

"**Effective Date**" means the time and date that a Registration Statement is first declared effective by the Commission or otherwise becomes effective.

"**Effectiveness Period**" has the meaning set forth in Section 2(b)(ii).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

"**Goldman**" means Goldman Sachs & Co. LLC, a New York limited liability company and (i) its Affiliates and (ii) investment funds it is Affiliated with or manages.

"**GS Entity**" has the meaning set forth in Section 3(r).

"**GS Underwriter Registration Statement**" has the meaning set forth in Section 3(r).

"**Holder**" means (i) each Initial Holder unless and until such Initial Holder ceases to hold any Registrable Securities; and (ii) any holder of Registrable Securities to whom registration rights conferred by this Agreement have been transferred in compliance with Section 8(e) hereof; provided that any Person referenced in clause (ii) shall be a Holder only if such Person agrees in writing to be bound by and subject to the terms set forth in this Agreement.

"**Holder Indemnified Persons**" has the meaning set forth in Section 6(a).

"**Holder Lock-Up Period**" has the meaning set forth in Section 3(q).

"**Initial Holders**" has the meaning set forth in the preamble.

"**Initiating Holder(s)**" means the Holder(s) delivering the Demand Notice or the Underwritten Offering Notice, as applicable.

"**Lock-Up Period**" has the meaning set forth in the underwriting agreement entered into by the Company in connection with the initial underwritten public offering of shares of Class A Common Stock.

"**Losses**" has the meaning set forth in Section 6(a).

"**Managing Underwriter**" means, with respect to any Underwritten Offering or Overnight Underwritten Offering, the book running lead manager or managers of such Underwritten Offering or Overnight Underwritten Offering.

"**Minimum Amount**" has the meaning set forth in Section 2(b)(i).

"**Overnight Underwritten Offering**" means an Underwritten Offering that is expected to be launched after the close of trading on one trading day and priced before the open of trading on the next succeeding trading day.

"**OWMH LLC Agreement**" means the Fourth Amended and Restated Limited Liability Company Agreement of One Water Marine Holdings, LLC, a Delaware limited liability company, dated as of February 11, 2020, as amended.

"**Parties**" has the meaning set forth in the preamble.

"**Person**" means an individual, corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, estate, trust, government (or an agency or subdivision thereof) or other entity of any kind.

"**Piggyback Registration**" has the meaning set forth in Section 2(e)(i).

"**Piggyback Registration Notice**" has the meaning set forth in Section 2(e)(i).

"**Piggyback Registration Request**" has the meaning set forth in Section 2(e)(i).

"**Proceeding**" means any action, claim, suit, proceeding or investigation (including a preliminary investigation or partial proceeding, such as a deposition) pending or, to the knowledge of the Company, to be threatened.

"**Prospectus**" means the prospectus included in a Registration Statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A, Rule 430B or Rule 430C promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"**Registrable Securities**" means the Shares; provided, however, that Registrable Securities shall not include: (i) any Shares that have been registered under the Securities Act and disposed of pursuant to an effective Registration Statement or otherwise transferred to a Person who is not entitled to the registration and other rights hereunder; (ii) any Shares that have been sold or transferred by the Holder thereof pursuant to Rule 144 (or any similar provision then in force under the Securities Act) and the transferee thereof does not receive "restricted securities" as defined in Rule 144; (iii) any Shares that cease to be outstanding (whether as a result of repurchase and cancellation, conversion or otherwise) and (iv) any Shares that may be sold pursuant to any section of Rule 144 (or any successor rule or regulation to Rule 144 then in force) without any volume or manner of sale restrictions or information requirements thereunder.

"**Registration Expenses**" has the meaning set forth in Section 5.

"**Registration Statement**" means a registration statement of the Company in the form required to register under the Securities Act and other applicable law the resale of the Registrable Securities in accordance with the intended plan of distribution of each Holder of Registrable Securities included therein, and including any Prospectus, amendments and supplements to each such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"**Requested Underwritten Offering**" has the meaning set forth in Section 2(d).

"**Requested Underwritten Offering Minimum Condition**" has the meaning set forth in Section 2(b)(iii).

"**Rule 144**" means Rule 144 promulgated by the Commission pursuant to the Securities Act.

"**Rule 405**" means Rule 405 promulgated by the Commission pursuant to the Securities Act.

"**Rule 415**" means Rule 415 promulgated by the Commission pursuant to the Securities Act.

"**Rule 424**" means Rule 424 promulgated by the Commission pursuant to the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Selling Expenses**" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (except as set forth in Section 5).

"**Shares**" means (i) the shares of Class A Common Stock held by the Holders as of the date hereof, including the shares of Class A Common Stock that may be delivered in exchange for Units held by the Holders as of the date hereof, and (ii) and any other equity interests of the Company or equity interests in any successor of the Company issued in respect of such shares by reason of or in connection with any stock dividend, stock split, combination, reorganization, recapitalization, conversion to another type of entity or similar event involving a change in the capital structure of the Company. For purposes of this Agreement, a Person shall be deemed to be a holder of Shares and such Shares shall be deemed to be in existence whenever such Person has the right to acquire such Shares (upon conversion, exchange, redemption or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right other than vesting), whether or not such acquisition has actually been effected, and such Person shall be entitled to exercise the rights of a holder of Shares.

"**Shelf Registration Statement**" means a Registration Statement of the Company filed with the Commission on Form S-3 (or any successor form or other appropriate form under the Securities Act) for an offering to be made on a continuous or delayed basis pursuant to Rule 415 (or any similar rule that may be adopted by the Commission) covering the Registrable Securities, as applicable.

"**Suspension Period**" has the meaning set forth in Section 8(b).

"**Trading Market**" means the principal national securities exchange on which Registrable Securities are listed.

"**Underwritten Offering**" means an underwritten offering of Class A Common Stock for cash (whether a Requested Underwritten Offering or in connection with a public offering of Class A Common Stock by the Company, stockholders or both), excluding an offering relating solely to an employee benefit plan, an offering relating to a transaction on Form S-4 or S-8 or an offering on any registration statement form that does not permit secondary sales.

"**Underwritten Offering Notice**" has the meaning set forth in Section 2(d).

"**Underwritten Offering Piggyback Notice**" has the meaning set forth in Section 2(e)(ii).

"**Underwritten Offering Piggyback Request**" has the meaning set forth in Section 2(e)(ii).

"**Underwritten Piggyback Offering**" has the meaning set forth in Section 2(e)(ii).

"**Units**" has the meaning given to such term in the OWMH LLC Agreement.

"**VWAP**" means, as of a specified date and in respect of Registrable Securities, the volume weighted average price for such security on the Trading Market for the five trading days immediately preceding, but excluding, such date.

"**WKSI**" means a "**well known seasoned issuer**" as defined under Rule 405.

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Sections refer to Sections of this Agreement; (c) the terms "include," "includes," "including" and words of like import shall be deemed to be followed by the words "without limitation"; (d) the terms "hereof," "hereto," "herein" or "hereunder" refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) unless the context otherwise requires, the term "or" is not exclusive and shall have the inclusive meaning of "and/or"; (f) defined terms herein will apply equally to both the singular and plural forms and derivative forms of defined terms will have correlative meanings; (g) references to any law or statute shall include all rules and regulations promulgated thereunder, and references to any law or statute shall be construed as including any legal and statutory provisions consolidating, amending, succeeding or replacing the applicable law or statute; (h) references to any Person include such Person's successors and permitted assigns; and (i) references to "days" are to calendar days unless otherwise indicated.

2. Registration.

(a) **Mandatory Shelf Registration**. Subject to any limitations or restrictions set forth in Section 3, at such time as the Company shall have qualified for the use of a Shelf Registration Statement, a holder of Registrable Securities shall have the right to request the registration under the Securities Act of all or any portion of their Registrable Securities for an offering on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a "**Mandatory Shelf Registration**"). Such request for a Mandatory Shelf Registration shall specify the number of Registrable Securities requested to be included in the Mandatory Shelf Registration. Upon receipt of any such request, the Company shall promptly (but in no event later than five Business Days following receipt thereof) deliver notice of such request to all other holders of Registrable Securities, if any, who shall then have 10 days from the date such notice is given to notify the Company in writing of their desire to be included in such registration. The Company shall prepare and file with or confidentially submit to the Commission a Shelf Registration Statement covering all of the Registrable Securities that the holders thereof have requested to be included in such Mandatory Shelf Registration within 45 days after the date on which the initial request is given and shall use commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective by the Commission as soon as practicable thereafter. Each Shelf Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the holders of Registrable Securities. After the filing of a Shelf Registration Statement, and until all Registrable Securities covered by such Shelf Registration Statement have ceased to be Registrable Securities, the Company shall use its commercially reasonable efforts to ensure that such Shelf Registration Statement remains continuously effective until all Registrable Securities registered thereby have been sold or otherwise disposed of.

(b) **Demand Registration**.

(i) At any time after the expiration of the Lock-Up Period, any Holder(s) shall have the option and right, exercisable by delivering a written notice to the Company (a "**Demand Notice**"), to require the Company to, pursuant to the terms of and subject to the limitations contained in this Agreement, prepare and file with the Commission a Registration Statement registering the offering and sale of the number and type of Registrable Securities on the terms and conditions specified in the Demand Notice, which may include sales on a delayed or continuous basis pursuant to Rule 415 pursuant to a Shelf Registration Statement (a "**Demand Registration**"). The Demand Notice must set forth the number of Registrable Securities that the Initiating Holder(s) intend to include in such Demand Registration and the intended methods of disposition thereof. Notwithstanding anything to the contrary herein, in no event shall the Company be required to effectuate a Demand Registration unless the Registrable Securities of the Initiating Holder(s) and their respective Affiliates to be included therein have an aggregate value, based on the VWAP as of the date of the Demand Notice, of at least $7.5 million or all of the Registrable Securities then held by such Initiating Holder (the "**Minimum Amount**").

(ii) Within 45 Business Days after the receipt of the Demand Notice (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, within 60 days thereof), the Company shall, subject to the limitations of this Section 2(b), file a Registration Statement in accordance with the terms and conditions of the Demand Notice. The Company shall use all commercially reasonable efforts to cause such Registration Statement to become and remain effective as soon as reasonably practicable after the filing thereof under the Securities Act until all Registrable Securities covered by such Registration Statement have been sold (the "**Effectiveness Period**").

(iii) Subject to the other limitations contained in this Agreement, the Company is not obligated hereunder to (A) file more than three registrations for each Holder or its affiliates as requested in a Demand Registration by such Holder or its affiliates pursuant to this Section 2(b); (B) file any Registration Statement pursuant to a Demand Registration within 90 days after the closing of any Requested Underwritten Offering, unless as a result of Section 2(e), the Requested Underwritten Offering includes less than (the "**Requested Underwritten Offering Minimum Condition**") the lesser of (i) Registrable Securities of the Initiating Holder(s) having an aggregate value, based on the VWAP as of the effective date of the related Registration Statement, of $7.5 million, and (ii) two-thirds of the number of Registrable Securities the Initiating Holder(s) set forth in the applicable Underwritten Offering Notice, or (C) effect a subsequent Demand Registration pursuant to a Demand Notice if a Registration Statement covering all of the Registrable Securities held by the Initiating Holder(s) shall have become and remains effective under the Securities Act and is sufficient to permit offers and sales of the number and type of Registrable Securities on the terms and conditions specified in the Demand Notice in accordance with the intended timing and method or methods of distribution thereof specified in the Demand Notice. No Demand Registration shall be deemed to have occurred for purposes of this Section 2(b)(iii) if the Registration Statement relating thereto does not become effective or is not maintained effective for its entire Effectiveness Period, in which case the Initiating Holder(s) shall be entitled to an additional Demand Registration in lieu thereof.

(iv) A Holder may withdraw all or any portion of its Registrable Securities included in a Demand Registration from such Demand Registration at any time prior to the effectiveness of the applicable Registration Statement. Upon receipt of a notice from an Initiating Holder that such Initiating Holder is withdrawing an amount of its Registrable Securities such that the remaining amount of Registrable Securities to be included in the Demand Registration is below the Minimum Amount, the Company shall cease all efforts to secure effectiveness of the applicable Registration Statement.

(v) The Company may include in any such Demand Registration other Company Securities for sale for its own account or for the account of any other Person, subject to Section 2(e).

(vi) Subject to the limitations contained in this Agreement, the Company shall effect any Demand Registration on such appropriate registration form of the Commission (A) as shall be selected by the Company and (B) as shall permit the disposition of the Registrable Securities in accordance with the intended method or methods of disposition specified in the Demand Notice; provided that if the Company becomes, and is at the time of its receipt of a Demand Notice, a WKSI, the Demand Registration for any offering and selling of Registrable Securities shall be effected pursuant to an Automatic Shelf Registration Statement, which shall be on Form S-3 or any equivalent or successor form under the Securities Act (if available to the Company), and shall not count as one of the two Demand Registrations for purposes of Section 2(b)(iii). If at any time a Registration Statement on Form S-3 is effective and a Holder provides written notice to the Company that it intends to effect an offering of all or part of the Registrable Securities included on such Registration Statement, the Company will amend or supplement such Registration Statement as may be necessary in order to enable such offering to take place.

(c) **General Registration Provisions**

(i) Without limiting Section 3, in connection with the Mandatory Shelf Registration pursuant to and accordance with Section 2(a), and any Demand Registration pursuant to and in accordance with Section 2(b), the Company shall (A) promptly prepare and file or cause to be prepared and filed (1) such additional forms, amendments, supplements, prospectuses, certificates, letters, opinions and other documents, as may be necessary or advisable to register or qualify the securities subject to such Mandatory Shelf Registration or Demand Registration, including under the securities laws of such jurisdictions as the Holders shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Company would become subject to general service of process or to taxation or qualification to do business in such jurisdiction solely as a result of registration and (2) such forms, amendments, supplements, prospectuses, certificates, letters, opinions and other documents as may be necessary to apply for listing or to list the Registrable Securities subject to such Mandatory Shelf Registration or Demand Registration on the Trading Market and (B) do any and all other acts and things that may be reasonably necessary or appropriate or reasonably requested by the Holders to enable the Holders to consummate a public sale of such Registrable Securities in accordance with the intended timing and method or methods of distribution thereof.

(ii) In the event a Holder transfers Registrable Securities included on a Registration Statement and such Registrable Securities remain Registrable Securities following such transfer, at the request of such Holder, the Company shall amend or supplement such Registration Statement as may be necessary in order to enable such transferee to offer and sell such Registrable Securities pursuant to such Registration Statement; provided that in no event shall the Company be required to file a post-effective amendment to the Registration Statement unless (A) such Registration Statement includes only Registrable Securities held by the Holder, Affiliates of the Holder or transferees of the Holder or (B) the Company has received written consent therefor from a Person for whom Registrable Securities have been registered on (but not yet sold under) such Registration Statement, other than the Holder, Affiliates of the Holder or transferees of the Holder.

(d) **Requested Underwritten Offering**. Any Initiating Holder(s) then able to effectuate a Demand Registration pursuant to the terms of Section 2(b), ignoring for purposes of such determination Section 2(b)(iii)(C), shall have the option and right, exercisable by delivering written notice to the Company of its intention to distribute Registrable Securities by means of an Underwritten Offering (an "**Underwritten Offering Notice**"), to require the Company, pursuant to the terms of and subject to the limitations of this Agreement, to effectuate a distribution of any or all of its Registrable Securities by means of an Underwritten Offering pursuant to a new Demand Registration or pursuant to an effective Registration Statement covering such Registrable Securities (a "**Requested Underwritten Offering**"); provided, that the Registrable Securities of such Holder(s) requested to be included in such Requested Underwritten Offering have an aggregate value of at least equal to the Minimum Amount as of the date of such Underwritten Offering Notice. The Underwritten Offering Notice must set forth the number of Registrable Securities that such Holder intends to include in such Requested Underwritten Offering. The Managing Underwriter of a Requested Underwritten Offering shall be designated by the Company; subject to the consent of the Initiating Holder(s), which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Company is not obligated to effect a Requested Underwritten Offering within 90 days after the closing of a Requested Underwritten Offering, unless as a result of Section 2(e), the prior Requested Underwritten Offering failed to satisfy the Requested Underwritten Offering Minimum Condition.

(e) **Piggyback Registration and Piggyback Underwritten Offering**.

(i) If the Company shall at any time propose to file a registration statement under the Securities Act with respect to an offering of Class A Common Stock (other than a registration statement on Form S-4, Form S-8 or any successor forms thereto or filed solely in connection with an exchange offer or any employee benefit or dividend reinvestment plan), whether or not for its own account, then the Company shall promptly notify all Holders of such proposal reasonably in advance of (and in any event at least ten Business Days before) the earlier of the anticipated submission or filing date (the "**Piggyback Registration Notice**"). The Piggyback Registration Notice shall offer Holders the opportunity to include for registration in such registration statement the number of Registrable Securities as they may request in writing (a "**Piggyback Registration**"). The Company shall use commercially reasonable efforts to include in each such Piggyback Registration such Registrable Securities for which the Company has received written requests for inclusion therein ("**Piggyback Registration Request**") within three Business Days after sending the Piggyback Registration Notice. Each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from a Piggyback Registration by giving written notice to the Company of its request to withdraw; provided that such request must be made in writing prior to the effectiveness of such registration statement and such withdrawal shall be irrevocable and, after making such withdrawal, a Holder shall no longer have any right to include Registrable Securities in the Piggyback Registration as to which such withdrawal was made. Any withdrawing Holder shall continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of Class A Common Stock, all upon the terms and conditions set forth herein.

(ii) If the Company shall at any time propose to conduct an Underwritten Offering (including a Requested Underwritten Offering), whether or not for its own account, then the Company shall promptly notify all Holders of such proposal reasonably in advance of (and in any event at least two Business Days before in connection with a "bought deal" or Overnight Underwritten Offering) the commencement of the offering, which notice shall set forth the principal terms and conditions of the issuance, including the proposed offering price (or range of offering prices), the anticipated filing date of the related registration statement (if applicable) and the number of shares of Class A Common Stock that are proposed to be registered (the "**Underwritten Offering Piggyback Notice**"). Receipt of any Underwritten Offering Piggyback Notice required to be provided in this Section 2(e)(ii) to Holders shall be kept confidential by the Holder until such proposed Underwritten Offering is (i) publicly announced or (ii) such Holder receives notice that such proposed Underwritten Offering has been abandoned, which such notice shall be provided promptly by the Company to each Holder. The Underwritten Offering Piggyback Notice shall offer Holders the opportunity to include in such Underwritten Offering (and any related registration, if applicable) the number of Registrable Securities as they may request in writing (an "**Underwritten Piggyback Offering**"); provided, however, that in the event that the Company proposes to effectuate the subject Underwritten Offering pursuant to an effective Shelf Registration Statement of the Company other than an Automatic Shelf Registration Statement, only Registrable Securities of Holders which are subject to an effective Shelf Registration Statement may be included in such Underwritten Piggyback Offering, unless the Company is then able to file an Automatic Shelf Registration Statement and in the reasonable judgment of the Company, the filing of the same including Registrable Securities of Holders that are not otherwise included in an effective Shelf Registration Statement would not have a material adverse effect on the price, timing or distribution of the Class A Common Stock in such Underwritten Piggyback Offering. The Company shall use commercially reasonable efforts to include in each such Underwritten Piggyback Offering such Registrable Securities for which the Company has received written requests for inclusion therein ("**Underwritten Offering Piggyback Request**") within three Business Days after sending the Underwritten Offering Piggyback Notice (or one Business Day in connection with a "bought deal" or Overnight Underwritten Offering). Notwithstanding anything to the contrary in this Section 2(e)(ii), if the Underwritten Offering pursuant to this Section 2(e)(ii) is a "bought deal" (other than a variable price reoffer) or Overnight Underwritten Offering and the Managing Underwriter advises the Company that the giving of notice pursuant to this Section 2(e)(ii) would have a material adverse effect on the price, timing or distribution of the Class A Common Stock in such Underwritten Offering, no such notice shall be required. Each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from an Underwritten Piggyback Offering at any time, and such Holder shall continue to have the right to include any Registrable Securities in any subsequent Underwritten Offerings, all upon the terms and conditions set forth herein.

(iii) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2(e) at any time in its sole discretion whether or not any Holder has elected to include Registrable Securities in such Registration Statement. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 44 hereof.

(f) **Priority in Underwritten Offerings**. In connection with an Underwritten Offering, if the Managing Underwriter of any such Underwritten Offering advises the Company, and the Company advises the Holders in writing, that, in the reasonable opinion of the Managing Underwriter, the total amount of Class A Common Stock (or securities convertible into or exercisable or exchangeable for Class A Common Stock) that the Holders and any other Persons (including the Company) intend to include in such Underwritten Offering (and any related registration, if applicable) exceeds the number that can be included in such Underwritten Offering without being likely to have a material adverse effect on the price, timing or distribution of the Class A Common Stock offered or the market for the Class A Common Stock (or securities convertible into or exercisable or exchangeable for Class A Common Stock), then the Class A Common Stock to be included in such Underwritten Offering (in each case subject to the other terms and provisions of this Agreement) shall include the number of shares of Registrable Securities that such Managing Underwriter, in its reasonable opinion, advises the Company can be sold without having such adverse effect, with such number to be allocated as follows (in each case, with respect to such Persons that have validly requested to include shares of Class A Common Stock in such Underwritten Offering in accordance with this Agreement or otherwise pursuant to rights of registration granted by the Company):

(i) if the offering was initiated for and on behalf of the Company:

(A) first, to the Company;

(B) second, to Goldman and Beekman, pro rata in accordance with the number of Registrable Securities then held by each of Goldman and Beekman;

(C) third, to all remaining Holders, pro rata in accordance with the number of Registrable Securities then held by each such Holder; and

(D) fourth, to all other holders of Class A Common Stock entitled to participate in such Underwritten Offering, pro rata in accordance with the number of shares of Class A Common Stock then held by such other holders;

(ii) in the case of a Requested Underwritten Offering:

(A) first, to Goldman and Beekman, pro rata in accordance with the number of Registrable Securities then held by each of Goldman and Beekman;

(B) second, to all remaining Holders, pro rata based on the relative number of Registrable Securities then held by each such Holder;

(C) third, to the Company; and

(D) fourth, pro rata among all other holders of Class A Common Stock entitled to participate in such Underwritten Offering, pro rata in accordance with the number of shares of Class A Common Stock then held by such other holders;

(iii) if the offering was not initiated for and on behalf of the Company and was initiated for and on behalf of any holder of registration rights (other than any Holder):

(A) first, to such other holders, Goldman, and Beekman, pro rata based on the number of shares of Class A Common Stock held by such other holders, Goldman and Beekman;

(B) second, to the remaining Holders, pro rata based on the number of Registrable Securities then held by each such Holder;

(C) third, to the Company; and

(D) fourth, pro rata among all other holders of Class A Common Stock proposed to be included in such offering based on the number of shares of Class A Common Stock held by such other holders.

Notwithstanding the foregoing, if (I) an offering was initiated by the Holders, (II) the Holders are unable to include in the offering all of the shares of Class A Common Stock included in the Underwritten Offering Piggyback Request and (III) the underwriters in such offering exercise their option to purchase up to an additional 15% of the shares sold in such offering, the shares to be included in such option closings shall be allocated (x) first, to Goldman and Beekman, pro rata in accordance with the number of Registrable Securities then held by each of Goldman and Beekman until all shares included by Goldman or Beekman in the Underwritten Offering Piggyback Request are sold; (y) second, to the Holders, pro rata in accordance with the number of Registrable Securities then held by each such Holder until all shares included in the Underwritten Offering Piggyback Request by the remaining Holders are sold, and (z) third, to the Company.

3. Registration and Underwritten Offering Procedures.

The procedures to be followed by the Company and each Holder electing to sell Registrable Securities in a Registration Statement pursuant to this Agreement, and the respective rights and obligations of the Company and such Holders, with respect to the preparation, filing and effectiveness of such Registration Statement and the effectuation of any Underwritten Offering, are as follows:

(a) In connection with a Mandatory Shelf Registration or Demand Registration, the Company shall, in advance as reasonably practicable (and in any case no less than 3 Business Days) prior to the anticipated filing of the Registration Statement and any related Prospectus or any supplement or amendment thereto (for purposes of this subsection, supplements and amendments shall not be deemed to include any filing that the Company is required to make pursuant to the Exchange Act), furnish to such Holders and representatives of such Holders copies of all such documents proposed to be filed (including all exhibits and documents to be incorporated by reference therein), and provide each Holder and its representatives the opportunity to (i) review and comment on such documents and (ii) object to any information pertaining to such Holder and its plan of distribution that is contained therein, and in either such case, the Company shall make any changes reasonably requested by the Holders prior to filing the registration statement or supplement or amendment thereto.

(b) In connection with a Piggyback Registration, Underwritten Piggyback Offering or a Requested Underwritten Offering, the Company will, at least three Business Days (or one Business Day in the case of any Overnight Underwritten Offering or "bought deal") prior to the anticipated filing of any initial Registration Statement that identifies the Holders and any related Prospectus or any amendment or supplement thereto (other than amendments and supplements that do not materially alter the previous disclosure or do nothing more than name Holders and provide information with respect thereto), as applicable, (i) furnish to such Holders copies of any such Registration Statement or related Prospectus or amendment or supplement thereto that identify the Holders and any related Prospectus or any amendment or supplement thereto (other than amendments and supplements that do not materially alter the previous disclosure or do nothing more than name Holders and provide information with respect thereto) prior to filing and (ii) use commercially reasonable efforts to address in each such document when so filed with the Commission such comments as such Holders reasonably shall propose prior to the filing thereof.

(c) The Company will use commercially reasonable efforts to as promptly as reasonably practicable (i) prepare and file with the Commission such amendments, including post-effective amendments, and supplements to each Registration Statement and the Prospectus used in connection therewith as may be necessary under applicable law to keep such Registration Statement continuously effective with respect to the disposition of all Registrable Securities covered thereby for its Effectiveness Period and, subject to the limitations contained in this Agreement, prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities held by the Holders; (ii) cause the related Prospectus to be amended or supplemented by any required prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; (iii) respond to any comments received from the Commission with respect to each Registration Statement or any amendment thereto and, as promptly as reasonably practicable provide such Holders true and complete copies of all correspondence from and to the Commission relating to such Registration Statement that pertains to such Holders as selling stockholders but not any comments that would result in the disclosure to such Holders of material and non-public information concerning the Company, and (iv) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the Holders of such Registrable Securities to consummate the disposition of such Registrable Securities in accordance with their intended method of distribution thereof. The Company shall not be deemed to have used its reasonable efforts to keep a Registration Statement effective during the applicable period if it voluntarily takes any action that would result in the Holders of such Registrable Securities not being able to sell such Registrable Securities during that period, unless such action is required under applicable law.

(d) The Company will comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the Registration Statements and the disposition of all Registrable Securities covered by each Registration Statement.

(e) The Company will notify such Holders who are included in a Registration Statement as promptly as reasonably practicable: (i) (A) when a Prospectus or any prospectus supplement or post-effective amendment to a Registration Statement in which such Holder is included has been filed; (B) when the Commission notifies the Company whether there will be a "review" of the applicable Registration Statement and whenever the Commission comments in writing on such Registration Statement (in which case the Company shall provide true and complete copies thereof and all written responses thereto to each of such Holders that pertain to such Holders as selling stockholders); and (C) with respect to each applicable Registration Statement or any post-effective amendment thereto, when the same has been declared effective; (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to such Registration Statement or Prospectus or for additional information that pertains to such Holders as sellers of Registrable Securities; (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (v) of the occurrence (but not the details) of any event or passage of time that makes any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided, however, that no notice by the Company shall be required pursuant to this clause (v) in the event that the Company either promptly files a prospectus supplement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which in either case, contains the requisite information that results in such Registration Statement no longer containing any untrue statement of material fact or omitting to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading).

(f) The Company will use commercially reasonable efforts to avoid the issuance of or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, as promptly as reasonably practicable, or if any such order or suspension is made effective during any Blackout Period or Suspension Period, as promptly as reasonably practicable after such Blackout Period or Suspension Period is over.

(g) During the Effectiveness Period, the Company will furnish to each such Holder, without charge, at least one conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Holder (including those incorporated by reference) promptly after the filing of such documents with the Commission; provided, that the Company will not have any obligation to provide any document pursuant to this clause that is available on the Commission's EDGAR system.

(h) The Company will promptly deliver to each Holder, without charge, as many copies of each Prospectus or Prospectuses (including each form of prospectus) authorized by the Company for use and each amendment or supplement thereto as such Holder may reasonably request during the Effectiveness Period. Subject to the terms of this Agreement, including Section 8(b), the Company consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(i) The Company will cooperate with such Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free of all restrictive legends indicating that the Registrable Securities are unregistered or unqualified for resale under the Securities Act, Exchange Act or other applicable securities laws, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request in writing. In connection therewith, if required by the Company's transfer agent, the Company will promptly, after the Effective Date of the Registration Statement, cause an opinion of counsel as to the effectiveness of the Registration Statement to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without any such legend upon sale by the Holder of such Registrable Securities under the Registration Statement.

(j) Upon the occurrence of any event contemplated by Section 3(e)(v), as promptly as reasonably practicable, the Company will prepare a supplement or amendment, including a post-effective amendment, if required by applicable law, to the affected Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement nor any Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) With respect to Underwritten Offerings, subject to the right of a Holder to withdraw such Holder's Registrable Securities from an Underwritten Offering in accordance with the terms of this Agreement, (i) the right of any Holder to include such Holder's Registrable Securities in an Underwritten Offering shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein, (ii) each Holder participating in such Underwritten Offering severally agrees to enter into an underwriting agreement in customary form and sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled to select the Managing Underwriter hereunder and (iii) each Holder participating in such Underwritten Offering severally agrees to complete and execute all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents customarily and reasonably required under the terms of such underwriting arrangements. Any such underwriting agreement to be entered into among the Company, the Managing Underwriter of such offering and each Holder participating in such Underwritten Offering shall contain representations and warranties by such Holders and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions on the part of selling shareholders. All of the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the underwriter(s) of such offering included in each such underwriting agreement shall also be made to and for the benefit of such Holder participating in such Underwritten Offering, and any or all of the conditions precedent to the obligations of such underwriter(s) under such underwriting agreement shall be conditions precedent to the obligations of such Holders. No Holder shall be required in any such underwriting agreement to make any representations or warranties to or agreements with the Company or the underwriter(s) other than representations, warranties or agreements regarding such Holder, such Holder's Registrable Securities, such Holder's intended method of distribution and any other representations required by law or reasonably required by the underwriter(s). The Company hereby agrees with each Holder that, in connection with any Underwritten Offering in accordance with the terms hereof, it will negotiate in good faith and execute all indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, including using all commercially reasonable efforts to procure customary legal opinions and auditor "comfort" letters included in the Registration Statement.

(l) For a reasonable period prior to the filing of any Registration Statement and throughout the Effectiveness Period, the Company will make available, upon reasonable notice at the Company's principal place of business or such other reasonable place, for inspection during normal business hours by a representative or representatives of the selling Holders, the Managing Underwriter and any attorneys or accountants retained by such selling Holders or underwriters, all such financial and other information and books and records of the Company, and cause the officers, employees, counsel and independent certified public accountants of the Company to respond to such inquiries, as shall be reasonably necessary (and in the case of counsel, not violate an attorney-client privilege in such counsel's reasonable belief) to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Persons unless disclosure of such information is required by court or administrative order or, in the opinion of counsel to such Person, law, in which case, such Person shall be required to give the Company written notice of the proposed disclosure prior to such disclosure and, if requested by the Company, assist the Company in seeking to prevent or limit the proposed disclosure.

(m) In connection with any Requested Underwritten Offering, the Company will use commercially reasonable efforts to take such actions as the Holders reasonably request in order to expedite or facilitate the disposition of the Registrable Securities subject to such Requested Underwritten Offering and to cause appropriate officers and employees to be available, on a customary basis and upon reasonable notice, to meet with prospective investors in presentations, meetings and road shows.

(n) Each Holder agrees to furnish to the Company any other information regarding the distribution of such securities as the Company reasonably determines is required to be included in any Registration Statement or any Prospectus or prospectus supplement relating to an Underwritten Offering.

(o) Notwithstanding any other provision of this Agreement, the Company shall not be required to file a Registration Statement (or any amendment thereto) or effect a Requested Underwritten Offering (or, if the Company has filed a Shelf Registration Statement and has included Registrable Securities therein, the Company shall be entitled to suspend the offer and sale of Registrable Securities pursuant to such Registration Statement) for a period of up to 60 days if (i) the Board determines that a postponement is in the best interest of the Company and its stockholders generally due to a pending transaction involving the Company (including a pending securities offering by the Company), (ii) the Board determines such registration would render the Company unable to comply with applicable securities laws or (iii) the Board determines such registration would require disclosure of material information that the Company has a bona fide business purpose for preserving as confidential (any such period, a "**Blackout Period**"); provided that the Company shall not delay filing any demanded Registration Statement, suspend any Shelf Registration Statement or delay effecting any Requested Underwritten Offering more than five times in the aggregate or more than twice in any consecutive 12-month period. Notwithstanding anything to the contrary in this Agreement, with the exception of the Holder Lock-Up Period in connection with the Company's initial public offering, in no event shall any Blackout Periods, any Suspension Periods and any Holder Lock-Up Periods collectively continue for more than 120 days in the aggregate during any consecutive 12-month period.

(p) In connection with an Underwritten Offering, the Company shall use all commercially reasonable efforts to provide to each Holder named as a selling securityholder in any Registration Statement a copy of any auditor "comfort" letters or customary legal opinions, in each case that have been provided to the Managing Underwriter in connection with the Underwritten Offering, not later than the Business Day prior to the effective date of such Registration Statement.

(q) In connection with any Underwritten Offering, any Holder that together with its Affiliates owns 10% or more of the outstanding Class A Common Stock, shall execute a customary "lock-up" agreement with the underwriters of such Underwritten Offering containing a lock-up period equal to the shorter of (A) the shortest number of days that a director of the Company, "executive officer" (as defined under Section 16 of the Exchange Act) of the Company or any stockholder of the Company (other than a Holder or director or employee of, or consultant to, the Company) who owns 10% or more of the outstanding Class A Common Stock contractually agrees to with the underwriters of such Underwritten Offering not to sell any securities of the Company following such Underwritten Offering and (B) 60 days from the date of the execution of the underwriting agreement with respect to such Underwritten Offering (each such period, a "**Holder Lock-Up Period**"). Notwithstanding anything to the contrary herein, the customary "lock-up" agreement contemplated in this Section 3(q) shall not in any way limit a Holder or any of their Affiliates from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of their business. Additionally, notwithstanding anything to the contrary set forth in this Agreement, such customary "lock-up" agreement shall not apply to Class A Common Stock or any securities convertible into or exercisable or exchangeable for Class A Common Stock acquired by any Holder or its affiliates acquired for the account of a third party during the ordinary course of its business following the effective date of the initial underwritten public offering of shares of the Company's Class A Common Stock.

(r) The Company agrees that, if Goldman (for purposes of this section only, Goldman and each of its affiliates are referred to as a "**GS Entity**") could reasonably be deemed to be an "underwriter," as defined in Section 2(a)(11) of the Securities Act, in connection with any registration of the Company's securities of any GS Entity pursuant to this Agreement, and any amendment or supplement thereof (any such registration statement or amendment or supplement a "**GS Underwriter Registration Statement**"), then the Company will cooperate with such GS Entity in allowing such GS Entity to conduct customary "underwriter's due diligence" with respect to the Company and satisfy its obligations in respect thereof. In addition, at Goldman's request, the Company will furnish to Goldman, on the date of the effectiveness of any GS Underwriter Registration Statement and thereafter from time to time on such dates as Goldman may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to Goldman, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such GS Underwriter Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, including, without limitation, a standard "10b-5" opinion for such offering, addressed to Goldman. The Company will also permit legal counsel to Goldman to review and comment upon any such GS Underwriter Registration Statement at least five business days prior to its filing with the Commission and all amendments and supplements to any such GS Underwriter Registration Statement within a reasonable number of days prior to their filing with the Commission and not file any GS Underwriter Registration Statement or amendment or supplement thereto in a form to which Goldman's legal counsel reasonably objects.

4. **No Inconsistent Agreements; Additional Rights**. The Company shall not hereafter enter into, and is not currently a party to, any agreement with respect to its securities that is superior to or inconsistent with or that in any way violates or subordinates rights granted to the Holders by this Agreement and any such agreement shall be considered void *ab initio*.

5. **Registration Expenses**. All Registration Expenses incident to the Parties' performance of or compliance with their respective obligations under this Agreement or otherwise in connection with any Demand Registration, Requested Underwritten Offering, Piggyback Registration or Underwritten Piggyback Offering (in each case, excluding any Selling Expenses) shall be borne by the Company, whether or not any Registrable Securities are sold pursuant to a Registration Statement. "**Registration Expenses**" shall include, without limitation, all (i) registration and filing fees (including fees and expenses (A) with respect to filings required to be made with the Trading Market, (B) in compliance with applicable state securities or "Blue Sky" laws and (C) with respect to filings with FINRA), (ii) printing expenses (including expenses of printing certificates for Company Securities and of printing Prospectuses if the printing of Prospectuses is reasonably requested by a Holder of Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel, auditors and accountants for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, (vii) the fees and expenses of one law firm of national standing selected by the Holders owning the majority of the Registrable Securities to be included in any such registration or offering and (viii) all expenses relating to marketing the sale of the Registrable Securities, including expenses related to conducting a "road show." In addition, the Company shall be responsible for all of its expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including expenses payable to third parties and including all salaries and expenses of their officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on the Trading Market.

6. Indemnification.

(a) The Company shall indemnify and hold harmless each Holder, its Affiliates and each of their respective officers and directors and any agent thereof (collectively, "**Holder Indemnified Persons**"), to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, joint or several, costs (including reasonable costs of preparation and reasonable attorneys' fees) and expenses, judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Holder Indemnified Person may be involved, or is threatened to be involved, as a party or otherwise, under the Securities Act or otherwise (collectively, "**Losses**"), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which any Registrable Securities were registered, in any preliminary prospectus (if the Company authorized the use of such preliminary prospectus prior to the Effective Date), or in any summary or final prospectus or free writing prospectus (if such free writing prospectus was authorized for use by the Company) or in any amendment or supplement thereto (if used during the period the Company is required to keep the Registration Statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading; provided, however, that the Company shall not be liable to any Holder Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue or alleged untrue statement or omission or alleged omission made in such Registration Statement, such preliminary, summary or final prospectus or free writing prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder Indemnified Person specifically for use in the preparation thereof. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. This indemnity shall be in addition to any liability the Company may otherwise have and shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder Indemnified Person or any indemnified party and shall survive the transfer of such securities by such Holder. Notwithstanding anything to the contrary herein, this Section 6 shall survive any termination or expiration of this Agreement indefinitely.

(b) In connection with any Registration Statement in which a Holder participates, such Holder shall, severally and not jointly, indemnify and hold harmless the Company, its Affiliates and each of their respective officers, directors and any agent thereof, to the fullest extent permitted by applicable law, from and against any and all Losses as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any such Registration Statement, in any preliminary prospectus (if used prior to the Effective Date of such Registration Statement), or in any summary or final prospectus or free writing prospectus or in any amendment or supplement thereto (if used during the period the Company is required to keep the Registration Statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances in which they were made, not misleading, but only to the extent that the same are made in reliance and in conformity with information relating to the Holder furnished in writing to the Company by such Holder expressly for use therein; *provided*, *however*, that this Section 6(b) shall not apply to any information furnished in writing by such Holder to the Company which corrected or made not misleading information previously furnished to the Company, if such information was furnished prior to the filing of any such Registration Statement, preliminary prospectus, summary or final prospectus or free writing prospectus, or in any amendment or supplement thereto, and the Company failed to include such information therein. This indemnity shall be in addition to any liability such Holder may otherwise have and shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any indemnified party. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Holder from the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim or there may be reasonable defenses available to the indemnified party that are different from or additional to those available to the indemnifying party, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to any local counsel) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party there may be one or more legal or equitable defenses available to such indemnified party that are in addition to or may conflict with those available to another indemnified party with respect to such claim. Failure to give prompt written notice shall not release the indemnifying party from its obligations hereunder.

(d) If the indemnification provided for in this Section 6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Losses referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and of the indemnified party, on the other, in connection with the untrue or alleged untrue statement of a material fact or the omission to state a material fact that resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

7. Facilitation of Sales Pursuant to Rule 144. The Company shall timely file the reports required to be filed by it under the Exchange Act or the Securities Act (including the reports under Sections 13 and 15(d) of the Exchange Act referred to in subparagraph (c)(1) of Rule 144), and shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitations of the exemption provided by Rule 144. Upon the request of any Holder in connection with that Holder's sale pursuant to Rule 144, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements.

8. Miscellaneous.

(a) **Remedies**. In the event of actual or potential breach by the Company of any of its obligations under this Agreement, each Holder, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) **Discontinued Disposition**. Subject to the last sentence of Section 3(o), each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in clauses (ii) through (v) of Section 3(e), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemental Prospectus or amended Registration Statement as contemplated by Section 3(j) or until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement (a "**Suspension Period**"). The Company may provide appropriate stop orders to enforce the provisions of this Section 8(b).

(c) **Amendments and Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company, Beekman, Goldman, and Holders that hold a majority of the Registrable Securities as of the date of such waiver or amendment; provided, that any waiver or amendment that would have a disproportionate adverse effect on a Holder relative to the other Holders shall require the consent of such Holder. The Company shall provide prior notice to all Holders of any proposed waiver or amendment. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any Party to exercise any right hereunder in any manner impair the exercise of any such right.

(d) **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile or electronic mail as specified in this Section 8(d) prior to 5:00 p.m. Central Time on a Business Day, (ii) the Business Day after the date of transmission, if such notice or communication is delivered via facsimile or electronic mail as specified in this Agreement later than 5:00 p.m. Central Time on any date and earlier than 11:59 p.m. Central Time on such date, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service (iv) upon actual receipt by the Party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company:	OneWater Marine Inc. Attention: Chief Executive Officer 6275 Lanier Islands Parkway Buford, Georgia 30518 Electronic mail:
With copy to:	Vinson & Elkins L.L.P. Attention: David P. Oelman, James R. Brown 1001 Fannin Street, Suite 2500 Houston, Texas 77002 Electronic mail:
If to any Person who is then the registered Holder:	To the address of such Holder as it appears in the applicable register for the Registrable Securities or such other address as may be designated in writing by such Holder (including on the signature pages hereto).

(e) **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns. Except as provided in this Section 8(e), this Agreement, and any rights or obligations hereunder, may not be assigned without the prior written consent of the Company (acting through the Board of Directors) and the Holders. Notwithstanding anything in the foregoing to the contrary, the rights of a Holder pursuant to this Agreement with respect to all or any portion of its Registrable Securities may be assigned without such consent (but only with all related obligations) with respect to such Registrable Securities (and any Registrable Securities issued as a dividend or other distribution with respect to, in exchange for or in replacement of such Registrable Securities) by such Holder to a transferee of such Registrable Securities; provided (i) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the Registrable Securities with respect to which such registration rights are being assigned and (ii) such transferee or assignee agrees in writing to be bound by and subject to the terms set forth in this Agreement. The Company may not assign its rights or obligations hereunder without the prior written consent of the Holders.

(f) **No Third Party Beneficiaries**. Nothing in this Agreement, whether express or implied, shall be construed to give any Person, other than the parties hereto or their respective successors and permitted assigns, any legal or equitable right, remedy, claim or benefit under or in respect of this Agreement.

(g) **Execution and Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile or electronic mail transmission, such signature shall create a valid binding obligation of the Party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such signature delivered by facsimile or electronic mail transmission were the original thereof.

(h) **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial**. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware. Each of the Parties irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware and the United States District Court for the District of Delaware and the appellate courts therefrom for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each Party anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the Parties irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

(i) **Cumulative Remedies**. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(j) **Severability**. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the Parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(k) **Entire Agreement**. This Agreement and the agreements referred to herein constitute the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof and the matters addressed or governed hereby, whether oral or written.

(l) **Termination**. Except for Section 6, this Agreement shall terminate as to any Holder, when all Registrable Securities held by such Holder no longer constitute Registrable Securities.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMPANY:

OneWater Marine Inc.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

HOLDERS:

Special Situations Investing Group II, LLC

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

OWM BIP Investor, LLC

By: /s/ John G. Troiano
Name: John G. Troiano
Title: Manager

OWM TBG Corporation

By: /s/ John G. Troiano
Name: John G. Troiano
Title: President

Exhibit 10.1

Execution Version

TAX RECEIVABLE AGREEMENT

by and among

ONEWATER MARINE INC.,

CERTAIN OTHER PERSONS NAMED HEREIN,

and

AGENTS

DATED AS OF FEBRUARY 11, 2020

TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (this "Agreement"), dated as of February 11, 2020, is hereby entered into by and among OneWater Marine Inc., a Delaware corporation (the "Corporate Taxpayer"), the TRA Holders and the Agents.

RECITALS

WHEREAS, the Corporate Taxpayer is the managing member of One Water Marine Holdings, LLC, a Delaware limited liability company ("OneWater LLC"), an entity classified as a partnership for U.S. federal income tax purposes, and holds membership interests in OneWater LLC;

WHEREAS, OneWater LLC and each of its direct and indirect Subsidiaries that is treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Code, for each Taxable Year in which a Redemption occurs;

WHEREAS, the TRA Holders currently hold Units or will hold Units in the future and may transfer all or a portion of such Units in one or more Redemptions (as defined herein), and, as a result of such Redemptions, the Corporate Taxpayer is expected to obtain or be entitled to certain tax benefits as further described herein;

WHEREAS, this Agreement is intended to set forth the agreement among the parties hereto regarding the sharing of the tax benefits realized by the Corporate Taxpayer as a result of the Redemptions;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

"Accrued Amount" has the meaning set forth in Section 3.1(b) of this Agreement.

"Actual Tax Liability" means, with respect to any Taxable Year, the actual liability for U.S. federal income Taxes of (i) the Corporate Taxpayer, and (ii) without duplication, OneWater LLC, but only with respect to Taxes imposed on OneWater LLC and allocable to the Corporate Taxpayer; provided that the actual liability for U.S. federal income Taxes of the Corporate Taxpayer shall be calculated assuming deductions of (and other impacts of) state and local income and franchise Taxes are excluded.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

"Agent" means: (i) with respect to Goldman and Beekman, for so long as Goldman or Beekman is a TRA Holder, the Goldman/Beekman Agent, and (ii) with respect to all other TRA Holders, Jeffrey B. Lamkin or such other Person designated as such pursuant to Section 7.6(b).

"Agreed Rate" means a per annum rate of LIBOR plus 150 basis points.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Amended Schedule" has the meaning set forth in Section 2.3(b) of this Agreement.

"Assumed State and Local Tax Rate" means, with respect to any Taxable Year, (i) the sum of the following amounts for each state and local jurisdiction in which OneWater LLC (or any of its direct or indirect subsidiaries that are treated as a partnership or disregarded entity) or the Corporate Taxpayer files an income or franchise tax return for the relevant Taxable Year: (A) the Corporate Taxpayer's income and franchise tax apportionment factor(s) for such applicable state or local jurisdiction, multiplied by (B) the highest corporate income and franchise tax rate(s) for such state or local jurisdiction, reduced by (ii) the product of (A) the highest marginal U.S. federal income tax rate applicable to the Corporate Taxpayer for the relevant Taxable Year (determined based on the calculation of the Hypothetical Tax Liability for the relevant Taxable Year) and (B) the aggregate rate calculated under clause (i).

"Attributable" has the meaning set forth in Section 3.1(b) of this Agreement.

"Basis Adjustment" means any adjustment to the Tax basis of a Reference Asset as a result of a Redemption and the payments made pursuant to this Agreement with respect to such Redemption (as calculated under Section 2.1 of this Agreement), including, but not limited to: (i) under Sections 734(b) and 743(b) of the Code (including in situations where, following a Redemption, OneWater LLC remains classified as a partnership for U.S. federal income tax purposes); and (ii) under Sections 732(b) and 1012 of the Code (in situations where, as a result of one or more Redemptions, OneWater LLC becomes an entity that is disregarded as separate from its owner for U.S. federal income tax purposes). For the avoidance of doubt, the amount of any Basis Adjustment resulting from a Redemption of Units shall be determined without regard to any Section 743(b) adjustment attributable to such Units prior to such Redemption; and, further, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest.

"Beekman" means Beekman Investment Advisors, LLC and (i) its Affiliates and (ii) investment funds and investment vehicles it is Affiliated with, manages or advises.

"Board" means the board of directors of the Corporate Taxpayer.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York or Atlanta, Georgia are authorized or required by law to be closed.

"Call Right" has the meaning set forth in the OneWater LLC Agreement.

"Change of Control" means the occurrence of any of the following events or series of related events after the IPO Date:

(i) any Person (excluding a corporation or other entity owned, directly or indirectly, by the stockholders of the Corporate Taxpayer in substantially the same proportions as their ownership of stock of the Corporate Taxpayer) is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the rules promulgated under the Exchange Act), directly or indirectly, of securities of the Corporate Taxpayer representing more than 50% of the combined voting power of the Corporate Taxpayer's then outstanding voting securities;

(ii) there is consummated a merger or consolidation of the Corporate Taxpayer with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the members of the Board immediately prior to the merger or consolidation do not constitute at least a majority of the members of the board of directors of the company surviving the merger, or if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) all of the Persons who were the respective "beneficial owners" (as defined above) of the voting securities of the Corporate Taxpayer immediately prior to such merger or consolidation do not continue to beneficially own more than 50% of the combined voting power of the then-outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(iii) the stockholders of the Corporate Taxpayer approve a plan of complete liquidation or dissolution of the Corporate Taxpayer or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer's assets, other than such sale or other disposition by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by stockholders of the Corporate Taxpayer in substantially the same proportions as their ownership of the Corporate Taxpayer immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii)(A) above, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of the Corporate Taxpayer immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns, either directly or through a Subsidiary, all or substantially all of the assets of the Corporate Taxpayer immediately following such transaction or series of transactions.

"Class A Shares" means shares of Class A common stock of the Corporate Taxpayer.

"Code" means the Internal Revenue Code of 1986, as amended (or any successor U.S. federal income Tax statute).

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Corporate Taxpayer" has the meaning set forth in the preamble to this Agreement.

"Corporate Taxpayer Return" means the U.S. federal income Tax Return of the Corporate Taxpayer (including any consolidated group of which the Corporate Taxpayer is a member, as further described in Section 7.12(a) of this Agreement) filed with respect to any Taxable Year.

"Cumulative Net Realized Tax Benefit" for a Taxable Year means the cumulative amount (but not less than zero) of Realized Tax Benefits for all Taxable Years of the Corporate Taxpayer, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Payment Schedule or Amended Schedule, if any, in existence at the time of such determination.

"Default Rate" means a per annum rate of LIBOR plus 550 basis points.

"Determination" has the meaning ascribed to such term in Section 1313(a) of the Code or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

"Dispute" has the meaning set forth in Section 7.9(a) of this Agreement.

"Early Termination" has the meaning set forth in Section 4.1 of this Agreement.

"Early Termination Date" means the date of an Early Termination Notice, or the date on which the Early Termination Notice is deemed to have been delivered pursuant to Section 4.2 or Section 4.3, for purposes of determining the Early Termination Payment.

"Early Termination Effective Date" has the meaning set forth in Section 4.4 of this Agreement.

"Early Termination Notice" has the meaning set forth in Section 4.4 of this Agreement.

"Early Termination Payment" has the meaning set forth in Section 4.5(b) of this Agreement.

"Early Termination Rate" means a per annum rate of LIBOR plus 100 basis points.

"Early Termination Schedule" has the meaning set forth in Section 4.4 of this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

"Expert" means such nationally recognized expert in the particular area of disagreement as is mutually acceptable to the Corporate Taxpayer and the Agents.

"Goldman" means Goldman Sachs & Co. LLC, a New York limited liability company and (i) its Affiliates and (ii) investment funds it is Affiliated with or manages.

"Goldman/Beekman Agent" means Special Situations Investing Group II, LLC, or such other Person designated as such by Goldman and Beekman.

"Hypothetical Tax Liability" means, with respect to any Taxable Year, the liability for U.S. federal income Taxes of (i) the Corporate Taxpayer, and (ii) without duplication, OneWater LLC, but only with respect to Taxes imposed on OneWater LLC and allocable to the Corporate Taxpayer (using the same methods, elections, conventions, U.S. federal income tax rate and similar practices used on the relevant Corporate Taxpayer Return), but without taking into account (A) any Basis Adjustments, (B) any deduction attributable to Imputed Interest for the Taxable Year and (C) any Post-IPO TRA Benefits. For the avoidance of doubt, Hypothetical Tax Liability shall be determined without taking into account the carryover or carryback of any U.S. federal income Tax item (or portions thereof) that is attributable to any Basis Adjustments, Imputed Interest or any Post-IPO TRA Benefits. Furthermore, the Hypothetical Tax Liability shall be calculated assuming deductions of (and other impacts of) state and local income and franchise Taxes are excluded.

"Imputed Interest" means any interest imputed under Section 1272, 1274 or 483 or other provision of the Code, and the principles of any similar provisions of state or local law, with respect to the Corporate Taxpayer's payment obligations under this Agreement.

"IPO" means the initial public offering of Class A Shares by the Corporate Taxpayer.

"IPO Date" means the closing date of the IPO.

"IRS" means the U.S. Internal Revenue Service.

"LIBOR" means during any period, an interest rate per annum equal to the one-year LIBOR rate reported, on the date two (2) calendar days prior to the first day of such period, on the Telerate Page 3750 (or if such screen shall cease to be publicly available, as reported on Reuters Screen page "LIBOR01" or by any other publicly available source of such market rate) for London interbank offered rates for United States dollar deposits for such period.

"Majority TRA Holders" means, at the time of any determination, TRA Holders who would be entitled to receive more than fifty percent (50%) of the aggregate amount of the Early Termination Payments payable to all TRA Holders hereunder (determined using such calculations of Early Termination Payments reasonably estimated by the Corporate Taxpayer) if the Corporate Taxpayer had exercised its right of Early Termination on such date.

"Market Value" means the closing price of the Class A Shares on the applicable Redemption Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by Bloomberg L.P.; provided, that if the closing price is not reported by Bloomberg L.P. for the applicable Redemption Date, then the Market Value means the closing price of the Class A Shares on the Business Day immediately preceding such Redemption Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by Bloomberg L.P.; provided further that if the Class A Shares are not then listed on a national securities exchange or interdealer quotation system, "Market Value" means the fair market value of the Class A Shares, as determined by the Board in good faith.

"Material Objection Notice" has the meaning set forth in Section 4.4 of this Agreement.

"Net Tax Benefit" has the meaning set forth in Section 3.1(b) of this Agreement.

"Objection Notice" has the meaning set forth in Section 2.3(a) of this Agreement.

"OneWater LLC" has the meaning set forth in the Recitals of this Agreement.

"OneWater LLC Agreement" means the limited partnership agreement of OneWater LLC, as amended from time to time.

"Payment Date" means any date on which a payment is required to be made pursuant to this Agreement.

"Person" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

"Post-IPO TRA" means any tax receivable agreement (or comparable agreement) entered into by the Corporate Taxpayer or any member of any affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Sections 1501 *et seq*. of the Code or any corresponding provisions of U.S. state or local Tax law of which the Corporate Taxpayer is a member pursuant to which the Corporate Taxpayer or any member of such group is obligated to pay over amounts with respect to tax benefits resulting from any increases in Tax basis, net operating losses or other tax attributes to which the Corporate Taxpayer becomes entitled as a result of a transaction (other than any Redemption) after the date of this Agreement.

"Post-IPO TRA Benefits" means any tax benefits resulting from increases in Tax basis, net operating losses or other tax attributes with respect to which the Corporate Taxpayer or any of its Subsidiaries is obligated to make payments under a Post-IPO TRA.

"Realized Tax Benefit" means, for a Taxable Year, the sum of (i) the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability and (ii) the State and Local Tax Benefit. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability and the corresponding Hypothetical Tax Liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination with respect to such Actual Tax Liability.

"Realized Tax Detriment" means, for a Taxable Year, the sum of (i) the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability and (ii) the State and Local Tax Detriment. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by the a Taxing Authority of any Taxable Year, such liability and the corresponding Hypothetical Tax Liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination with respect to such Actual Tax Liability.

"Reconciliation Dispute" has the meaning set forth in Section 7.10 of this Agreement.

"Reconciliation Procedures" means the procedures described in Section 7.10 of this Agreement.

"Redemption" means any transfer of Units by a TRA Holder, or by a permitted transferee of such TRA Holder (pursuant to the OneWater LLC Agreement), to OneWater LLC or to the Corporate Taxpayer pursuant to the Redemption Right or the Call Right, as applicable.

"Redemption Date" means each date on which a Redemption occurs.

"Redemption Notice" has the meaning given to the term "Redemption Notice" in the OneWater LLC Agreement.

"Redemption Right" means the redemption right of holders of Units set forth in Section 4.6 of the OneWater LLC Agreement.

"Reference Asset" means, with respect to any Redemption, an asset (other than cash or a cash equivalent) that is held by OneWater LLC, or any entity in which OneWater LLC holds a direct or indirect interest that is treated as a partnership or disregarded entity for U.S. federal income tax purposes (but only to the extent such entities are not held through any entity treated as a corporation for U.S. federal income tax purposes), at the time of such Redemption. A Reference Asset also includes any asset that is "substituted basis property" under Section 7701(a)(42) of the Code with respect to a Reference Asset.

"Resolution of Disputes Procedures" means the procedures described in Section 7.9 of this Agreement.

"Schedule" means any of the following: (i) a Tax Attribute Schedule, (ii) a Tax Benefit Payment Schedule, or (iii) the Early Termination Schedule.

"Senior Obligations" has the meaning set forth in Section 5.1 of this Agreement.

"State and Local Tax Benefit" means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability; provided that, for purposes of determining the State and Local Tax Benefit, each of the Hypothetical Tax Liability and the Actual Tax Liability shall be calculated using the Assumed State and Local Tax Rate instead of the rate applicable for U.S. federal income tax purposes.

"State and Local Tax Detriment" means, for a Taxable Year, the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability; provided that, for purposes of determining the State and Local Tax Detriment, each of the Actual Tax Liability and the Hypothetical Tax Liability shall be calculated using the Assumed State and Local Tax Rate instead of the rate applicable for U.S. federal income tax purposes.

"Subsidiaries" means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

"Supermajority TRA Holders" means, at the time of any determination, TRA Holders who would be entitled to receive more than seventy-five percent (75%) of the aggregate amount of the Early Termination Payments payable to all TRA Holders hereunder (determined using such calculations of Early Termination Payments reasonably estimated by the Corporate Taxpayer) if the Corporate Taxpayer had exercised its right of Early Termination on such date.

"Tax Attribute Schedule" has the meaning set forth in Section 2.1 of this Agreement.

"Tax Benefit Payment" has the meaning set forth in Section 3.1(b) of this Agreement.

"Tax Benefit Payment Schedule" has the meaning set forth in Section 2.2 of this Agreement.

"Tax Proceeding" has the meaning set forth in Section 6.1 of this Agreement.

"Tax Receivable Agreements" means this Agreement and any Post-IPO TRA.

"Tax Return" means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

"Taxable Year" means a taxable year of the Corporate Taxpayer as defined in Section 441(b) of the Code (which, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is made), ending on or after the IPO Date.

"Taxes" means any and all U.S. federal, state and local taxes, assessments or similar charges that are based on or measured with respect to net income or profits, including franchise taxes, and any interest imposed in respect of such Tax under applicable law.

"Taxing Authority" means the IRS and any federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

"TRA Holder" means each of those Persons set forth on Schedule A and their respective successors and permitted assigns pursuant to Section 7.6(a).

"Transferor" has the meaning set forth in Section 7.12(b) of this Agreement.

"Treasury Regulations" means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant Taxable Year.

"Units" has the meaning set forth in the OneWater LLC Agreement.

"Valuation Assumptions" means, as of an Early Termination Date, the assumptions that:

(i) in each Taxable Year ending on or after such Early Termination Date, the Corporate Taxpayer will have taxable income sufficient to fully utilize the deductions arising from all Basis Adjustments (assuming, to the extent applicable, in calculating such deductions that the election under Section 168(k)(7) of the Code is made with respect to any actual or deemed Basis Adjustment arising from a Redemption made in the Taxable Year that includes the Early Termination Date or deemed to be made on the Early Termination Date pursuant to clause (v) of this definition), and Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions, further assuming such future Tax Benefit Payments would be paid on the due date, without extensions, for filing the Corporate Taxpayer Return for the applicable Taxable Year) in which such deductions would become available;

(ii) any loss or credit carryovers generated by deductions or losses arising from any Basis Adjustment or Imputed Interest (including such Basis Adjustment and Imputed Interest generated as a result of payments under this Agreement) that are available in the Taxable Year that includes the Early Termination Date will be utilized by the Corporate Taxpayer ratably in each Taxable Year over the ten Taxable Years beginning with the Taxable Year that includes the Early Termination Date (provided that, in any year that the Corporate Taxpayer is prevented from fully utilizing net operating losses pursuant to Section 382 of the Code, or any successor provision, the amount utilized for purposes of this provision shall not exceed the amount that would otherwise be utilizable under Section 382 of the Code, or any successor provision);

(iii) the U.S. federal, state and local income and franchise tax rates that will be in effect for each Taxable Year ending on or after such Early Termination Date will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date except to the extent any change to such tax rates for such Taxable Year have already been enacted into law;

(iv) any Reference Asset that is not subject to amortization, depletion, depreciation or other cost recovery deduction to which any Basis Adjustment is attributable will be disposed of in a fully taxable transaction for U.S. federal income tax purposes on the fifth anniversary of the Early Termination Date for an amount sufficient to fully utilize the Basis Adjustment with respect to such Reference Asset; provided, that in the event of a Change of Control which includes a taxable sale of such Reference Asset (including the sale of all of the equity interests in an entity classified as a partnership or disregarded entity that directly or indirectly owns such Reference Asset), such Reference Asset shall be deemed disposed of at the time of the Change of Control; and

(v) if, at the Early Termination Date, there are Units that have not been transferred in a Redemption, then all Units shall be deemed to be transferred pursuant to the Redemption Right effective on the Early Termination Date.

Section 1.2 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II
DETERMINATION OF CERTAIN REALIZED TAX BENEFITS

Section 2.1 Tax Attribute Schedules. Within ninety (90) calendar days after the filing of the relevant Corporate Taxpayer Return for each Taxable Year, the Corporate Taxpayer shall deliver to each Agent a schedule (the "Tax Attribute Schedule") that shows, in reasonable detail necessary to perform the calculations required by this Agreement, including with respect to each applicable TRA Holder, (i) the Basis Adjustments with respect to the Reference Assets as a result of the Redemptions effected by such TRA Holder in such Taxable Year and (ii) the period (or periods) over which such Basis Adjustments are amortizable and/or depreciable.

Section 2.2 Tax Benefit Payment Schedules.

(a) Within ninety (90) calendar days after the filing of the Corporate Taxpayer Return for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporate Taxpayer shall deliver to each Agent: (i) a schedule showing, in reasonable detail, (A) the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year, (B) the portion of the Net Tax Benefit, if any, that is Attributable to each TRA Holder who has participated in any Redemption, (C) the Accrued Amount with respect to any such Net Tax Benefit that is Attributable to such TRA Holder, (D) the Tax Benefit Payment due to each such TRA Holder, and (E) the portion of such Tax Benefit Payment that the Corporate Taxpayer intends to treat as Imputed Interest (a "Tax Benefit Payment Schedule"), (ii) a reasonably detailed calculation by the Corporate Taxpayer of the Hypothetical Tax Liability, (iii) a reasonably detailed calculation by the Corporate Taxpayer of the Actual Tax Liability, (iv) a copy of the Corporate Taxpayer Return for such Taxable Year, and (v) any other work papers reasonably requested by any Agent. In addition, the Corporate Taxpayer shall allow each Agent reasonable access at no cost to its appropriate representatives in connection with a review of such Tax Benefit Payment Schedule. The Tax Benefit Payment Schedule will become final as provided in Section 2.3(a) and may be amended as provided in Section 2.3(b) (subject to the procedures set forth in Section 2.3(b)).

(b) For purposes of calculating the Realized Tax Benefit or Realized Tax Detriment for any Taxable Year, carryovers or carrybacks of any U.S. federal income Tax item attributable to the Basis Adjustments, Imputed Interest and any Post-IPO TRA Benefits shall be considered to be subject to the rules of the Code and the Treasury Regulations, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any U.S. federal income Tax item includes a portion that is attributable to the Basis Adjustment, Imputed Interest or any Post-IPO TRA Benefits and another portion that is not so attributable, such respective portions shall be considered to be used in accordance with the "with and without" methodology such that the portion that is not attributable to a Basis Adjustment or Imputed Interest is deemed utilized first. The parties agree that (i) any payment under this Agreement (to the extent permitted by law and other than amounts accounted for as Imputed Interest) will be treated as a subsequent upward adjustment to the purchase price of the relevant Units and will have the effect of creating additional Basis Adjustments to Reference Assets for the Corporate Taxpayer in the year of payment, and (ii) as a result, such additional Basis Adjustments will be incorporated into the current year calculation and into future year calculations, as appropriate.

Section 2.3 Procedure; Amendments.

(a) An applicable Schedule or amendment thereto shall become final and binding on all parties thirty (30) calendar days from the first date on which all Agents have received the applicable Schedule or amendment thereto unless (i) any Agent, within thirty (30) calendar days after receiving an applicable Schedule or amendment thereto, provides the Corporate Taxpayer and each other Agent with notice of a material objection to such Schedule ("Objection Notice") made in good faith or (ii) each Agent provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date waivers from all Agents have been received by the Corporate Taxpayer. If the Corporate Taxpayer and the Agents, for any reason, are unable to successfully resolve the issues raised in an Objection Notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of such Objection Notice, the Corporate Taxpayer and the Agents shall employ the Reconciliation Procedures under Section 7.10 or Resolution of Disputes Procedures under Section 7.9, as applicable.

(b) The applicable Schedule for any Taxable Year may be amended from time to time by the Corporate Taxpayer (i) in connection with a Determination affecting such Schedule, (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to the Agents, (iii) to comply with the Expert's determination under the Reconciliation Procedures, (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Corporate Taxpayer Return filed for such Taxable Year or (vi) to adjust a Tax Attribute Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an "Amended Schedule"). The Corporate Taxpayer shall provide an Amended Schedule to each Agent within sixty (60) calendar days of the occurrence of an event referenced in clauses (i) through (vi) of the preceding sentence. For the avoidance of doubt, in the event a Schedule is amended after such Schedule becomes final pursuant to Section 2.3(a), the Amended Schedule shall not be taken into account in calculating any Tax Benefit Payment in the Taxable Year to which the amendment relates but instead shall be taken into account in calculating the Cumulative Net Realized Tax Benefit for the Taxable Year in which the amendment actually occurs.

Section 2.4 Section 754 Election. In its capacity as the sole managing member of OneWater LLC, the Corporate Taxpayer will (i) ensure that, on and after the date hereof and continuing throughout the term of this Agreement, OneWater LLC and any of its eligible Subsidiaries will have in effect an election pursuant to Section 754 of the Code (and under any similar provisions of applicable U.S. state or local law) and (ii) use commercially reasonable efforts to ensure that, on and after the date hereof and continuing throughout the term of this Agreement, any entity in which OneWater LLC holds a direct or indirect interest that is treated as a partnership for U.S. federal income tax purposes that does not meet the definition of "Subsidiary" herein, will have in effect an election pursuant to Section 754 of the Code (and under any similar provisions of applicable U.S. state or local law).

ARTICLE III
TAX BENEFIT PAYMENTS

Section 3.1 Payments.

(a) Within five (5) Business Days after a Tax Benefit Payment Schedule delivered to the Agents becomes final in accordance with Section 2.3(a), the Corporate Taxpayer shall pay to each TRA Holder the Tax Benefit Payment in respect of such TRA Holder determined pursuant to Section 3.1(b) for such Taxable Year. Each such payment shall be made by check, by wire transfer of immediately available funds to the bank account previously designated by the TRA Holder to the Corporate Taxpayer, or as otherwise agreed by the Corporate Taxpayer and the TRA Holder. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated Tax payments, including, without limitation, U.S. federal or state estimated income Tax payments.

(b) A "Tax Benefit Payment" in respect of a TRA Holder for a Taxable Year means an amount, not less than zero, equal to the sum of the portion of the Net Tax Benefit Attributable to such TRA Holder and the Accrued Amount with respect thereto. The "Net Tax Benefit" for a Taxable Year shall be an amount equal to the excess, if any, of 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over the sum of (i) the total amount of payments previously made under this Section 3.1 (excluding payments attributable to Accrued Amounts) and (ii) the total amount of Tax Benefit Payments previously made under the corresponding provision of any Post-IPO TRA; provided, for the avoidance of doubt, that no TRA Holder shall be required to return any portion of any previously made Tax Benefit Payment. Subject to Section 3.3, the portion of the Net Tax Benefit for a Taxable Year that is "Attributable" to a TRA Holder is the portion of such Net Tax Benefit that is derived from (i) any Basis Adjustment that was attributable, at the time of the relevant Redemption, to the Units acquired or deemed acquired by the Corporate Taxpayer in a Redemption undertaken by or with respect to such TRA Holder or (ii) any Imputed Interest with respect to Tax Benefit Payments made to such TRA Holder. The "Accrued Amount" with respect to any portion of a Net Tax Benefit shall equal an amount determined in the same manner as interest on such portion of the Net Tax Benefit for a Taxable Year calculated at the Agreed Rate from the due date (without extensions) for filing the Corporate Taxpayer Return for such Taxable Year until the Payment Date. For the avoidance of doubt, for Tax purposes, the Accrued Amount shall not be treated as interest but shall instead be treated as additional consideration for the acquisition of Units in a Redemption, unless otherwise required by law.

(c) Notwithstanding any provision of this Agreement to the contrary, unless a TRA Holder elects for the provisions of this Section 3.1(c) not to apply to any Redemption by notifying the Corporate Taxpayer in writing on or before the due date for providing the Redemption Notice with respect to such Redemption, the aggregate Tax Benefit Payments to be made to such TRA Holder, with respect to the related Redemption shall be limited to (i) 50%, or such other percentage such TRA Holder elects to apply by notifying the Corporate Taxpayer in writing on or before the due date for providing the Redemption Notice with respect to such Redemption, of (ii) the amount equal to the sum of (A) the Cash Election Amount as defined in the OneWater LLC Agreement and (B) the aggregate Market Value of the Class A Shares received by such TRA Holder in such Redemption. An election made by a TRA Holder pursuant to this Section 3.1(c) may not be revoked.

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under the Tax Receivable Agreements. It is also intended that the provisions of the Tax Receivable Agreements will result in 85% of the Cumulative Net Realized Tax Benefit, and the Accrued Amount thereon, being paid to the Persons to whom payments are due pursuant to the Tax Receivable Agreements. The provisions of this Agreement shall be construed in the appropriate manner to achieve these fundamental results.

Section 3.3 Pro Rata Payments; Coordination of Benefits with Other Tax Receivable Agreements.

(a) Notwithstanding anything in Section 3.1 to the contrary, to the extent that the aggregate amount of the Corporate Taxpayer's tax benefit subject to the Tax Receivable Agreements is limited in a particular Taxable Year because the Corporate Taxpayer does not have sufficient taxable income in such Taxable Year to fully utilize available deductions and other attributes, the limitation on the tax benefit for the Corporate Taxpayer shall be allocated as follows: (i) first among any Post-IPO TRAs (and among all Persons eligible for payments thereunder in the manner set forth in such Post-IPO TRAs) and (ii) to the extent of any remaining limitation on tax benefit for the Corporate Taxpayer after application of clause (i), among this Agreement (and among all Persons eligible for payments thereunder) in proportion to the respective amounts of Net Tax Benefit that would have been determined under this Agreement if the Corporate Taxpayer had sufficient taxable income so that there was no such limitation.

(b) After taking into account Section 3.3(a), if for any reason the Corporate Taxpayer does not fully satisfy its payment obligations to make all Tax Benefit Payments due under the Tax Receivable Agreements in respect of a particular Taxable Year, then (i) the Corporate Taxpayer will pay the same proportion of each Tax Benefit Payment due to each Person to whom a payment is due under this Agreement (provided that, no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments in respect of prior Taxable Years have been made in full) and (ii) after fulfilling the obligations set forth in clause (i) of this Section 3.3(b), the Corporate Taxpayer will then pay all amounts due under any Post-IPO TRA in respect of such Taxable Year (provided that, no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments in respect of prior Taxable Years have been made in full).

(c) To the extent the Corporate Taxpayer makes a payment to a TRA Holder in respect of a particular Taxable Year under Section 3.1(a) of this Agreement (taking into account Section 3.3(a) and Section 3.3(b), but excluding payments attributable to Accrued Amounts) in an amount in excess of the amount of such payment that should have been made to such TRA Holder in respect of such Taxable Year, then (i) such TRA Holder shall not receive further payments under Section 3.1(a) until such TRA Holder has foregone an amount of payments equal to such excess and any Accrued Amount attributable to such excess and (ii) the Corporate Taxpayer will pay the amount of such TRA Holder's foregone payments (other than any foregone payments in respect of Accrued Amounts) to the other Persons to whom a payment is due under the Tax Receivable Agreements (or if no such payments are due, shall retain such amounts for future payments when they become due) in a manner such that each such Person to whom a payment is due under the Tax Receivable Agreements, to the maximum extent possible, receives aggregate payments under Section 3.1(a) or the comparable section of the other Tax Receivable Agreement(s), as applicable (in each case, taking into account Section 3.3(a) and Section 3.3(b) or the comparable section of the other Tax Receivable Agreement(s), but excluding payments attributable to Accrued Amounts) in the amount it would have received if there had been no excess payment to such TRA Holder.

ARTICLE IV
TERMINATION

Section 4.1 Early Termination at Election of the Corporate Taxpayer. The Corporate Taxpayer may terminate this Agreement at any time by paying to each TRA Holder the Early Termination Payment due to such TRA Holder pursuant to Section 4.5(b) (such termination, an "Early Termination"); provided that the Corporate Taxpayer may withdraw any notice of exercise of its termination rights under this Section 4.1 prior to the time at which any Early Termination Payment has been paid. Upon payment of the Early Termination Payment by the Corporate Taxpayer, the Corporate Taxpayer shall not have any further payment obligations under this Agreement, other than for (a) any Tax Benefit Payment agreed to by the Corporate Taxpayer and such TRA Holder as due and payable but unpaid as of the Early Termination Notice and (b) except to the extent included in the Early Termination Payment or as a payment under clause (a) of this Section 4.1, any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the Early Termination Date. Upon payment of all amounts provided for in this Section 4.1, this Agreement shall terminate.

Section 4.2 Early Termination upon Change of Control. In the event of a Change of Control, all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the closing date of the Change of Control and shall include, but not be limited to the following: (a) payment of the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the closing date of a Change of Control, (b) payment of any Tax Benefit Payment in respect of a TRA Holder agreed to by the Corporate Taxpayer and such TRA Holder as due and payable but unpaid as of the deemed Early Termination Notice, and (c) except to the extent included in the Early Termination Payment or as a payment under clause (b) of this Section 4.2, payment of any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the Early Termination Date.

Section 4.3 Breach of Agreement.

(a) In the event that the Corporate Taxpayer breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment as described in Section 4.3(b), as a result of failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the United States Bankruptcy Code or otherwise, then if the Supermajority TRA Holders so elect, such breach shall be treated as an Early Termination. Upon such election, all obligations hereunder shall be accelerated and shall be immediately due and payable, and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach and shall include, but shall not be limited to, (i) payment of the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of a breach, (ii) payment of any Tax Benefit Payment in respect of a TRA Holder agreed to by the Corporate Taxpayer and such TRA Holder as due and payable but unpaid as of the deemed Early Termination Notice, and (iii) except to the extent included in the Early Termination Payment or as a payment under clause (ii) of this Section 4.3(a), payment of any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the Early Termination Date. Notwithstanding the foregoing, in the event that the Corporate Taxpayer breaches this Agreement, if the Supermajority TRA Holders do not elect to treat such breach as an Early Termination pursuant to this Section 4.3(a), the TRA Holders shall be entitled to seek specific performance of the terms hereof.

(b) The parties agree that the failure of the Corporate Taxpayer to make any payment due pursuant to this Agreement within three (3) months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it shall not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three (3) months of the date such payment is due. Notwithstanding anything in this Agreement to the contrary, except in the case of an Early Termination Payment or any payment treated as an Early Termination Payment, it shall not be a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due to the extent that the Corporate Taxpayer has insufficient funds available to make, or to the extent that the Corporate Taxpayer is contractually constrained from making, such payment in the Corporate Taxpayer's sole judgment exercised in good faith; provided that the interest provisions of Section 5.2 shall apply to such late payment (unless the Corporate Taxpayer does not have sufficient cash to make such payment as a result of limitations imposed by any credit agreement to which OneWater LLC or any Subsidiary of OneWater LLC is a party, in which case Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate); provided further that it shall be a breach of this Agreement, and the provisions of Section 4.3(a) shall apply as of the original due date of the Tax Benefit Payment, if the Corporate Taxpayer makes any distribution of cash or other property (other than Class A Shares or other equity interests of the Corporate Taxpayer) to its stockholders while any Tax Benefit Payment is due and payable but unpaid.

Section 4.4 Early Termination Notice. If the Corporate Taxpayer chooses to exercise its right of early termination under Section 4.1 above, the Corporate Taxpayer shall deliver to each Agent notice of such intention to exercise such right (the "Early Termination Notice"). Upon delivery of the Early Termination Notice or the occurrence of an event described in Section 4.2 or Section 4.3(a), the Corporate Taxpayer shall deliver (i) a schedule showing in reasonable detail the calculation of the Early Termination Payment (the "Early Termination Schedule") and (ii) any other work papers related to the calculation of the Early Termination Payment reasonably requested by any Agent. In addition, the Corporate Taxpayer shall allow each Agent reasonable access at no cost to the appropriate representatives of the Corporate Taxpayer in connection with a review of such Early Termination Schedule. The Early Termination Schedule shall become final and binding on all parties thirty (30) calendar days from the first date on which all Agents have received such Schedule or amendment thereto unless (x) any Agent, within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporate Taxpayer and each other Agent with notice of a material objection to such Schedule made in good faith ("Material Objection Notice") or (y) each Agent provides a written waiver of such right of a Material Objection Notice within the period described in clause (x) above, in which case such Schedule becomes binding on the date waivers from all Agents have been received by the Corporate Taxpayer (the "Early Termination Effective Date"). If the Corporate Taxpayer and the Agents, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of the Material Objection Notice, the Corporate Taxpayer and the Agents shall employ the Reconciliation Procedures under Section 7.10 or Resolution of Disputes Procedures under Section 7.9, as applicable.

Section 4.5 Payment upon Early Termination.

(a) Subject to its right to withdraw any notice of Early Termination pursuant to Section 4.1, within three (3) Business Days after the Early Termination Effective Date, the Corporate Taxpayer shall pay to each TRA Holder its Early Termination Payment. Each such payment shall be made by check, by wire transfer of immediately available funds to a bank account or accounts designated by the TRA Holder, or as otherwise agreed by the Corporate Taxpayer and the TRA Holder.

(b) The "Early Termination Payment" shall equal, with respect to each TRA Holder, the present value, discounted at the Early Termination Rate as of the Early Termination Date, of all Tax Benefit Payments that would be required to be paid by the Corporate Taxpayer to such TRA Holder beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied.

ARTICLE V
SUBORDINATION AND LATE PAYMENTS

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment, Early Termination Payment or any payment pursuant to Section 5.2 shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of the Corporate Taxpayer and its Subsidiaries (such obligations, "Senior Obligations") and shall rank pari passu with all current or future unsecured obligations of the Corporate Taxpayer and its Subsidiaries that are not Senior Obligations. For the avoidance of doubt, notwithstanding the above, the determination of whether it is a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment or other payment under this Agreement when due is governed by Section 4.3(b). To the extent that any payment under this Agreement is not permitted to be made at the time payment is due as a result of this Section 5.1 and the terms of the agreements governing Senior Obligations, such payment obligation nevertheless shall accrue for the benefit of the TRA Holders and the Corporate Taxpayer shall make such payments at the first opportunity that such payments are permitted to be made in accordance with the terms of the Senior Obligations.

Section 5.2 Late Payments by the Corporate Taxpayer. The amount of all or any portion of any Tax Benefit Payment, Early Termination Payment or any other payment under this Agreement not made to any TRA Holder when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate (or, if so provided in Section 4.3(b), at the Agreed Rate) and commencing from the date on which such Tax Benefit Payment, Early Termination Payment or any other payment under this Agreement was due and payable.

ARTICLE VI
NO DISPUTES; CONSISTENCY; COOPERATION

Section 6.1 Participation in the Corporate Taxpayer's and OneWater LLC's Tax Matters. Except as otherwise provided herein or in the OneWater LLC Agreement, the Corporate Taxpayer shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporate Taxpayer and OneWater LLC, including without limitation preparing, filing or amending any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, the Corporate Taxpayer shall notify each Agent of, and keep each Agent reasonably informed with respect to, the portion of any audit, examination, or any other administrative or judicial proceeding (a "Tax Proceeding") of the Corporate Taxpayer or OneWater LLC by a Taxing Authority the outcome of which is reasonably expected to materially affect the rights of the TRA Holders under this Agreement, and shall provide each Agent with reasonable opportunity to provide information and other input to the Corporate Taxpayer, OneWater LLC and their respective advisors concerning the conduct of any such portion of a Tax Proceeding; provided, however, that the Corporate Taxpayer shall use commercially reasonable efforts to not settle or otherwise resolve any part of a Tax Proceeding described in the previous clause that relates to a Basis Adjustment or the deduction of Imputed Interest (and, in each case, that is reasonably expected to have a material effect on the TRA Holders' rights under this Agreement) without the consent of the relevant Agent or the Majority TRA Holders, which consent shall not be unreasonably withheld, conditioned or delayed; provided further, that the Corporate Taxpayer and OneWater LLC shall not be required to take any action, or refrain from taking any action, that is inconsistent with any provision of the OneWater LLC Agreement.

Section 6.2 Consistency. Unless otherwise required by applicable law, the Corporate Taxpayer and each of the TRA Holders agree to report, and to cause their respective Subsidiaries to report, for all purposes, including U.S. federal, state and local Tax purposes and financial reporting purposes, all Tax-related items (including, without limitation, the Basis Adjustments and each Tax Benefit Payment), but, for financial reporting purposes, only in respect of items that are not explicitly characterized as "deemed" or in a similar manner by the terms of this Agreement, in a manner consistent with the description of any Tax characterization herein (including as set forth in Section 2.2(b) and Section 3.1(b) and any Schedule required to be provided by or on behalf of the Corporate Taxpayer under this Agreement, as finally determined pursuant to Section 2.3). If the Corporate Taxpayer and any TRA Holder, for any reason, are unable to successfully resolve any disagreement concerning such treatment within thirty (30) calendar days, the Corporate Taxpayer and such TRA Holder shall employ the Reconciliation Procedures under Section 7.10 or Resolution of Disputes Procedures under Section 7.9, as applicable.

Section 6.3 Cooperation. Each TRA Holder shall (i) furnish to the Corporate Taxpayer in a timely manner such information, documents and other materials as the Corporate Taxpayer may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any Tax Proceeding, (ii) make itself available to the Corporate Taxpayer and its representatives to provide explanations of documents and materials and such other information as the Corporate Taxpayer or its representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter. The Corporate Taxpayer shall reimburse each TRA Holder for any reasonable third-party costs and expenses incurred pursuant to this Section 6.3. The Goldman/Beekman Agent shall deliver to Beekman all material information (including the Tax Attribute Schedule and Tax Benefit Payment Schedule) received by the Goldman/Beekman Agent hereunder in its capacity as an Agent, promptly after received by the Goldman/Beekman Agent.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Notices. Any notice or other communication hereunder must be given in writing and (a) delivered in person, (b) transmitted by facsimile, by telecommunications mechanism or electronically or (c) mailed by certified or registered mail, postage prepaid, receipt requested at the addresses below or to such other address or to such other Person as any party shall have last designated by such notice to the other parties. Each such notice or other communication shall be effective (i) if given by telecommunication or electronically, when transmitted to the applicable number or email address so specified in (or pursuant to) this Section 7.1 and an appropriate answerback is received or, if transmitted after 4:00 p.m. local time on a Business Day in the jurisdiction to which such notice is sent or at any time on a day that is not a Business Day in the jurisdiction to which such notice is sent, then on the immediately following Business Day, (ii) if given by mail, on the first Business Day in the jurisdiction to which such notice is sent following the date three days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, on the Business Day when actually received at such address or, if not received on a Business Day, on the Business Day immediately following such actual receipt:

If to the Corporate Taxpayer, to:

One Water Marine Holdings, LLC
6275 Lanier Islands Parkway
Buford, GA 30518
Attention: Jack Ezzell, CFO
Email:

with a copy (which shall not constitute notice to the Corporate Taxpayer) to:

Vinson & Elkins L.L.P.
2001 Ross Avenue, Suite 3900
Dallas, TX 75201
Attention: Peter Marshall
Email:

If to the Goldman/Beekman Agent, to:

Special Situations Investing Group II, LLC
200 West Street
New York, NY 10282

with a copy (which shall not constitute notice to the Goldman/Beekman Agent) to:

c/o The Beekman Group LLC
530 Fifth Avenue, 23rd Floor
New York, NY 10036
Attention: John Troiano and Shaun Caesar
Email:

If to the Agent other than the Goldman/Beekman Agent, to:

Jeffrey B. Lamkin

If to a TRA Holder, other than an Agent, that is or was a member in OneWater LLC, to:

The address set forth in the records of OneWater LLC.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission or otherwise (including an electronically executed signature page) shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement and the agreements referred to herein constitute the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except as expressly provided in Section 3.3.

Section 7.4 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Successors; Assignment.

(a) No TRA Holder may assign this Agreement to any Person without the prior written consent of the Corporate Taxpayer; provided, however, that:

(i) to the extent Units are transferred in accordance with the terms of the OneWater LLC Agreement (except pursuant to the Redemption Right or Call Right), the transferring TRA Holder shall have the option to assign to the transferee of such Units the transferring TRA Holder's rights under this Agreement with respect to such transferred Units without the prior written consent of the Corporate Taxpayer, provided that, such transferee or such Affiliate, as applicable, has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to become a "TRA Holder" for all purposes of this Agreement, and provided, further, that, for the avoidance of doubt, if a TRA Holder transfers Units but does not assign to the transferee of such Units the rights of such TRA Holder under this Agreement with respect to such transferred Units, such TRA Holder shall continue to be entitled to receive the Tax Benefit Payments, if any, due hereunder with respect to, including any Tax Benefit Payments arising in respect of a subsequent Redemption of, such Units; and

(ii) the right to receive any and all payments payable or that may become payable to a TRA Holder pursuant to this Agreement that, once a Redemption has occurred, arise with respect to the Units transferred in such Redemption, may be assigned to any Person or Persons with the prior written consent of the Corporate Taxpayer (not to be unreasonably withheld, conditioned or delayed) as long as any such Person has executed and delivered, or, in connection with such assignment, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to be bound by Section 7.13.

(b) The Person designated as the Agent other than the Goldman/Beekman Agent may not be changed without the prior written consent of the Corporate Taxpayer and the Majority TRA Holders (for this purpose, calculated by excluding Goldman and Beekman, their Affiliates and each of their assignees).

(c) Except as otherwise specifically provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporate Taxpayer shall cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporate Taxpayer, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporate Taxpayer would be required to perform if no such succession had taken place.

Section 7.7 Amendments. No provision of this Agreement may be amended unless such amendment is approved in writing by each of the Corporate Taxpayer, the Majority TRA Holders and, for so long as Goldman or Beekman hold an interest herein, Goldman and Beekman; provided, however, that no such amendment shall be effective if such amendment would have a disproportionate effect on the payments certain TRA Holders will or may receive under this Agreement unless all such disproportionately affected TRA Holders consent in writing to such amendment. No provision of this Agreement may be waived unless such waiver is in writing and signed by the relevant Agent, in the case of provisions relating to such Agent, or in the case of any other provision, by the party against whom the waiver is to be effective.

Section 7.8 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.9 Resolution of Disputes.

(a) Any and all disputes which are not governed by Section 7.10, including any ancillary claims of any party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this Section 7.9 and Section 7.10) (each a "Dispute") shall be governed by this Section 7.9. The parties hereto shall attempt in good faith to resolve all Disputes by negotiation. If a Dispute between the parties hereto cannot be resolved in such manner, such Dispute shall be finally settled by arbitration conducted by a single arbitrator in accordance with the then-existing rules of arbitration of the American Arbitration Association. If the parties to the Dispute fail to agree on the selection of an arbitrator within ten (10) calendar days of the receipt of the request for arbitration, the American Arbitration Association shall make the appointment. The arbitrator shall be a lawyer admitted to the practice of law in a U.S. state, or a nationally recognized expert in the relevant subject matter, and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings. In addition to monetary damages, the arbitrator shall be empowered to award equitable relief, including an injunction and specific performance of any obligation under this Agreement. The arbitrator is not empowered to award damages in excess of compensatory damages, and each party hereby irrevocably waives any right to recover punitive, exemplary or similar damages with respect to any Dispute. The award shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered and enforced in any court having jurisdiction over a party or any of its assets.

(b) Notwithstanding the provisions of Section 7.9(a), the Corporate Taxpayer may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this Section 7.9(b), each Agent and each TRA Holder (i) expressly consents to the application of Section 7.9(c) to any such action or proceeding, (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate, and (iii) irrevocably appoints the Corporate Taxpayer as agent of such party for service of process in connection with any such action or proceeding and agrees that service of process upon such agent, who shall promptly advise such party in writing of any such service of process, shall be deemed in every respect effective service of process upon such party in any such action or proceeding.

(c) EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY COURTS LOCATED IN DELAWARE FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION 7.9 OR ANY JUDICIAL PROCEEDING ANCILLARY TO AN ARBITRATION OR CONTEMPLATED ARBITRATION ARISING OUT OF OR RELATING TO OR CONCERNING THIS AGREEMENT. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration, or to confirm an arbitration award. The parties acknowledge that the fora designated by this Section 7.9(c) have a reasonable relation to this Agreement, and to the parties' relationship with one another.

(d) The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in Section 7.9(c) and such parties agree not to plead or claim the same.

Section 7.10 Reconciliation. In the event that any Agent and the Corporate Taxpayer are unable to resolve a disagreement with respect to the calculations required to produce the schedules described in Section 2.3, Section 4.4 and Section 6.2 (but not, for the avoidance doubt, with respect to any legal interpretation with respect to such provisions or schedules) within the relevant period designated in this Agreement ("Reconciliation Dispute"), the Reconciliation Dispute shall be submitted for determination to the Expert. The Expert shall be a partner or principal in a nationally recognized accounting or law firm, and unless the Corporate Taxpayer and such Agent agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporate Taxpayer or such Agent or other actual or potential conflict of interest. If the parties are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the Expert shall be appointed by the American Arbitration Association. The Expert shall resolve (a) any matter relating to the Tax Attribute Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days, (b) any matter relating to a Tax Benefit Payment Schedule or an amendment thereto within fifteen (15) calendar days, and (c) any matter related to treatment of any tax-related item as contemplated in Section 6.2 within fifteen (15) calendar days, or, in each case, as soon thereafter as is reasonably practicable after such matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, any portion of such payment that is not under dispute shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporate Taxpayer, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporate Taxpayer except as provided in the next sentence. The Corporate Taxpayer and such Agent shall each bear its own costs and expenses of such proceeding, unless (i) the Expert adopts such Agent's position (as determined by the Expert), in which case the Corporate Taxpayer shall reimburse such Agent for any reasonable out-of-pocket costs and expenses in such proceeding, or (ii) the Expert adopts the Corporate Taxpayer's position (as determined by the Expert), in which case such Agent shall reimburse the Corporate Taxpayer for any reasonable out-of-pocket costs and expenses in such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.10 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.10 shall be binding on the Corporate Taxpayer and its Subsidiaries, the Agents, and the TRA Holders and may be entered and enforced in any court having jurisdiction.

Section 7.11 Withholding. The Corporate Taxpayer shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporate Taxpayer is required to deduct and withhold with respect to the making of such payment under the Code or any provision of U.S. federal, state, local or non-U.S. tax law; provided, that the Corporate Taxpayer and each TRA Holder shall cooperate to reduce or eliminate any such deduction or withholding, including by providing or obtaining any certificates or other documentation that would reduce or eliminate any such deduction or withholding to the extent such party is legally entitled to do so. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporate Taxpayer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant TRA Holder.

Section 7.12 Admission of the Corporate Taxpayer into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporate Taxpayer is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Sections 1501 *et seq.* of the Code or any corresponding provisions of U.S. state or local Tax law, then, subject to the application of the Valuation Assumptions upon a Change of Control: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If the Corporate Taxpayer (or any other entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder), OneWater LLC or any other entity treated as holding a Reference Asset hereunder (a "Transferor") transfers one or more Reference Assets to a corporation (or a Person classified as a corporation for U.S. federal income tax purposes) with which the Transferor does not file a consolidated Tax Return pursuant to Section 1501 of the Code, in a transaction that is wholly or partially exempt from tax, the Transferor, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment (e.g., calculating the gross income of the entity and determining the Realized Tax Benefit of such entity) due hereunder, shall be treated as having disposed of such Reference Assets in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by the Transferor with respect to the non-taxable portion of such transfer shall be equal to the fair market value of the transferred Reference Assets, plus, without duplication, (i) the amount of debt to which any Reference Asset is subject, in the case of a transfer of an encumbered Reference Asset or (ii) the amount of debt allocated to any such Reference Asset, in the case of a contribution of a partnership interest. For purposes of this Section 7.12(b), a transfer of a partnership interest shall be treated as a transfer of the Transferor's share of each of the assets and liabilities of that partnership.

Section 7.13 Confidentiality.

(a) Each Agent, each TRA Holder and each of such TRA Holder's assignees acknowledges and agrees that the information of the Corporate Taxpayer is confidential and, except in the course of performing any duties as necessary for the Corporate Taxpayer and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such Person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters, acquired pursuant to this Agreement, of the Corporate Taxpayer and its Affiliates and successors, concerning OneWater LLC and its Affiliates and successors or the TRA Holders, learned by any Agent or any TRA Holder heretofore or hereafter; provided that, for the avoidance of doubt, any Agent may disclose information received by it in the ordinary course of such Agent's duties as Agent to the TRA Holders for which it is the Agent. This Section 7.13 shall not apply to (i) any information that has been made publicly available by the Corporate Taxpayer or any of its Affiliates, becomes public knowledge (except as a result of an act of an Agent or a TRA Holder in violation of this Agreement) or is generally known to the business community and (ii) the disclosure of information (A) as may be proper in the course of performing such TRA Holder's obligations, or monitoring or enforcing such TRA Holder's rights, under this Agreement, (B) as part of such TRA Holder's normal reporting, rating or review procedure (including normal credit rating and pricing process), or in connection with such TRA Holder's or such TRA Holder's Affiliates' normal fund raising, financing, marketing, informational or reporting activities, or to such TRA Holder's (or any of its Affiliates') or its direct or indirect owners or Affiliates, auditors, accountants, employees, attorneys or other agents, (C) to any bona fide prospective assignee of such TRA Holder's rights under this Agreement, or prospective merger or other business combination partner of such TRA Holder, provided that such assignee or merger partner agrees to be bound by the provisions of this Section 7.13, (D) as is required to be disclosed by order of a court of competent jurisdiction, administrative body or governmental body, or by subpoena, summons or legal process, or by law, rule or regulation; provided that any TRA Holder required to make any such disclosure to the extent legally permissible shall provide the Corporate Taxpayer prompt notice of such disclosure, or to regulatory authorities or similar examiners conducting regulatory reviews or examinations (without any such notice to the Corporate Taxpayer), or (E) to the extent necessary for a TRA Holder or its direct or indirect owners to prepare and file its Tax Returns, to respond to any inquiries regarding such Tax Returns from any Taxing Authority or to prosecute or defend any Tax Proceeding with respect to such Tax Returns. Notwithstanding anything to the contrary herein, each Agent (and each employee, representative or other agent of such Agent or its assignees, as applicable) and each TRA Holder and each of its assignees (and each employee, representative or other agent of such TRA Holder or its assignees, as applicable) may disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure of the Corporate Taxpayer, OneWater LLC, the Agents, the TRA Holders and their Affiliates, and any of their transactions, and all materials of any kind (including opinions or other Tax analyses) that are provided to the Agents or any TRA Holder relating to such Tax treatment and Tax structure.

(b) If an Agent or an assignee or a TRA Holder or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.13, the Corporate Taxpayer shall have the right and remedy to have the provisions of this Section 7.13 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporate Taxpayer or any of its Subsidiaries or the TRA Holders and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 7.14 No More Favorable Terms. None of the Corporate Taxpayer nor any of its Subsidiaries shall enter into any additional agreement providing rights similar to this Agreement to any Person (including any agreement pursuant to which the Corporate Taxpayer is obligated to pay amounts with respect to tax benefits resulting from any increases in Tax basis, net operating losses or other tax attributes to which the Corporate Taxpayer becomes entitled as a result of a transaction) if such agreement provides terms that are more favorable to the counterparty under such agreement than those provided to the TRA Holders under this Agreement; provided, however, that the Corporate Taxpayer (or any of its Subsidiaries) may enter into such an agreement if this Agreement is amended to make such more favorable terms available to the TRA Holders.

Section 7.15 Change in Law. Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a TRA Holder reasonably believes that the existence of this Agreement (a) could cause income (other than income arising from receipt of a payment under this Agreement) recognized by such TRA Holder upon any Redemption that as of the date of this Agreement would be treated as capital gain to instead be treated as ordinary income or to be otherwise taxed at ordinary income rates for U.S. federal income tax purposes or (b) would have other material adverse tax consequences to such TRA Holder and/or its direct or indirect owners, then, in either case, at the election of such TRA Holder and to the extent specified by such TRA Holder, this Agreement (i) shall cease to have further effect, (ii) shall not apply to an Redemption by such TRA Holder occurring after a date specified by it, or (iii) shall otherwise be amended in a manner determined by such TRA Holder to waive any benefits to which such TRA Holder would otherwise be entitled under this Agreement, provided that such amendment shall not result in an increase in or acceleration of payments under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section 7.16 Several Obligations. Notwithstanding anything to the contrary in this Agreement, the parties hereto agree that (i) the representations and warranties of each TRA Holder made in this Agreement are being made on a several, and not joint, basis, (ii) the obligations of each TRA Holder under this Agreement are several obligations of each of them, and (iii) no TRA Holders shall have any liability for the breach of any representation, warranty, covenant, or obligation by any other TRA Holder.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporate Taxpayer, the Agents, and the TRA Holders have duly executed this Agreement as of the date first written above.

THE CORPORATE TAXPAYER:

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

AGENT:

By: /s/ Jeffrey B. Lamkin
Jeffrey B. Lamkin

AGENT:

SPECIAL SITUATIONS INVESTING GROUP II, LLC

By: /s/ Justin Betzen
Name: Justin Betzen
Title: Authorized Signatory

[The signatures of the TRA Holders are attached in Schedule A.]

SCHEDULE A
TRA HOLDERS

TRA Holder

AUBURN OWMH, LLLP

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Member

TRA Holder

PHILIP SINGLETON IRREVOCABLE TRUST, DATED DECEMBER 24, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

TRA Holder

AUSTIN SINGLETON IRREVOCABLE TRUST, DATED DECEMBER 30, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

TRA Holder

/s/ Anthony Aisquith
Anthony Aisquith

TRA Holder

ADC INVESTMENTS, LLC

By: /s/ A. Derrill Crowe
Name: A. Derrill Crowe
Title: President

TRA Holder

/s/ Scott Cunningham

Scott Cunningham

TRA Holder

/s/ Cindy Thompson

Cindy Thompson

TRA Holder

TERESA D. BOS 2015 TRUST

By: /s/ Pete Knowles
Name: Pete Knowles
Title: Trustee

TRA Holder

/s/ Pete Knowles

Pete Knowles

TRA Holder

/s/ Peter H. Bos, III

Peter H. Bos, III

Schedule A to
Tax Receivable Agreement

TRA Holder

/s/ Mitchell W. Legler, II

Mitchell W. Legler, II

TRA Holder

/s/ J. Clarke Legler, II

J. Clarke Legler, II

TRA Holder

/s/ Kenneth M. Kirschner

Kenneth M. Kirschner

TRA Holder

LANDIS MARINE HOLDINGS, LLC

By: /s/ Michael C. Smith
Name: Michael C. Smith
Title: Manager

TRA Holder

L13, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Management, LLC

TRA Holder

JBL INVESTMENT HOLDINGS, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Group

Schedule A to
Tax Receivable Agreement

TRA Holder

/s/ Keith R. Style

Keith R. Style

TRA Holder

/s/ Michael Gold

Michael Gold

TRA Holder

SPECIAL SITUATIONS INVESTING GROUP II, LLC

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

TRA Holder

OWM BIP INVESTOR, LLC

By: /s/ John G. Troiano
Name: John G. Troiano
Title: Manager

Schedule A to
Tax Receivable Agreement

Exhibit 10.2

Execution Version

FOURTH AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ONE WATER MARINE HOLDINGS, LLC

DATED AS OF FEBRUARY 11, 2020

THE LIMITED LIABILITY COMPANY INTERESTS IN ONE WATER MARINE HOLDINGS, LLC HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS, AND HAVE BEEN OR ARE BEING ISSUED IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY STATE AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT; AND (III) ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BETWEEN THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THE LIMITED LIABILITY COMPANY INTERESTS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS, THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT AND ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BY THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THEREFORE, PURCHASERS AND OTHER TRANSFEREES OF SUCH LIMITED LIABILITY COMPANY INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT OR ACQUISITION FOR AN INDEFINITE PERIOD OF TIME.

TABLE OF CONTENTS

FOURTH AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ONE WATER MARINE HOLDINGS, LLC

This Fourth Amended and Restated Limited Liability Company Agreement (as amended, supplemented or restated from time to time, this "***Agreement***") is entered into as of February 11, 2020, by and among One Water Marine Holdings, LLC, a Delaware limited liability company (the "***Company***"), OneWater Marine Inc., a Delaware corporation ("***PubCo***"), Special Situations Investing Group II, LLC, a Delaware limited liability company ("***Goldman***"), OWM BIP Investor, LLC, a Delaware limited liability company ("***Beekman***"), the other parties listed on Exhibit A hereto (together with Goldman and Beekman, collectively, the "***Legacy Owners***") and each other Person who is or at any time becomes a Member in accordance with the terms of this Agreement and the Act. Capitalized terms used herein and not otherwise defined have the respective meanings set forth in Section 1.1.

RECITALS

WHEREAS, the Company was formed under the name "Gale-Force Marine Holdings, LLC" pursuant to the Articles of Organization filed in the office of the Secretary of State of the State of Georgia on February 20, 2014, and on such date the original members adopted said Articles of Organization and entered into a written operating agreement;

WHEREAS, the Company filed a Certificate of Conversion with the Georgia Secretary of State on March 24, 2014 and filed a Certificate of Conversion and Certificate of Formation under the name "Gale Force Marine Holdings, LLC" with the State of Delaware on March 28, 2014, pursuant to the Act;

WHEREAS, the original members unanimously consented to the change of the Company's name from "Gale Force Marine Holdings, LLC" to "One Water Marine Holdings, LLC" on September 5, 2014;

WHEREAS, immediately prior to the adoption of this Agreement, the Company was governed by the Third Amended and Restated Limited Liability Company Agreement, dated as of March 1, 2017 (the "***Existing LLC Agreement***");

WHEREAS, as part of a restructuring and pursuant to the Master Reorganization Agreement dated as of the date hereof (the "***Master Reorganization Agreement***"), the equity interests in the Company are being recapitalized into the Units (as defined in Section 1.1);

WHEREAS, it is contemplated that PubCo will, subject to the approval of its board of directors, issue up to 5,307,693 Class A Shares to the public for cash in the initial underwritten public offering of shares of its stock (the "***IPO***");

WHEREAS, if the IPO is consummated, PubCo will contribute all of the net proceeds received by it from the IPO and Class B Shares to the Company in exchange for a number of Units equal to the number of Class A Shares issued in the IPO, and the Company will then distribute such Class B Shares to each of its Members (other than PubCo and its Subsidiaries);

WHEREAS, each Unit (other than any Unit held by PubCo and its direct and indirect Subsidiaries) may be redeemed, at the election of the holder of such Unit (together with the surrender and delivery by such holder of one Class B Share), for one Class A Share in accordance with the terms and conditions of this Agreement;

WHEREAS, the Members of the Company desire that PubCo become the sole managing member of the Company (in its capacity as managing member as well as in any other capacity, the "***Managing Member***");

WHEREAS, the Members of the Company desire to amend and restate the Existing LLC Agreement and adopt this Agreement; and

WHEREAS, this Agreement shall supersede the Existing LLC Agreement in its entirety as of the date hereof.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Existing LLC Agreement is hereby amended and restated in its entirety and the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions**. As used in this Agreement and the Schedules and Exhibits attached to this Agreement, the following definitions shall apply:

"***Act***" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

"***Action***" means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Entity.

"***Adjusted Basis***" has the meaning given such term in Section 1011 of the Code.

"***Adjusted Capital Account Deficit***" means the deficit balance, if any, in such Member's Capital Account at the end of any Fiscal Year or other taxable period, with the following adjustments:

(a) credit to such Capital Account any amount that such Member is obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(*c*), as well as any addition thereto pursuant to the next to last sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account thereunder any changes during such year in Company Minimum Gain and Member Minimum Gain; and

(b) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(*d*)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

"***Affiliate***" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; *provided* that, for purposes of this Agreement, (a) no Member shall be deemed an Affiliate of the Company or any of its Subsidiaries and (b) none of the Company or any of its Subsidiaries shall be deemed an Affiliate of any Member.

"***Agreement***" is defined in the preamble to this Agreement.

"***Beekman***" is defined in the preamble to this Agreement.

"***Beekman Entity***" means each of Beekman, its Affiliates (including any investment funds managed or advised by Beekman Investment Advisors, LLC or its Affiliates) and any Transferee (for the avoidance of doubt, other than PubCo and any Subsidiary of PubCo) to whom any of the foregoing entities Transfer Units in a Transfer permitted under this Agreement.

"***beneficially own***" and "***beneficial owner***" shall be as defined in Rule 13d-3 of the rules promulgated under the Exchange Act.

"***Beneficial Ownership Limitation***" means 4.99% (or, upon written election by Goldman up to 19.99%) of the number of Class A Shares outstanding immediately after giving effect to the issuance of Class A Shares issuable upon redemption of Class B Shares held by Goldman. Goldman, upon notice to PubCo, may increase or decrease the Beneficial Ownership Limitation provisions applicable to its Class B Shares provided that the Beneficial Ownership Limitation in no event exceeds 19.99% of the number of Class A Shares outstanding immediately after giving effect to the issuance of Class A Shares upon redemption of the Class B Shares held by Goldman and the provisions of this definition shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to PubCo.

"***Business Day***" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York or Atlanta, Georgia are authorized or required by law to be closed.

"***Business Opportunities Exempt Party***" is defined in Section 8.4.

"***Call Right***" is defined in Section 4.6(m).

"***Capital Account***" means, with respect to any Member, the Capital Account maintained for such Member in accordance with Section 4.4.

"***Capital Contribution***" means, with respect to any Member, the amount of cash and the initial Gross Asset Value of any property (other than cash) contributed to the Company by such Member. Any reference to the Capital Contribution of a Member will include any Capital Contributions made by a predecessor holder of such Member's Units to the extent that such Capital Contribution was made in respect of Units Transferred to such Member.

"***Cash Election***" means an election by the Company to redeem Units for cash pursuant to Section 4.6(d) or an election by PubCo (or such designated member(s) of the PubCo Holdings Group) to purchase Units for cash pursuant to an exercise of its Call Right set forth in Section 4.6(m).

"***Cash Election Amount***" means with respect to a particular Redemption for which a Cash Election has been made, (a) other than in the case of clause (b), if the Class A Shares trade on a securities exchange or automated or electronic quotation system, an amount of cash equal to the product of (i) the number of Class A Shares that would have been received in such Redemption if a Cash Election had not been made and (ii) the average of the volume-weighted closing price for a Class A Share on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Shares trade, as reported by Bloomberg, L.P., or its successor, for each of the 5 consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the Redemption Notice Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Shares; (b) if the Cash Election is made in respect of a Redemption Notice issued by a Redeeming Member in connection with a Registered Offering, an amount of cash equal to the product of (i) the number of Class A Shares that would have been received in such Redemption if a Cash Election had not been made and (ii) the price per Class A Share sold to the public in such Registered Offering (reduced by the amount of any Discount associated with such Class A Share), and (c) if the Class A Shares no longer trade on a securities exchange or automated or electronic quotation system, an amount of cash equal to the product of (i) the number of Class A Shares that would have been received in such Redemption if a Cash Election had not been made and (ii) the fair market value of one Class A Share, as determined by the Managing Member in Good Faith, that would be obtained in an arms' length transaction for cash between an informed and willing buyer and an informed and willing seller, neither of whom is under any compulsion to buy or sell, and without regard to the particular circumstances of the buyer or seller and without any discounts for liquidity or minority discount.

"***Change of Control***" means the occurrence of any of the following events or series of related events after the date hereof:

(i) any Person (excluding a corporation or other entity owned, directly or indirectly, by the stockholders of PubCo in substantially the same proportions as their ownership of stock of PubCo) is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the rules promulgated under the Exchange Act), directly or indirectly, of securities of PubCo representing more than 50% of the combined voting power of PubCo's then outstanding voting securities;

(ii) there is consummated a merger or consolidation of PubCo with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the members of the board of directors of PubCo immediately prior to the merger or consolidation do not constitute at least a majority of the members of the board of directors of the company surviving the merger, or if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) all of the Persons who were the respective "beneficial owners" (as defined above) of the voting securities of PubCo immediately prior to such merger or consolidation do not continue to beneficially own more than 50% of the combined voting power of the then-outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(iii) the stockholders of PubCo approve a plan of complete liquidation or dissolution of PubCo or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by PubCo of all or substantially all of PubCo's assets, other than such sale or other disposition by PubCo of all or substantially all of PubCo's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by stockholders of PubCo in substantially the same proportions as their ownership of PubCo immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii)(A) above, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of PubCo immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns, either directly or through a Subsidiary, all or substantially all of the assets of PubCo immediately following such transaction or series of transactions.

"***Change of Control Exchange Date***" is defined in Section 4.6(p).

"***Chief Executive Officer***" means the person appointed as the Chief Executive Officer of the Company by the Managing Member pursuant to Section 7.2(a).

"***Class A Shares***" means, as applicable, (a) the Class A Common Stock of PubCo, par value $0.01 per share, or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person or cash or other property that become payable in consideration for the Class A Shares or into which the Class A Shares are exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

"***Class B Shares***" means, as applicable, (a) the Class B common stock of PubCo, par value $0.01 per share, or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person or cash or other property that become payable in consideration for the Class B Shares or into which the Class B Shares are exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

"***Code***" means the United States Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"***Commission***" means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"***Common Stock***" means the Class A Shares and the Class B Shares.

"***Company***" is defined in the preamble to this Agreement.

"***Company Level Taxes***" means any federal, state or local taxes, additions to tax, penalties and interest payable by the Company or any of its Subsidiaries as a result of any examination of the Company's or any of its Subsidiaries' affairs by any federal, state or local tax authorities, including resulting administrative and judicial proceedings under the Partnership Tax Audit Rules.

"***Company Minimum Gain***" has the meaning of "partnership minimum gain" set forth in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d). It is further understood that Company Minimum Gain shall be determined in a manner consistent with the rules of Treasury Regulations Section 1.704-2(b)(2), including the requirement that if the adjusted Gross Asset Value of property subject to one or more Nonrecourse Liabilities differs from its adjusted tax basis, Company Minimum Gain shall be determined with reference to such Gross Asset Value.

"***Company Representative***" has, with respect to taxable periods beginning after December 31, 2017, the meaning assigned to the term "partnership representative" (including any "designated individual," if applicable) in Section 6223 of the Code and any Treasury Regulations or other administrative or judicial pronouncements promulgated thereunder, and with respect to taxable periods beginning on or before December 31, 2017, and for any applicable state and local tax purposes, the meaning assigned to the term "tax matters partner" as defined in Code Section 6231(a)(7) prior to its amendment by Title XI of the Bipartisan Budget Act of 2015, in each case as appointed pursuant to Section 10.4.

"***Contract***" means any written agreement, contract, lease, sublease, license, sublicense, obligation, promise or undertaking.

"***control***" (including the terms "***controlled by***" and "***under common control with***"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract or otherwise.

"***Covered Audit Adjustment***" means an adjustment to any partnership-related item (within the meaning of Section 6241(2)(B) of the Code) to the extent such adjustment results in an "imputed underpayment" as described in Section 6225(b) of the Code or any analogous provision of state or local Law.

"***Covered Person***" is defined in Section 7.4.

"***Debt Securities***" means, with respect to PubCo, any and all debt instruments or debt securities that are not convertible or exchangeable into Equity Securities of PubCo.

"***Depreciation***" means, for each Fiscal Year or other taxable period, an amount equal to the depreciation, amortization or other cost recovery deduction (excluding depletion) allowable with respect to an asset for such Fiscal Year or other taxable period, except that (a) with respect to any such property the Gross Asset Value of which differs from its Adjusted Basis for U.S. federal income tax purposes and which difference is being eliminated by use of the "remedial method" pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such Fiscal Year or other taxable period shall be the amount of book basis recovered for such Fiscal Year or other taxable period under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2), and (b) with respect to any other such property the Gross Asset Value of which differs from its Adjusted Basis for U.S. federal income tax purposes at the beginning of such Fiscal Year or other taxable period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other taxable period bears to such beginning Adjusted Basis; *provided*, *however*, that if the Adjusted Basis for U.S. federal income tax purposes of an asset at the beginning of such Fiscal Year or other taxable period is zero, Depreciation with respect to such asset shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

"***DGCL***" means the General Corporation Law of the State of Delaware, as amended from time to time (or any corresponding provisions of succeeding law).

"***Discount***" is defined in Section 4.6(i).

"***Effective Time***" means 12:01 a.m. Central Daylight Time on the date of the initial closing of the IPO.

"***Equity Securities***" means (a) with respect to a partnership, limited liability company or similar Person, any and all units, interests, rights to purchase, warrants, options or other equivalents of, or other ownership interests in, any such Person as well as debt or equity instruments convertible, exchangeable or exercisable into any such units, interests, rights or other ownership interests and (b) with respect to a corporation, any and all shares, interests, participation or other equivalents (however designated) of corporate stock, including all common stock and preferred stock, or warrants, options or other rights to acquire any of the foregoing, including any debt instrument convertible or exchangeable into any of the foregoing.

"***ERISA***" means the Employee Retirement Security Act of 1974, as amended.

"***Excess Tax Amount***" is defined in Section 10.5(c).

"***Exchange Act***" means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

"***Existing LLC Agreement***" is defined in the recitals to this Agreement.

"***Fair Market Value***" means the fair market value of any property as determined in Good Faith by the Managing Member after taking into account such factors as the Managing Member shall deem appropriate.

"***Federal Bankruptcy Code***" means Title 11 of the United States Code, as amended from time to time, and all rules and regulations promulgated thereunder.

"***Fiscal Year***" means the fiscal year of the Company, which shall end on September 30 of each calendar year unless, for U.S. federal income tax purposes, another fiscal year is required. The Company shall have the same fiscal year for U.S. federal income tax purposes and for accounting purposes.

"***GAAP***" means U.S. generally accepted accounting principles at the time.

"***Goldman***" is defined in the preamble to this Agreement.

"***Goldman Entity***" means each of Goldman, its Affiliates and any Transferee (for the avoidance of doubt, other than PubCo and any Subsidiary of PubCo) to whom any of the foregoing entities Transfer Units in a Transfer permitted under this Agreement.

"***Good Faith***" means a Person having acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and the PubCo Holdings Group and, with respect to a criminal proceeding, having had no reasonable cause to believe such Person's conduct was unlawful.

"***Governmental Entity***" means any federal, national, supranational, state, provincial, local, foreign or other government, governmental, stock exchange, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"***Gross Asset Value***" means, with respect to any asset, the asset's Adjusted Basis for U.S. federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset as of the date of such contribution;

(b) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values as of the following times: (i) the acquisition of an interest (or additional interest) in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution to the Company or in exchange for the performance of more than a *de minimis* amount of services to or for the benefit of the Company; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(*g*)(1), (iv) the acquisition of an interest in the Company by any new or existing Member upon the exercise of a noncompensatory option in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(*s*); or (v) any other event to the extent determined by the Managing Member to be permitted and necessary or appropriate to properly reflect Gross Asset Values in accordance with the standards set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(*q*); *provided*, *however*, that adjustments pursuant to clauses (i), (ii) and (iv) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. If any noncompensatory options are outstanding upon the occurrence of an event described in this paragraph (b)(i) through (b)(v), the Company shall adjust the Gross Asset Values of its properties in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)*(f)*(1) and 1.704-1(b)(2)(iv)*(h)*(2);

(c) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross Fair Market Value of such asset on the date of such distribution;

(d) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the Adjusted Basis of such assets pursuant to Code Section 734(b) (including any such adjustments pursuant to Treasury Regulation Section 1.734-2(b)(1)), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*) and clause (f) in the definition of "Profits" or "Losses" below or Section 5.2(h); *provided*, *however*, that the Gross Asset Value of a Company asset shall not be adjusted pursuant to this subsection to the extent the Managing Member determines in Good Faith that an adjustment pursuant to clause (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d); and

(e) if the Gross Asset Value of a Company asset has been determined or adjusted pursuant to clauses (a), (b) or (d) of this definition of Gross Asset Value, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Losses and other items allocated pursuant to Article V.

"***Indebtedness***" means (a) all indebtedness for borrowed money (including capitalized lease obligations, sale-leaseback transactions or other similar transactions, however evidenced), (b) any other indebtedness that is evidenced by a note, bond, debenture, draft or similar instrument, (c) notes payable and (d) lines of credit and any other agreements relating to the borrowing of money or extension of credit.

"***Interest***" means the entire interest of a Member in the Company, including the Units and all of such Member's rights, powers and privileges under this Agreement and the Act.

"***Investment Company Act***" is defined in Section 8.1(b).

"***IPO***" is defined in the recitals to this Agreement.

"***IPO TRA***" means the Tax Receivable Agreement, dated as of the date hereof, by and among PubCo and certain current and former Members or Affiliates thereof, as the same may be amended, supplemented or restated from time to time.

"***Law***" means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

"***Legacy Owners***" is defined in the preamble to this Agreement.

"***Legal Action***" is defined in Section 12.8.

"***Liability***" means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

"***Liquidating Event***" is defined in Section 11.1.

"***Lock-Up Period***" means the period of 180 days commencing with the pricing of the IPO.

"***Managing Member***" is defined in the recitals to this Agreement.

"***Master Reorganization Agreement***" is defined in the recitals to this Agreement.

"***Member***" means any Person that executes this Agreement as a Member and any other Person admitted to the Company as an additional or substituted Member, in each case, that has not made a disposition of such Person's entire Interest.

"***Member Minimum Gain***" has the meaning ascribed to "partner nonrecourse debt minimum gain" set forth in Treasury Regulations Section 1.704-2(i). It is further understood that the determination of Member Minimum Gain and the net increase or decrease in Member Minimum Gain shall be made in the same manner as required for such determination of Company Minimum Gain under Treasury Regulations Sections 1.704-2(d) and 1.704-2(g)(3).

"***Member Nonrecourse Debt***" has the meaning of "partner nonrecourse debt" set forth in Treasury Regulations Section 1.704-2(b)(4).

"***Member Nonrecourse Deductions***" has the meaning of "partner nonrecourse deductions" set forth in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"***Minority Member Redemption Date***" is defined in Section 4.6(n).

"***Minority Member Redemption Notice***" is defined in Section 4.6(n).

"***National Securities Exchange***" means an exchange registered with the Commission under the Exchange Act.

"***Nonrecourse Deductions***" has the meaning assigned that term in Treasury Regulations Section 1.704-2(b)(1).

"***Nonrecourse Liability***" is defined in Treasury Regulations Section 1.704-2(b)(3).

"***Officer***" means each Person appointed as an officer of the Company pursuant to and in accordance with the provisions of Section 7.2.

"***Option***" means the option to purchase an additional 692,308 Class A Shares granted by PubCo to the underwriters for the IPO as described in PubCo's registration statement on Form S-1 (Registration No. 333-232639), initially filed with the Commission on July 12, 2019.

"***Partnership Tax Audit Rules***" means Sections 6221 through 6241 of the Code, together with any final or temporary Treasury Regulations, Revenue Rulings and case law interpreting Sections 6221 through 6241 of the Code (and any analogous provision of state or local tax Law).

"***Permitted Transferee***" means, with respect to any Member: (a) any Affiliate of such Member; (b) any successor entity of such Member; (c) with respect to any Member that is a natural person or of which a majority of the outstanding Equity Securities and voting power with respect to the election of directors (or the selection of any other similar governing body in the case of an entity other than a corporation) are beneficially owned (as such term is defined under Rule 13d-3 of the Exchange Act) by a single natural person, a trust established by or for the benefit of such natural person of which only such natural person and his or her immediate family members are beneficiaries; and (d) upon the death of any Member that is a natural person, an executor, administrator or beneficiary of the estate of the deceased Member.

"***Person***" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

"***Plan Asset Regulations***" means the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, or any successor regulations as the same may be amended from time to time.

"***Post-IPO TRA***" means any tax receivable agreement (or comparable agreement), other than the IPO TRA, entered into by PubCo or any of its Subsidiaries pursuant to which PubCo is obligated to pay over amounts with respect to tax benefits resulting from any tax attributes to which PubCo becomes entitled.

"***Proceeding***" is defined in Section 7.4.

"***Profits***" or "***Losses***" means, for each Fiscal Year or other taxable period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income or gain of the Company that is exempt from U.S. federal income tax or otherwise described in Section 705(a)(1)(B) of the Code and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted pursuant to clause (b) or (c) of the definition of Gross Asset Value above, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the Company asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the Company asset) from the disposition of such asset and shall, except to the extent allocated pursuant to Section 5.2, be taken into account for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for U.S. federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) in lieu of the depreciation, amortization and other cost recovery deductions (excluding depletion) taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;

(f) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(4), to be taken into account in determining Capital Account balances as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) any items of income, gain, loss or deduction that are specifically allocated pursuant to the provisions of Section 5.2 shall not be taken into account in computing Profits or Losses for any taxable year, but such items available to be specially allocated pursuant to Section 5.2 will be determined by applying rules analogous to those set forth in clauses (a) through (f) above.

"***Property***" means all real and personal property owned by the Company from time to time, including both tangible and intangible property.

"***PubCo***" is defined in the recitals to this Agreement.

"***PubCo Approved Change of Control***" means any Change of Control of PubCo that meets the following conditions: (i) such Change of Control was approved by the board of directors of PubCo prior to such Change of Control, (ii) such Change of Control results in an early termination of and acceleration of payments under the IPO TRA, (iii) the terms of such Change of Control provide for the consideration for the Units in such Change of Control to consist solely of (A) freely and immediately tradeable common equity securities of an issuer listed on a national securities exchange and/or (B) cash, and (iv) if such consideration includes common equity, the market value of the outstanding common equity held by non-affiliates of such issuer is at least twice as large as the market value of all of the outstanding common equity of PubCo, in each case on a fully-diluted basis immediately before the public announcement of such Change of Control.

"***PubCo Holdings Group***" means PubCo and each other Subsidiary of PubCo (other than the Company and its Subsidiaries).

"***PubCo Shares***" means all classes and series of common stock of PubCo, including the Class A Shares and the Class B Shares.

"***PubCo Tax-Related Liabilities***" means (a) any U.S. federal, state and local and non-U.S. tax obligations (including any Company Level Taxes for which the PubCo Holdings Group is liable hereunder) owed by the PubCo Holdings Group (other than any obligations to remit any withholdings withheld from payments to third parties) and (b) any obligations under the IPO TRA and any Post-IPO TRA payable by the PubCo Holdings Group.

"***Reclassification Event***" means any of the following: (a) any reclassification or recapitalization of PubCo Shares (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination or any transaction subject to Section 4.1(e)), (b) any merger, consolidation or other combination involving PubCo, or (c) any sale, conveyance, lease or other disposal of all or substantially all the properties and assets of PubCo to any other Person, in each of clauses (a), (b) or (c), as a result of which holders of PubCo Shares shall be entitled to receive cash, securities or other property for their PubCo Shares.

"***Redeeming Member***" is defined in Section 4.6(a).

"***Redemption***" means any redemption of Units into Class A Shares pursuant to this Agreement.

"***Redemption Date***" means a Regular Redemption Date or a Special Redemption Date.

"***Redemption Notice***" is defined in Section 4.6(b).

"***Redemption Notice Date***" means, with respect to any Redemption Date, the date specified by PubCo that is no later than 10 Business Days before such Redemption Date, *provided* that if such date falls on a weekend or holiday, the Redemption Notice Date shall be on the following Business Day.

"***Redemption Right***" is defined in Section 4.6(a).

"***Registered Offering***" means any secondary securities offering (which may include a "bought deal" or "overnight" offering), and any primary securities offering for which piggyback rights are offered, pursuant to the Registration Rights Agreement.

"***Registration Rights Agreement***" means the Registration Rights Agreement, by and among PubCo and the Members, to be entered into concurrently with the closing of the IPO.

"***Regular Redemption Date***" means a date within each fiscal quarter specified by PubCo from time to time, which will generally be set so that the corresponding Redemption Notice Date falls within a window after PubCo's earnings announcement for the prior fiscal quarter or in connection with a Registered Offering.

"***Regulatory Allocations***" is defined in Section 5.2(i).

"***Securities Act***" means the Securities Act of 1933, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

"***Special Redemption Date***" means a date specified by PubCo in addition to or in lieu of the Regular Redemption Date during the same fiscal quarter. PubCo must specify a Regular Redemption Date or Special Redemption Date effective with any Registered Offering.

"***Subsidiary***" means, with respect to any specified Person, any other Person with respect to which such specified Person (a) has, directly or indirectly, the power, through the ownership of securities or otherwise, to elect a majority of directors or similar managing body or (b) beneficially owns, directly or indirectly, a majority of such Person's Equity Securities.

"***Tax Contribution Obligation***" is defined in Section 10.5(c).

"***Tax Offset***" is defined in Section 10.5(c).

"***Trading Day***" means a day on which the Nasdaq Stock Market or such other principal United States securities exchange on which the Class A Shares are listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

"***Transfer***" means, when used as a noun, any voluntary or involuntary, direct or indirect (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of the Transferor, by operation of law or otherwise), transfer, sale, pledge or hypothecation or other disposition and, when used as a verb, voluntarily or involuntarily, directly or indirectly (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of the Transferor or any Person that controls the Transferor, by operation of law or otherwise), to transfer, sell, pledge or hypothecate or otherwise dispose of. The terms "***Transferee***," "***Transferor***," "***Transferred***" and other forms of the word "***Transfer***" shall have the correlative meanings.

"***Transfer Agent***" means Broadridge Corporate Issuer Solutions, Inc. or such other agent or agents of PubCo as may be designated by the board of directors of PubCo as the transfer agent for the Class A Shares.

"***Treasury Regulations***" means pronouncements, as amended from time to time, or their successor pronouncements, that clarify, interpret and apply the provisions of the Code, and that are designated as "Treasury Regulations" by the United States Department of the Treasury.

"***Uniform Commercial Code***" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of Delaware.

"***Units***" means the Units issued hereunder and shall also include any Equity Security of the Company issued in respect of or in exchange for Units, whether by way of dividend or other distribution, split, recapitalization, merger, rollup transaction, consolidation, conversion or reorganization.

"***Winding-Up Member***" is defined in Section 11.3(a).

Section 1.2 **Interpretive Provisions**. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Section 1.1 are applicable to the singular as well as the plural forms of such terms;

(b) all accounting terms not otherwise defined herein have the meanings assigned under GAAP;

(c) all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars;

(d) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(e) whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation";

(f) "or" is not exclusive;

(g) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms; and

(h) the words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

ARTICLE II

ORGANIZATION OF THE LIMITED LIABILITY COMPANY

Section 2.1 **Formation**. The Company has been formed as a limited liability company subject to the provisions of the Act upon the terms, provisions and conditions set forth in this Agreement.

Section 2.2 **Filing**. The Company's Certificate of Formation has been filed with the Secretary of State of the State of Delaware in accordance with the Act. The Members shall execute such further documents (including amendments to such Certificate of Formation) and take such further action as is appropriate to comply with the requirements of Law for the formation or operation of a limited liability company in Delaware and in all states and counties where the Company may conduct its business.

Section 2.3 **Name**. The name of the Company is "One Water Marine Holdings, LLC" and all business of the Company shall be conducted in such name or, in the discretion of the Managing Member, under any other name.

Section 2.4 **Registered Office; Registered Agent**. The location of the registered office of the Company in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808, or at such other place as the Managing Member from time to time may select. The name and address for service of process on the Company in the State of Delaware are Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808, or such other qualified Person as the Managing Member may designate from time to time and its business address.

Section 2.5 **Principal Place of Business**. The principal place of business of the Company shall be located in such place as is determined by the Managing Member from time to time.

Section 2.6 **Purpose; Powers**. The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act. The Company shall have the power and authority to take any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to the accomplishment of the foregoing purpose.

Section 2.7 **Term**. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue indefinitely. The Company may be dissolved and its affairs wound up only in accordance with Article XI.

Section 2.8 **Intent**. It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a "partnership" for U.S. federal and state income tax purposes. It is also the intent of the Members that the Company not be operated or treated as a "partnership" for purposes of Section 303 of the Federal Bankruptcy Code. Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in this Section 2.8.

ARTICLE III

CLOSING TRANSACTIONS

Section 3.1 **Reorganization Transactions**.

(a) Effective immediately prior to the Effective Time, (i) the Existing LLC Agreement shall be amended and restated and this Agreement shall be adopted and (ii) all of the membership interests in the Company prior to the adoption of this Agreement shall be recapitalized to consist solely of a single class of Units with the rights and privileges as set forth in this Agreement and each Member will receive its pro rata share of such Units in accordance with the Master Reorganization Agreement and the right to receive the Class B Shares pursuant to Section 3.1(c).

(b) Immediately following the initial closing of the IPO, (i) PubCo shall contribute to the Company all of the net proceeds received by PubCo in connection with such initial closing and 6,087,906 Class B Shares in exchange for the issuance of 6,087,906 Units.

(c) Immediately following the contribution described in Section 3.1(b), the Company shall distribute to each of the Members (other than any member of the PubCo Holdings Group), pro rata, in accordance with the number of Units owned by each Member, the Class B Shares contributed to the Company pursuant to Section 3.1(b).

(d) Immediately following any closing of the issuance and sale of Class A Shares pursuant to the Option, PubCo shall contribute all of the net proceeds received pursuant to such Option exercise to the Company in exchange for a number of Units equal to the number of Class A Shares issued and sold pursuant to such Option exercise.

ARTICLE IV

OWNERSHIP AND CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 4.1 **Authorized Units; General Provisions With Respect to Units**.

(a) Subject to the provisions of this Agreement, the Company shall be authorized to issue from time to time such number of Units and such other Equity Securities as the Managing Member shall determine in accordance with Section 4.3. Each authorized Unit may be issued pursuant to such agreements as the Managing Member shall approve, including pursuant to options and warrants. The Company may reissue any Units that have been repurchased or acquired by the Company.

(b) Except to the extent explicitly provided otherwise herein (including Section 4.3), each outstanding Unit shall be identical.

(c) Initially, none of the Units will be represented by certificates. If the Managing Member determines that it is in the interest of the Company to issue certificates representing the Units, certificates will be issued and the Units will be represented by those certificates, and this Agreement shall be amended as necessary or desirable to reflect the issuance of certificated Units for purposes of the Uniform Commercial Code. Nothing contained in this Section 4.1(c) shall be deemed to authorize or permit any Member to Transfer its Units except as otherwise permitted under this Agreement.

(d) The Members as of the date hereof are set forth on Exhibit A. The total number of Units issued and outstanding and held by each Member as of the date hereof is set forth in the books and records of the Company. The Company shall update such books and records from time to time to reflect any Transfers of Interests, the issuance of additional Units or Equity Securities and, subject to Section 12.1(a), subdivisions or combinations of Units made in compliance with Section 4.1(f), in each case, in accordance with the terms of this Agreement.

(e) If, at any time after the Effective Time, PubCo issues a Class A Share or any other Equity Security of PubCo (other than Class B Shares), (i) one or more member(s) of the PubCo Holdings Group shall concurrently contribute to the Company the net proceeds (in cash or other property, as the case may be), if any, received by PubCo for such Class A Share or other Equity Security and (ii) the Company shall concurrently issue to such member(s) of the PubCo Holdings Group, in accordance with the contributions made by each such member pursuant to clause (i), one Unit (if PubCo issues a Class A Share), or such other Equity Security of the Company (if PubCo issues Equity Securities other than Class A Shares) corresponding to the Equity Securities issued by PubCo, and with substantially the same rights to dividends and distributions (including distributions upon liquidation, but taking into account differences as a result of any tax or other liabilities borne by PubCo) and other economic rights as those of such Equity Securities of PubCo to be issued. Notwithstanding the foregoing:

(i) If PubCo issues any Class A Shares in order to acquire or fund the acquisition from a Member (other than any member of the PubCo Holdings Group) of a number of Units (and Class B Shares) equal to the number of Class A Shares so issued, then the Company shall not issue any new Units in connection therewith and, where such Class A Shares have been issued for cash to fund such an acquisition by any member of the PubCo Holdings Group pursuant to a Cash Election, the PubCo Holdings Group shall not be required to transfer such net proceeds to the Company, and such net proceeds shall instead be transferred by such member of the PubCo Holdings Group to such Member as consideration for such acquisition. For the avoidance of doubt, if PubCo issues any Class A Shares or other Equity Security for cash to be used to fund the acquisition by any member of the PubCo Holdings Group of any Person or the assets of any Person, then PubCo shall not be required to transfer such cash proceeds to the Company but instead such member of the PubCo Holdings Group shall be required to contribute such Person or the assets and liabilities of such Person to the Company or any of its Subsidiaries.

(ii) This Section 4.1(e) shall not apply to the issuance and distribution to holders of PubCo Shares of rights to purchase Equity Securities of PubCo under a “poison pill” or similar shareholders rights plan (and upon any redemption of Units for Class A Shares, such Class A Shares will be issued together with a corresponding right under such plan), or to the issuance under PubCo’s employee benefit plans of any warrants, options, other rights to acquire Equity Securities of PubCo or rights or property that may be converted into or settled in Equity Securities of PubCo, but shall in each of the foregoing cases apply to the issuance of Equity Securities of PubCo in connection with the exercise or settlement of such rights, warrants, options or other rights or property.

(iii) Except pursuant to Section 4.6, (x) the Company may not issue any additional Units to any member of the PubCo Holdings Group unless substantially simultaneously therewith such member of the PubCo Holdings Group issues or transfers an equal number of newly-issued Class A Shares of PubCo to another Person, and (y) the Company may not issue any other Equity Securities of the Company to any member of the PubCo Holdings Group unless substantially simultaneously such member of the PubCo Holdings Group issues or transfers, to another Person, an equal number of newly-issued shares of a new class or series of Equity Securities of PubCo or such member of the PubCo Holdings Group with substantially the same rights to dividends and distributions (including distributions upon liquidation, but taking into account differences as a result of any tax or other liabilities borne by PubCo) and other economic rights as those of such Equity Securities of the Company.

(iv) If at any time any member of the PubCo Holdings Group issues Debt Securities, such member of the PubCo Holdings Group shall transfer to the Company (in a manner to be determined by the Managing Member in its reasonable discretion) the proceeds received by such member of the PubCo Holdings Group in exchange for such Debt Securities in a manner that directly or indirectly burdens the Company with the repayment of the Debt Securities.

(v) In the event any Equity Security outstanding at PubCo is exercised or otherwise converted and, as a result, any Class A Shares or other Equity Securities of PubCo are issued, (a) the corresponding Equity Security outstanding at the Company shall be similarly exercised or otherwise converted, as applicable, and an equivalent number of Units or other Equity Securities of the Company shall be issued to the PubCo Holdings Group as contemplated by the first sentence of this Section 4.1(e), and (b) the PubCo Holdings Group shall concurrently contribute to the Company the net proceeds received by the PubCo Holdings Group from any such exercise.

(vi) No member of the PubCo Holdings Group may redeem, repurchase or otherwise acquire (other than from another member of the PubCo Holdings Group) (a) any Class A Shares (including upon forfeiture of any unvested Class A Shares) unless substantially simultaneously the Company redeems, repurchases or otherwise acquires from the PubCo Holdings Group an equal number of Units for the same price per security or (b) any other Equity Securities of PubCo (other than Class B Shares), unless substantially simultaneously the Company redeems, repurchases or otherwise acquires from the PubCo Holdings Group an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation, but taking into account differences as a result of any tax or other liabilities borne by PubCo) and other economic rights as those of such Equity Securities of PubCo for the same price per security. The Company may not redeem, repurchase or otherwise acquire (x) except pursuant to Section 4.6, any Units from the PubCo Holdings Group unless substantially simultaneously the PubCo Holdings Group redeems, repurchases or otherwise acquires an equal number of Class A Shares for the same price per security from holders thereof, or (y) any other Equity Securities of the Company from the PubCo Holdings Group unless substantially simultaneously the PubCo Holdings Group redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of PubCo of a corresponding class or series with substantially the same rights to dividends and distributions (including distribution upon liquidation, but taking into account differences as a result of any tax or other liabilities borne by PubCo) and other economic rights as those of such Equity Securities of PubCo. Notwithstanding the foregoing, to the extent that any consideration payable by the PubCo Holdings Group in connection with the redemption or repurchase of any Class A Shares or other Equity Securities of the PubCo Holdings Group consists (in whole or in part) of Class A Shares or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then the redemption or repurchase of the corresponding Units or other Equity Securities of the Company shall be effectuated in an equivalent manner.

(f) The Company shall not in any manner effect any subdivision (by any equity split, equity distribution, reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise) of the outstanding Units unless accompanied by an identical subdivision or combination, as applicable, of the outstanding PubCo Shares, with corresponding changes made with respect to any other exchangeable or convertible securities. Unless in connection with any action taken pursuant to Section 4.1(h), PubCo shall not in any manner effect any subdivision (by any equity split, equity distribution, reclassification, recapitalization or otherwise) or combination (by reverse equity split, reclassification, recapitalization or otherwise) of the outstanding PubCo Shares unless accompanied by an identical subdivision or combination, as applicable, of the outstanding Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

(g) Notwithstanding any other provision of this Agreement (including Section 4.1(e)), the Company may redeem Units from the PubCo Holdings Group for cash to fund any acquisition by the PubCo Holdings Group of another Person, provided that promptly after such redemption and acquisition the PubCo Holdings Group contributes or causes to be contributed, directly or indirectly, such Person or the assets and liabilities of such Person to the Company or any of its Subsidiaries in exchange for a number of Units equal to the number of Units so redeemed.

(h) Notwithstanding any other provision of this Agreement (including Section 4.1(e)), if the PubCo Holdings Group acquires or holds any material amount of cash in excess of any monetary obligations it reasonably anticipates (including as a result of the receipt of distributions pursuant to Section 6.2 for any period in excess of the PubCo Tax-Related Liabilities for such period), PubCo may, in its sole discretion, use such excess cash amount in such manner, and make such adjustments to or take such other actions with respect to the capitalization of PubCo and the Company, as PubCo (including in its capacity as the Managing Member) in Good Faith determines to be fair and reasonable to the holders of PubCo Shares and to the Members and to preserve the intended economic effect of this Section 4.1, Section 4.6 and the other provisions hereof.

Section 4.2 **Voting Rights**. No Member has any voting right except with respect to those matters specifically reserved for a Member vote under the Act and for matters expressly requiring the approval of Members under this Agreement. Except as otherwise required by the Act, each Unit will entitle the holder thereof to one vote on all matters to be voted on by the Members. Except as otherwise expressly provided in this Agreement, the holders of Units having voting rights will vote together as a single class on all matters to be approved by the Members.

Section 4.3 **Capital Contributions; Unit Ownership**.

(a) *Capital Contributions*. Except as otherwise set forth in Section 4.1(e) with respect to the obligations of the PubCo Holdings Group, no Member shall be required to make additional Capital Contributions.

(b) *Issuance of Additional Units or Interests*. Except as otherwise expressly provided in this Agreement, the Managing Member shall have the right to authorize and cause the Company to issue on such terms (including price) as may be determined by the Managing Member, subject to the limitations of Section 4.1, (i) additional Units or other Equity Securities in the Company (including creating preferred interests or other classes or series of interests having such rights, preferences and privileges as determined by the Managing Member, which rights, preferences and privileges may be senior to the Units), and (ii) obligations, evidences of Indebtedness or other securities or interests convertible or exchangeable for Units or other Equity Securities in the Company; *provided* that, at any time following the date hereof, in each case the Company shall not issue Equity Securities in the Company to any Person unless such Person shall have executed a counterpart to this Agreement and all other documents, agreements or instruments deemed necessary or desirable in the discretion of the Managing Member. Upon such issuance and execution, such Person shall be admitted as a Member of the Company. In that event, the Managing Member shall update the Company's books and records to reflect such additional issuances. Subject to Section 12.1, the Managing Member is hereby authorized to amend this Agreement to set forth the designations, preferences, rights, powers and duties of such additional Units or other Equity Securities in the Company, or such other amendments that the Managing Member determines to be otherwise necessary or appropriate in connection with the creation, authorization or issuance of any class or series of Units or other Equity Securities in the Company pursuant to this Section 4.3(b); *provided* that, notwithstanding the foregoing, the Managing Member shall have the right to amend this Agreement as set forth in this sentence without the approval of any other Person (including any Member) and notwithstanding any other provision of this Agreement (other than Section 12.1(ii), (iii) or (iv)) if such amendment is necessary, and then only to the extent necessary, in order to consummate any offering of PubCo Shares or other Equity Securities of PubCo provided that the designations, preferences, rights, powers and duties of any such additional Units or other Equity Securities of the Company as set forth in such amendment are substantially similar to those applicable to such PubCo Shares or other Equity Securities of PubCo.

Section 4.4 **Capital Accounts**. A Capital Account shall be maintained for each Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such regulations, the other provisions of this Agreement. Each Member's Capital Account shall be (a) increased by (i) allocations to such Member of Profits pursuant to Section 5.1 and any other items of income or gain allocated to such Member pursuant to Section 5.2, (ii) the amount of cash or the initial Gross Asset Value of any asset (net of any Liabilities assumed by the Company and any Liabilities to which the asset is subject) contributed to the Company by such Member, and (iii) any other increases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv), and (b) decreased by (i) allocations to such Member of Losses pursuant to Section 5.1 and any other items of deduction or loss allocated to such Member pursuant to the provisions of Section 5.2, (ii) the amount of any cash or the Gross Asset Value of any asset (net of any Liabilities assumed by the Member and any Liabilities to which the asset is subject) distributed to such Member, and (iii) any other decreases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv). In the event of a Transfer of Units made in accordance with this Agreement (including a deemed Transfer for U.S. federal income tax purposes as described in Section 4.6(g)) the Capital Account of the Transferor that is attributable to the Transferred Units shall carry over to the Transferee Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(*l*).

Section 4.5 **Other Matters**.

(a) No Member shall demand or receive a return on or of its Capital Contributions or withdraw from the Company without the consent of the Managing Member. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive property other than cash.

(b) No Member shall receive any interest, salary, compensation, draw or reimbursement with respect to its Capital Contributions or its Capital Account, or for services rendered or expenses incurred on behalf of the Company or otherwise in its capacity as a Member, except as otherwise provided in Section 7.9 or as otherwise contemplated by this Agreement.

(c) The Liability of each Member shall be limited as set forth in the Act and other applicable Law and, except as expressly set forth in this Agreement or required by Law, no Member (or any of its Affiliates) shall be personally liable, whether to the Company, any of the other Members, the creditors of the Company or any other third party, for any debt or Liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company.

(d) Except as otherwise required by the Act, a Member shall not be required to restore a deficit balance in such Member's Capital Account, to lend any funds to the Company or, except as otherwise set forth herein, to make any additional contributions or payments to the Company.

(e) The Company shall not be obligated to repay any Capital Contributions of any Member.

Section 4.6 **Redemption of Units**.

(a) Each Member other than the PubCo Holdings Group shall be entitled from time to time to cause the Company to redeem all or a portion of such Member's Units (such Member a "***Redeeming Member***"), together with an equal number of Class B Shares, in exchange for Class A Shares or, at the Company's election under certain circumstances, cash in accordance with Section 4.6(d) (referred to herein as the "***Redemption Right***"), upon the terms and subject to the conditions set forth in this Section 4.6 and subject to PubCo's (or such designated member(s) of the PubCo Holdings Group's) Call Right as set forth in Section 4.6(m).

(b) In order to exercise its Redemption Right, each Redeeming Member shall provide written notice in a reasonable form as the Company may provide from time to time (the "***Redemption Notice***") to the Company and PubCo, on or before any Redemption Notice Date, stating that the Redeeming Member elects to have redeemed on the next Redemption Date a stated number of Units, together with an equal number Class B Shares. Upon delivery of any Redemption Notice by any Member on or before any Redemption Notice Date, such member may not revoke or rescind such Redemption Notice after such Redemption Notice Date. Any Redemption Notice delivered for a Redemption on a Regular Redemption Date may not be contingent. Any Redemption Notice delivered for a Redemption on a Special Redemption Date may be made contingent on the consummation of the Registered Offering or other transaction described in the notice of the Managing Member specifying such Special Redemption Date. Any notice by any Member pursuant to the Registration Rights Agreement to demand or participate in any Registered Offering shall be deemed to constitute a Redemption Notice for the related Special Redemption Date.

(c) On any Redemption Date for which any Member delivered a Redemption Notice with respect to Units, unless the Company elects to pay cash in accordance with Section 4.6(d) or PubCo (or such designated member(s) of the PubCo Holdings Group) exercises its Call Right pursuant to Section 4.6(m), on such Redemption Date such number of Units, together with an equal number of Class B Shares, shall be redeemed for an equal number of Class A Shares.

(d) The Company shall be entitled to elect to settle any Redemption by delivering to the Redeeming Member, in lieu of the applicable number of Class A Shares that would be received in such Redemption, an amount of cash equal to the Cash Election Amount for such shares.

(e) Each Member's Redemption Right shall be subject to the following limitations and qualifications:

(i) The first Redemption shall only be permitted on the first Redemption Date after the Lock-Up Period;

(ii) thereafter, except as provided herein, Redemptions shall only be permitted on each Redemption Date;

(iii) a Redeeming Member shall only be permitted to redeem less than all of its Units if (A) after such Redemption it would continue to hold at least 69,290 Units and (B) it redeems not less than 69,290 Units in such Redemption;

(iv) the Company shall not effect any Redemption of any Units, together with any Class B Shares, held by Goldman, and Goldman shall not have the right to redeem any of its Units, along with any Class B Shares, to the extent that, after giving effect to such redemption, Goldman (together with its affiliates and any persons acting as a group together with Goldman or any of Goldman's affiliates (such Persons, "***Attribution Parties***")) would beneficially own in excess of the Beneficial Ownership Limitation. For purposes of the foregoing sentence, the number of Class A Shares beneficially owned by Goldman shall include the number of Class A Shares issuable upon redemption of the Units, together with the Class B Shares, with respect to which such determination is being made, but shall exclude the number of Class A Shares which are issuable upon (i) redemption of the remaining Units, together with Class B Shares, beneficially owned by Goldman or any of its affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of PubCo subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by Goldman or any of its affiliates or Attribution Parties. Except as set forth in the preceding sentence, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4.6(e)(iv), in determining the number of outstanding Class A Shares, Goldman may rely on the number of outstanding Class A Shares as stated in the most recent of the following: (i) PubCo's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by PubCo or (iii) a more recent written notice by PubCo or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of Goldman, PubCo shall within one Trading Day confirm orally and in writing to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the redemption, conversion or exercise of securities of PubCo, including the Class B Shares, by Goldman or its affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. In the event that the issuance of Class A Shares to Goldman upon redemption of Goldman's Units, together with its Class B Shares, results in Goldman and its affiliates and Attribution Parties being deemed to beneficially own, in the aggregate, Class A Shares in excess of the Beneficial Ownership Limitation (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which Goldman, its affiliates and its other Attribution Parties' aggregate beneficial ownership exceeds the Beneficial Ownership Limitation (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and Goldman shall not have the power to vote or to transfer the Excess Shares. The provisions of this section shall not be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to correct this section (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(v) any Redemption of Units issued after the date hereof (other than in connection with any recapitalization), including such Units issued to Members as of the date hereof, may be limited in accordance with the terms of any agreements or instruments entered into in connection with such issuance, as deemed necessary or desirable in the discretion of the Managing Member; and

(f) The Managing Member may impose additional limitations and restrictions on Redemptions (including limiting Redemptions or creating priority procedures for Redemptions), to the extent it determines, in Good Faith, such limitations and restrictions to be necessary or appropriate to avoid undue risk that the Company may be classified as a "publicly traded partnership" within the meaning of Section 7704 of the Code. Furthermore, the Managing Member may require any Member or group of Members to redeem all of their Units to the extent it determines, in Good Faith, that such Redemption is necessary or appropriate to avoid undue risk that the Company may be classified as a "publicly traded partnership" within the meaning of Section 7704 of the Code. Upon delivery of any notice by the Managing Member to such Member or group of Members requiring such Redemption, such Member or group of Members shall exchange, subject to exercise by PubCo (or such designated member(s) of the PubCo Holdings Group) of the Call Right pursuant to Section 4.6(m), all of their Units effective as of the date specified in such notice (and such date shall be deemed to be a Redemption Date for purposes of this Agreement) in accordance with this Section 4.6 and otherwise in accordance with the requirements set forth in such notice.

(g) For U.S. federal income (and applicable state and local) tax purposes, each of the Redeeming Member, the Company and PubCo (and any other member of the PubCo Holding Group), as the case may be, agree to treat each Redemption and, in the event PubCo (or another member of the PubCo Holdings Group) exercises its Call Right, each transaction between the redeeming or selling Member and PubCo (or such other member of the PubCo Holdings Group), as a sale of such Member's Units (together, if applicable, with the same number Class B Shares) to PubCo (or such other member of the PubCo Holdings Group) in exchange for Class A Shares or cash, as applicable.

(h) Each Redemption shall be deemed to have been effected on the applicable Redemption Date. Any Member redeeming Units in accordance with this Agreement may request that the Class A Shares to be issued upon such Redemption be issued in a name other than such Member. Any Person or Persons in whose name or names any Class A Shares are issuable on any Redemption Date shall be deemed to have become, on such Redemption Date, the holder or holders of record of such shares.

(i) Unless a member of the PubCo Holdings Group has elected its Call Right pursuant to Section 4.6(m) with respect to any Redemption, on the relevant Redemption Date and immediately prior to such Redemption, (i) PubCo (or such other member(s) of the PubCo Holdings Group) shall contribute to the Company the consideration the Redeeming Member is entitled to receive under Section 4.6(c) (including in the event the Company exercises its right to deliver the Cash Election Amount pursuant to Section 4.6(d)) and the Company shall issue to PubCo (or such other member(s) of the PubCo Holdings Group) a number of Units or, pursuant to Section 4.1(e), other Equity Securities of the Company as consideration for such contribution, (ii) the Company shall (A) cancel the redeemed Units and (B) transfer to the Redeeming Member the consideration the Redeeming Member is entitled to receive under Section 4.6(c) (including in the event the Company exercises its right to deliver the Cash Election Amount pursuant to Section 4.6(d)), and (iii) PubCo shall cancel the surrendered Class B Shares, if applicable. Notwithstanding any other provisions of this Agreement to the contrary, in the event that the Company makes a Cash Election that is funded with proceeds from a primary offering of PubCo Equity Securities, the PubCo Holdings Group shall only be obligated to contribute to the Company an amount in cash equal to the net proceeds (after deduction of any underwriters' discounts or commissions and brokers' fees or commissions (including, for the avoidance of doubt, any deferred discounts or commissions and brokers' fees or commissions payable in connection with or as a result of such Registered Offering)) (such difference, the "***Discount***") from the sale by PubCo of a number of Class A Shares equal to the number of Units and, if applicable, Class B Shares to be redeemed with such cash or from the sale of other PubCo Equity Securities used to fund the Cash Election Amount; *provided* that PubCo's Capital Account (or the Capital Account(s) of the other member(s) of the PubCo Holdings Group, as applicable) shall be increased by the amount of such Discount in accordance with Section 7.9; *provided further*, that the contribution of such net proceeds shall in no event affect the Redeeming Member's right to receive the Cash Election Amount.

(j) If (i) there is any reclassification, reorganization, recapitalization or other similar transaction pursuant to which the Class A Shares are converted or changed into another security, securities or other property (other than as a result of a subdivision or combination or any transaction subject to Section 4.1(f)), or (ii) except in connection with actions taken with respect to the capitalization of PubCo or the Company pursuant to Section 4.1(h), PubCo, by dividend or otherwise, distributes to all holders of the Class A Shares evidences of its indebtedness or assets, including securities (including Class A Shares and any rights, options or warrants to all holders of the Class A Shares to subscribe for or to purchase or to otherwise acquire Class A Shares, or other securities or rights convertible into, redeemable for or exercisable for Class A Shares) but excluding (A) any cash dividend or distribution or (B) any such distribution of indebtedness or assets received by PubCo, in either case (A) or (B) received by PubCo from the Company in respect of the Units, then upon any subsequent Redemption, in addition to the Class A Shares or the Cash Election Amount, as applicable, each Member shall be entitled to receive the amount of such security, securities or other property that such Member would have received if such Redemption had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization, other similar transaction, dividend or other distribution, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the Class A Shares are converted or changed into another security, securities or other property, or any dividend or distribution (other than an excluded dividend or distribution, as described above in clause (A) or (B)), this Section 4.6 shall continue to be applicable, *mutatis mutandis*, with respect to such security or other property.

(k) PubCo shall at all times keep available, solely for the purpose of issuance upon a Redemption, out of its authorized but unissued Class A Shares, such number of Class A Shares that shall be issuable upon the Redemption of all outstanding Units (other than those Units held by any member of the PubCo Holdings Group); provided, that nothing contained herein shall be construed to preclude PubCo from satisfying its obligations with respect to a Redemption by delivery of cash pursuant to a Cash Election or Class A Shares that are held in the treasury of PubCo. PubCo covenants that all Class A Shares that shall be issued upon a Redemption shall, upon issuance thereof, be validly issued, fully paid and non-assessable. In addition, for so long as the Class A Shares are listed on a National Securities Exchange, PubCo shall use its reasonable best efforts to cause all Class A Shares issued upon a Redemption to be listed on such National Securities Exchange at the time of such issuance.

(l) The issuance of Class A Shares upon a Redemption shall be made without charge to the Redeeming Member for any stamp or other similar tax in respect of such issuance, except that if any such Class A Shares are to be issued in a name other than that of the Redeeming Member, then the Person or Persons in whose names such shares are to be issued shall pay to PubCo the amount of any tax payable in respect of any Transfer involved in such issuance or establish to the satisfaction of PubCo that such tax has been paid or is not payable. Each of the Company and PubCo shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable upon a Redemption (and the Redeeming Member agrees to indemnify the Company and PubCo with respect to) such amounts as may be required to be deducted or withheld therefrom under the Code or any provision of applicable Law, and to the extent deduction and withholding is required, such deduction and withholding may be taken in Class A Shares. Prior to making such deduction or withholding, the Company shall use commercially reasonable efforts to give written notice to the Redeeming Member and reasonably cooperate with such Redeeming Member to reduce or avoid any such withholding. To the extent such amounts are so deducted or withheld and paid over to the relevant governmental authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Redeeming Member, and, if withholding is taken in Class A Shares, the relevant withholding party shall be treated as having sold such Class A Shares on behalf of such Redeeming Member for an amount of cash equal to the fair market value thereof at the time of such deemed sale and paid such cash proceeds to the appropriate governmental authority.

(m) Notwithstanding anything to the contrary in this Section 4.6, a Redeeming Member shall be deemed to have offered to sell its Units as described in any Redemption Notice to each member of the PubCo Holdings Group, and PubCo (or such other member(s) of the PubCo Holdings Group designated by PubCo) may, in its sole discretion, in accordance with this Section 4.6(m), elect to purchase directly and acquire such Units on the Redemption Date by paying to the Redeeming Member that number of Class A Shares the Redeeming Member would otherwise receive pursuant to Section 4.6(c) or, if PubCo (or such designated member(s) of the PubCo Holdings Group) makes a Cash Election, the Cash Election Amount for such Class A Shares (the "***Call Right***"), whereupon PubCo (or such designated member(s) of the PubCo Holdings Group) shall acquire the Units offered for redemption by the Redeeming Member and shall be treated thereafter for all purposes of this Agreement as the owner of such Units.

(n) In the event that (i) the Members (other than any member of the PubCo Holdings Group) beneficially own, in the aggregate, less than 10% of the then outstanding Units and (ii) the Class A Shares are listed or admitted to trading on a National Securities Exchange, the Managing Member shall have the right, in its sole discretion, to require any Member (other than any member of the PubCo Holdings Group, a Goldman Entity or a Beekman Entity) that beneficially owns less than 5% of the then-outstanding Units to effect a Redemption of some or all of such Member's Units (together with the surrender and delivery of the same number of Class B Shares); *provided* that a Cash Election shall not be permitted pursuant to such a Redemption under this Section 4.6(n). Managing Member shall deliver written notice to the Company and any such Member of its intention to exercise its Redemption right pursuant to this Section 4.6(n) (a "***Minority Member Redemption Notice***") at least five Business Days prior to the proposed date upon which such Redemption is to be effected (such proposed date, the "***Minority Member Redemption Date***"), indicating in such notice the number of Units (and corresponding Class B Shares) held by such Member that Managing Member intends to require to be subject to such Redemption. Any Redemption pursuant to this Section 4.6(n) shall be effective on the Minority Member Redemption Date. From and after the Minority Member Redemption Date, (x) the Units and Class B Shares subject to such Redemption shall be deemed to be transferred to Managing Member on the Minority Member Redemption Date and (y) such Member shall cease to have any rights with respect to the Units and Class B Shares subject to such Redemption (other than the right to receive Class A Shares pursuant to such Redemption). Following delivery of a Minority Member Redemption Notice and on or prior to the Minority Member Redemption Date, the Members shall take all actions reasonably requested by Managing Member to effect such Redemption, including taking any action and delivering any document required pursuant to the remainder of this Section 4.6 to effect a Redemption.

(o) No Redemption shall impair the right of the Redeeming Member to receive any distributions payable on the Units redeemed pursuant to such Redemption in respect of a record date that occurs prior to the Redemption Date for such Redemption. For the avoidance of doubt, no Redeeming Member, or a Person designated by a Redeeming Member to receive Class A Shares, shall be entitled to receive, with respect to such record date, distributions or dividends both on Units redeemed by the Company from such Redeeming Member and on Class A Shares received by such Redeeming Member, or other Person so designated, if applicable, in such Redemption.

(p) In connection with a PubCo Approved Change of Control, PubCo shall have the right, in its sole discretion, to require each Member (other than any member of the PubCo Holdings Group) to effect a Redemption of all or a portion of such Member's Units (together, if applicable, with the corresponding number of shares of Class B Shares). Any Redemption pursuant to this Section 4.6(p) shall be effective immediately prior to the consummation of the PubCo Approved Change of Control (and, for the avoidance of doubt, shall not be effective if such PubCo Approved Change of Control is not consummated) (the "***Change of Control Exchange Date***"). From and after the Change of Control Exchange Date, (i) the Units and Class B Shares subject to such Redemption shall be deemed to be transferred to PubCo on the Change of Control Exchange Date and (ii) such Member shall cease to have any rights with respect to the Units and Class B Shares subject to such Redemption (other than the right to receive shares of Class A Shares pursuant to such Redemption). PubCo shall provide written notice of an expected PubCo Approved Change of Control to all Members within the earlier of (x) five (5) Business Days following the execution of the agreement with respect to such PubCo Approved Change of Control and (y) ten (10) Business Days before the proposed date upon which the contemplated PubCo Approved Change of Control is to be effected, indicating in such notice such information as may reasonably describe the PubCo Approved Change of Control transaction, subject to applicable Law, including the date of execution of such agreement or such proposed effective date, as applicable, the amount and types of consideration to be paid for shares of Class A Shares in the PubCo Approved Change of Control, any election with respect to types of consideration that a holder of shares of Class A Shares, as applicable, shall be entitled to make in connection with such PubCo Approved Change of Control, and the number of Units (and, if applicable, the corresponding Class B Shares) held by such Member that PubCo intends to require to be subject to such Redemption. Following delivery of such notice and on or prior to the Change of Control Exchange Date, the Members shall take all actions reasonably requested by PubCo to effect such Redemption, including taking any action and delivering any document required pursuant to the remainder of this Section 4.6(p) to effect a Redemption. Nothing contained in this Section 4.6(p) shall limit the right of any Member to vote for or participate in any proposed Change of Control of PubCo with respect to such Member's Units or exchange all Units of such Member for Class A Shares in connection with such Change of Control, even if such Change of Control was not approved by the board of directors of PubCo.

ARTICLE V

ALLOCATIONS OF PROFITS AND LOSSES

Section 5.1 **Profits and Losses**. After giving effect to the allocations under Section 5.2 and subject to Section 5.4, Profits and Losses (and, to the extent determined by the Managing Member to be necessary and appropriate to achieve the resulting Capital Account balances described below, any allocable items of income, gain, loss, deduction or credit includable in the computation of Profits and Losses) for each Fiscal Year or other taxable period shall be allocated among the Members during such Fiscal Year or other taxable period in a manner such that, after giving effect to the special allocations set forth in Section 5.2 and all distributions through the end of such Fiscal Year or other taxable period, the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the amount such Member would receive pursuant to Section 11.3(b) if all assets of the Company on hand at the end of such Fiscal Year or other taxable period were sold for cash equal to their Gross Asset Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and all remaining or resulting cash was distributed, in accordance with Section 11.3(b), to the Members immediately after making such allocation, *minus* (ii) such Member's share of Company Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets, and the amount any such Member is treated as obligated to contribute to the Company, computed immediately after the hypothetical sale of assets.

Section 5.2 **Special Allocations**.

(a) Nonrecourse Deductions for any Fiscal Year or other taxable period shall be specially allocated to the Members on a *pro rata* basis, in accordance with the number of Units owned by each Member as of the last day of such Fiscal Year or other taxable period. The amount of Nonrecourse Deductions for a Fiscal Year or other taxable period shall equal the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year or other taxable period over the aggregate amount of any distributions during that Fiscal Year or other taxable period of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined in accordance with the provisions of Treasury Regulations Section 1.704-2(d).

(b) Any Member Nonrecourse Deductions for any Fiscal Year or other taxable period shall be specially allocated to the Member who bears economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i). If more than one Member bears the economic risk of loss for such Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable to such Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss. This Section 5.2(b) is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Company Minimum Gain during any Fiscal Year or other taxable period (or if there was a net decrease in Company Minimum Gain for a prior Fiscal Year or other taxable period and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 5.2(c)), each Member shall be specially allocated items of Company income and gain for such Fiscal Year or other taxable period in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year (as determined pursuant to Treasury Regulations Section 1.704-2(g)(2)). This section is intended to constitute a minimum gain chargeback under Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) Notwithstanding any other provision of this Agreement except Section 5.2(c), if there is a net decrease in Member Minimum Gain during any Fiscal Year or other taxable period (or if there was a net decrease in Member Minimum Gain for a prior Fiscal Year or other taxable period and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 5.2(d)), each Member shall be specially allocated items of Company income and gain for such year in an amount equal to such Member's share of the net decrease in Member Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(i)(4)). This section is intended to constitute a partner nonrecourse debt minimum gain chargeback under Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Notwithstanding any provision hereof to the contrary except Section 5.2(a) and Section 5.2(b), no Losses or other items of loss or expense shall be allocated to any Member to the extent that such allocation would cause such Member to have an Adjusted Capital Account Deficit (or increase any existing Adjusted Capital Account Deficit) at the end of such Fiscal Year or other taxable period. All Losses and other items of loss and expense in excess of the limitation set forth in this Section 5.2(e) shall be allocated to the Members who do not have an Adjusted Capital Account Deficit in proportion to their relative positive Capital Accounts (as adjusted pursuant to clauses (a) and (b) of the definition of "Adjusted Capital Account Deficit") but only to the extent that such Losses and other items of loss and expense do not cause any such Member to have an Adjusted Capital Account Deficit.

(f) Notwithstanding any provision hereof to the contrary except Section 5.2(c) and Section 5.2(d), in the event any Member unexpectedly receives any adjustment, allocation or distribution described in paragraph (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(*d*), items of income and gain (consisting of a *pro rata* portion of each item of income, including gross income, and gain for the Fiscal Year or other taxable period) shall be specially allocated to such Member in an amount and manner sufficient to eliminate any Adjusted Capital Account Deficit of that Member as quickly as possible; provided that an allocation pursuant to this Section 5.2(f) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.2(f) were not in this Agreement. This Section 5.2(f) is intended to constitute a qualified income offset under Treasury Regulations Section 1.704-1(b)(2)(ii)*(d)* and shall be interpreted consistently therewith.

(g) If any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year or other taxable period, that Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.2(g) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit in excess of such sum after all other allocations provided for in this Article V have been made as if Section 5.2(f) and this Section 5.2(g) were not in this Agreement.

(h) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) (including any such adjustments pursuant to Treasury Regulation Section 1.734-2(b)(1)) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(2) or 1.704-1(b)(2)(iv)*(m)*(4), to be taken into account in determining Capital Accounts as a result of a distribution to any Member in complete liquidation of such Member's Interest, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such item of gain or loss shall be allocated to the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)*(m)*(2) if such section applies or to the Member to whom such distribution was made if Treasury Regulations Section 1.704-1(b)(2)(iv)*(m)*(4) applies.

(i) The allocations set forth in Sections 5.2(a) through 5.2(h) (the "***Regulatory Allocations***") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provision of this Article V (other than the Regulatory Allocations), the Regulatory Allocations (and anticipated future Regulatory Allocations) shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocation of other items and the Regulatory Allocations to each Member should be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. This Section 5.2(i) is intended to minimize to the extent possible and to the extent necessary any economic distortions that may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith.

(j) Items of income, gain, loss, deduction or credit resulting from a Covered Audit Adjustment shall be allocated to the Members in accordance with the applicable provisions of the Partnership Tax Audit Rules.

Section 5.3 **Allocations for Tax Purposes in General**.

(a) Except as otherwise provided in this Section 5.3, each item of income, gain, loss, deduction, and credit of the Company for U.S. federal income tax purposes shall be allocated among the Members in the same manner as such item is allocated under Sections 5.1 and 5.2.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder (including the Treasury Regulations applying the principles of Code Section 704(c) to changes in Gross Asset Values), items of income, gain, loss and deduction with respect to any Company property having a Gross Asset Value that differs from such property's adjusted U.S. federal income tax basis shall, solely for U.S. federal income tax purposes, be allocated among the Members to account for any such difference using the "traditional method with curative allocations," with the curative allocations applied only to sale gain, under Treasury Regulations Section 1.704-3(c) or such other method or methods as determined by the Managing Member to be appropriate and in accordance with the applicable Treasury Regulations.

(c) Any (i) recapture of depreciation or any other item of deduction shall be allocated, in accordance with Treasury Regulations Sections 1.1245-1(e) and 1.1254-5, to the Members who received the benefit of such deductions, and (ii) recapture of grants or credits shall be allocated to the Members in accordance with applicable law.

(d) Tax credits of the Company shall be allocated among the Members as provided in Treasury Regulation Sections 1.704-1(b)(4)(ii) and 1.704-1(b)(4)(viii).

(e) Allocations pursuant to this Section 5.3 are solely for purposes of U.S. federal, state and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

(f) If, as a result of an exercise of a noncompensatory option to acquire an interest in the Company, a Capital Account reallocation is required under Treasury Regulations Section 1.704-1(b)(2)(iv)(*s*)(3), the Company shall make corrective allocations pursuant to Treasury Regulations Section 1.704-1(b)(4)(x).

Section 5.4 **Other Allocation Rules**.

(a) The Members are aware of the income tax consequences of the allocations made by this Article V and the economic impact of the allocations on the amounts receivable by them under this Agreement. The Members hereby agree to be bound by the provisions of this Article V in reporting their share of Company income and loss for income tax purposes.

(b) The provisions regarding the establishment and maintenance for each Member of a Capital Account as provided by Section 4.4 and the allocations set forth in Sections 5.1, 5.2 and 5.3 are intended to comply with the Treasury Regulations and to reflect the intended economic entitlement of the Members. If the Managing Member determines, in its sole discretion, that the application of the provisions in Sections 4.4, 5.1, 5.2 or 5.3 would result in non-compliance with the Treasury Regulations or would be inconsistent with the intended economic entitlement of the Members, the Managing Member is authorized to make any appropriate adjustments to such provisions.

(c) All items of income, gain, loss, deduction and credit allocable to an interest in the Company that may have been Transferred shall be allocated between the Transferor and the Transferee in accordance with a method determined by the Managing Member and permissible under Code Section 706 and the Treasury Regulations thereunder.

(d) The Members' proportionate shares of the "excess nonrecourse liabilities" of the Company, within the meaning of Treasury Regulations Section 1.752-3(a)(3), shall be allocated to the Members on a *pro rata* basis, in accordance with the number of Units owned by each Member.

ARTICLE VI

DISTRIBUTIONS

Section 6.1 **Distributions**.

(a) Distributions. To the extent permitted by applicable Law and hereunder, and except as otherwise provided in Section 11.3, distributions to Members may be declared by the Managing Member out of funds legally available therefor in such amounts and on such terms (including the payment dates of such distributions) as the Managing Member shall determine using such record date as the Managing Member may designate; any such distribution shall be made to the Members as of the close of business on such record date on a *pro rata* basis (except that, for the avoidance of doubt, repurchases or redemptions made in accordance with Section 4.1(e)(vi), Section 4.6 or payments made in accordance with Sections 7.4 or 7.9 need not be on a *pro rata* basis), in accordance with the number of Units owned by each Member as of the close of business on such record date; *provided*, *however*, that the Managing Member shall have the obligation to make distributions as set forth in Sections 6.2 and 11.3(b)(iii); and *provided*, *further*, that, notwithstanding any other provision herein to the contrary, no distributions shall be made to any Member to the extent such distribution would render the Company insolvent or violate the Act. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a distribution pursuant to this Section 6.1, the Managing Member shall give notice to each Member of the record date, the amount and the terms of the distribution and the payment date thereof.

(b) Successors. For purposes of determining the amount of distributions, each Member shall be treated as having made the Capital Contributions and as having received the distributions made to or received by its predecessors in respect of any of such Member's Units.

(c) Distributions In-Kind. Except as otherwise provided in this Agreement, any distributions may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Managing Member. In the event of any distribution of (i) property in kind or (ii) both cash and property in kind, each Member shall be distributed its proportionate share of any such cash so distributed and its proportionate share of any such property so distributed in kind (based on the Fair Market Value of such property). To the extent that the Company distributes property in-kind to the Members, the Company shall be treated as making a distribution equal to the Fair Market Value of such property for purposes of Section 6.1(a) and such property shall be treated as if it were sold for an amount equal to its Fair Market Value. Any resulting gain or loss shall be allocated to the Member's Capital Accounts in accordance with Sections 5.1 and 5.2.

Section 6.2 **Tax-Related Distributions**. The Company shall, subject to any restrictions contained in any agreement to which the Company is bound, make distributions out of legally available funds to all Members on a *pro rata* basis in accordance with Section 6.1 at such times and in such amounts as the Managing Member reasonably determines is necessary to cause a distribution to the PubCo Holdings Group, in the aggregate, sufficient to enable the PubCo Holdings Group to timely satisfy any PubCo Tax-Related Liabilities.

Section 6.3 **Distribution Upon Withdrawal**. No withdrawing Member shall be entitled to receive any distribution or the value of such Member's Interest as a result of withdrawal from the Company prior to the liquidation of the Company, except as specifically provided in this Agreement.

Section 6.4 **Issuance of Additional Equity Securities**. This Article VI shall be subject to and, to the extent necessary, amended to reflect the issuance by the Company of any additional Equity Securities.

ARTICLE VII

MANAGEMENT

Section 7.1 **The Managing Member; Fiduciary Duties**.

(a) PubCo shall be the sole Managing Member of the Company. Except as otherwise required by Law, (i) the Managing Member shall have full and complete charge of all affairs of the Company, (ii) the management and control of the Company's business activities and operations shall rest exclusively with the Managing Member, and the Managing Member shall make all decisions regarding the business, activities and operations of the Company (including the incurrence of costs and expenses) in its sole discretion without the consent of any other Member and (iii) the Members other than the Managing Member (in their capacity as such) shall not participate in the control, management, direction or operation of the activities or affairs of the Company and shall have no power to act for or bind the Company.

(b) In connection with the performance of its duties as the Managing Member of the Company, except as otherwise set forth herein, the Managing Member acknowledges that it will owe to the Members the same fiduciary duties as it would owe to the stockholders of a Delaware corporation if it were a member of the board of directors of such a corporation and the Members were stockholders of such corporation. The Members acknowledge that the Managing Member will take action through its board of directors, and that the members of the Managing Member's board of directors will owe comparable fiduciary duties to the stockholders of the Managing Member.

Section 7.2 **Officers**.

(a) The Managing Member may appoint, employ or otherwise contract with any Person for the transaction of the business of the Company or the performance of services for or on behalf of the Company, and the Managing Member may delegate to any such Persons such authority to act on behalf of the Company as the Managing Member may from time to time deem appropriate.

(b) Except as otherwise set forth herein, the Chief Executive Officer will be responsible for the general and active management of the business of the Company and its Subsidiaries and will see that all orders of the Managing Member are carried into effect. The Chief Executive Officer will report to the Managing Member and have the general powers and duties of management usually vested in the office of president and chief executive officer of a corporation organized under the DGCL, subject to the terms of this Agreement, and will have such other powers and duties as may be prescribed by the Managing Member or this Agreement. The Chief Executive Officer will have the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Company, except where required or permitted by Law to be otherwise signed and executed, and except where the signing and execution thereof will be expressly delegated by the Managing Member to some other Officer or agent of the Company.

(c) Except as set forth herein, the Managing Member may appoint Officers at any time, and the Officers may include a president, one or more vice presidents, a secretary, one or more assistant secretaries, a chief financial officer, a general counsel, a treasurer, one or more assistant treasurers, a chief operating officer, an executive chairman, and any other officers that the Managing Member deems appropriate. Except as set forth herein, the Officers will serve at the pleasure of the Managing Member, subject to all rights, if any, of such Officer under any contract of employment. Any individual may hold any number of offices, and an Officer may, but need not, be a Member of the Company. The Officers will exercise such powers and perform such duties as specified in this Agreement or as determined from time to time by the Managing Member.

(d) Subject to this Agreement and to the rights, if any, of an Officer under a contract of employment, any Officer may be removed, either with or without cause, by the Managing Member. Any Officer may resign at any time by giving written notice to the Managing Member. Any resignation will take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation will not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause will be filled in the manner prescribed in this Agreement for regular appointments to that office.

(e) The Officers, in the performance of their duties as such, shall owe to the Company and the Members duties of loyalty and due care of the type owed by the officers of a corporation to such corporation and its shareholders under the DGCL.

Section 7.3 **Warranted Reliance by Officers on Others**. In exercising their authority and performing their duties under this Agreement, the Officers shall be entitled to rely on information, opinions, reports or statements of the following Persons or groups unless they have actual knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(a) one or more employees or other agents of the Company or subordinates whom the Officer reasonably believes to be reliable and competent in the matters presented; and

(b) any attorney, public accountant or other Person as to matters which the Officer reasonably believes to be within such Person's professional or expert competence.

Section 7.4 **Indemnification**. The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable Law as it presently exists or may hereafter be amended (provided, that no such amendment shall limit a Covered Person's rights to indemnification hereunder with respect to any actions or events occurring prior to such amendment except to the extent required by a non-waivable and non-modifiable provision of applicable Law), any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Manager (as defined in the Existing LLC Agreement) entitled to indemnification under the Existing LLC Agreement, a Member, an Officer, the Managing Member or the Company Representative or is or was serving at the request of the Company as a member, director, officer, trustee, employee or agent of another limited liability company or of a corporation, partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (a "***Covered Person***"), whether the basis of such Proceeding is alleged action in an official capacity as a member, director, officer, trustee, employee or agent, or in any other capacity while serving as a member, director, officer, trustee, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such Proceeding, unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of such act or omission, and taking into account the acknowledgements and agreements set forth in this Agreement, (x) such Covered Person engaged in a bad faith violation of the implied contractual covenant of good faith and fair dealing or a bad faith violation of this Agreement or (y) such Covered Person would not be so entitled to be indemnified and held harmless if the Company were a corporation organized under the laws of the State of Delaware that indemnified and held harmless its directors, officers, employees and agents to the fullest extent permitted by Section 145 of the DGCL as in effect on the date of this Agreement (but including any expansion of rights to indemnification thereunder from and after the date of this Agreement). The Company shall, to the fullest extent not prohibited by applicable Law as it presently exists or may hereafter be amended (provided, that no such amendment shall limit a Covered Person's rights to indemnification hereunder with respect to any actions or events occurring prior to such amendment except to the extent required by a non-waivable and non-modifiable provision of applicable Law), pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; *provided*, *however*, that such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal that the Covered Person is not entitled to be indemnified under this Section 7.4 or otherwise. The rights to indemnification and advancement of expenses under this Section 7.4 shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a member, director, officer, trustee, employee or agent and shall inure to the benefit of his heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 7.4, except for Proceedings to enforce rights to indemnification and advancement of expenses, the Company shall indemnify and advance expenses to a Covered Person in connection with a Proceeding (or part thereof) initiated by such Covered Person only if such Proceeding (or part thereof) was authorized by the Managing Member.

Section 7.5 **Maintenance of Insurance or Other Financial Arrangements**. To the extent permitted by applicable Law, the Company (with the approval of the Managing Member) may purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Member, employee or agent of the Company, or at the request of the Company is or was serving as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, for any Liability asserted against such Person and Liability and expenses incurred by such Person in such Person's capacity as such, or arising out of such Person's status as such, whether or not the Company has the authority to indemnify such Person against such Liability and expenses.

Section 7.6 **Resignation or Termination of Managing Member**. PubCo shall not, by any means, resign as, cease to be or be replaced as Managing Member except in compliance with this Section 7.6. No termination or replacement of PubCo as Managing Member shall be effective unless proper provision is made, in compliance with this Agreement, so that the obligations of PubCo, its successor (if applicable) and any new Managing Member and the rights of all Members under this Agreement and applicable Law remain in full force and effect. No appointment of a Person other than PubCo (or its successor, as applicable) as Managing Member shall be effective unless PubCo (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against PubCo (or its successor, as applicable) and the new Managing Member (as applicable), to cause (a) PubCo to comply with all PubCo's obligations under this Agreement (including its obligations under Section 4.6) other than those that must necessarily be taken in its capacity as Managing Member and (b) the new Managing Member to comply with all the Managing Member's obligations under this Agreement.

Section 7.7 **No Inconsistent Obligations**. The Managing Member represents that it does not have any contracts, other agreements, duties or obligations that are inconsistent with its duties and obligations (whether or not in its capacity as Managing Member) under this Agreement and covenants that, except as permitted by Section 7.1, it will not enter into any contracts or other agreements or undertake or acquire any other duties or obligations that are inconsistent with such duties and obligations.

Section 7.8 **Reclassification Events of PubCo**. If a Reclassification Event occurs, the Managing Member or its successor, as the case may be, shall, as and to the extent necessary, amend this Agreement in compliance with Section 12.1, and enter into any necessary supplementary or additional agreements, to ensure that following the effective date of the Reclassification Event: (i) the redemption rights of holders of Units set forth in Section 4.6 provide that each Unit (together with the surrender and delivery of one Class B Share) is redeemable for the same amount and same type of property, securities or cash (or combination thereof) that one Class A Share becomes exchangeable for or converted into as a result of the Reclassification Event and (ii) PubCo or the successor to PubCo, as applicable, is obligated to deliver such property, securities or cash upon such redemption. PubCo shall not consummate or agree to consummate any Reclassification Event unless the successor Person, if any, becomes obligated to comply with the obligations of PubCo (in whatever capacity) under this Agreement.

Section 7.9 **Certain Costs and Expenses**. The Company shall (a) pay, or cause to be paid, all costs, fees, operating expenses and other expenses of the Company and its Subsidiaries (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company and its Subsidiaries) incurred in pursuing and conducting, or otherwise related to, the activities of the Company and (b) in the Good Faith discretion of the Managing Member, reimburse the Managing Member for any costs, fees or expenses incurred by it in connection with serving as the Managing Member. To the extent that the Managing Member determines in its Good Faith discretion that such expenses are related to the business and affairs of the Managing Member that are conducted through the Company and/or its Subsidiaries (including expenses that relate to the business and affairs of the Company and/or its Subsidiaries and that also relate to other activities of the Managing Member or any other member of the PubCo Holdings Group), the Managing Member may cause the Company to pay or bear all expenses of the PubCo Holdings Group, including, without limitation, costs of securities offerings not borne directly by Members, board of directors compensation and meeting costs, costs of periodic reports to stockholders of PubCo, litigation costs and damages arising from litigation, accounting and legal costs; *provided* that the Company shall not pay or bear any income tax obligations of any member of the PubCo Holdings Group or any obligations of any member of the PubCo Holdings Group pursuant to the IPO TRA or any Post-IPO TRA (but the Company shall be entitled to make distributions in respect of these obligations pursuant to Article VI). In the event that (i) Class A Shares or other Equity Securities of PubCo were sold to underwriters in any public offering (including the IPO) after the Effective Time, in each case, at a price per share that is lower than the price per share for which such Class A Shares or other Equity Securities of PubCo are sold to the public in such public offering after taking into account any Discounts and (ii) the proceeds from such public offering are used to fund the Cash Election Amount for any redeemed Units or otherwise contributed to the Company, the Company shall reimburse the applicable member of the PubCo Holdings Group for such Discount by treating such Discount as an additional Capital Contribution made by such member of the PubCo Holdings Group to the Company, issuing Units in respect of such deemed Capital Contribution in accordance with Section 4.6(i) (but, for the avoidance of doubt, without duplication of the Units issued pursuant to the Master Reorganization Agreement), and increasing the Capital Account of such member of the PubCo Holdings Group by the amount of such Discount. For the avoidance of doubt, any payments made to or on behalf of any member of the PubCo Holdings Group pursuant to this Section 7.9 shall not be treated as a distribution pursuant to Section 6.1(a) but shall instead be treated as an expense of the Company.

ARTICLE VIII

ROLE OF MEMBERS

Section 8.1 **Rights or Powers**.

(a) Other than the Managing Member, the Members, acting in their capacity as Members, shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. A Member, any Affiliate thereof or an employee, stockholder, agent, director or officer of a Member or any Affiliate thereof, may also be an employee or be retained as an agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member (other than the Managing Member) being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member. Except as specifically provided herein, a Member (other than the Managing Member) shall not, in its capacity as a Member, take part in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

(b) The Company shall promptly (but in any event within three business days) notify the Members in writing if, to the Company's knowledge, for any reason, it would be an "investment company" within the meaning of the Investment Company Act of 1940 (the "***Investment Company Act***"), as amended, but for the exceptions provided in Section 3(c)(1) or 3(c)(7) thereunder.

Section 8.2 **Voting**.

(a) Meetings of the Members may be called upon the written request of Members holding at least 50% of the outstanding Units. Such request shall state the location of the meeting and the nature of the business to be transacted at the meeting. Written notice of any such meeting shall be given to all Members not less than two Business Days and not more than 30 days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at any meeting of the Members and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 8.2. Except as otherwise expressly provided in this Agreement, the affirmative vote of the Members holding a majority of the outstanding Units shall constitute the act of the Members.

(b) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by such Member or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(c) Each meeting of Members shall be conducted by an Officer designated by the Managing Member or such other individual Person as the Managing Member deems appropriate.

(d) Any action required or permitted to be taken by the Members may be taken without a meeting if the requisite Members whose approval is necessary consent thereto in writing.

Section 8.3 **Various Capacities**. The Members acknowledge and agree that the Members or their Affiliates will from time to time act in various capacities, including as a Member and as the Company Representative.

Section 8.4 **Investment Opportunities**. To the fullest extent permitted by applicable law, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Member (other than Members who are officers or employees of the Company, PubCo or any of their respective Subsidiaries), any of their respective Affiliates (other than the Company, the Managing Member or any of their respective Subsidiaries), or any of their respective officers, directors, agents, shareholders, members, managers and partners (each, a "***Business Opportunities Exempt Party***"). The Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to any Business Opportunities Exempt Party. No Business Opportunities Exempt Party who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company or any of its subsidiaries shall have any duty to communicate or offer such opportunity to the Company. No amendment or repeal of this Section 8.4 shall apply to or have any effect on the liability or alleged liability of any Business Opportunities Exempt Party for or with respect to any opportunities of which any such Business Opportunities Exempt Party becomes aware prior to such amendment or repeal. Any Person purchasing or otherwise acquiring any interest in any Units shall be deemed to have notice of and consented to the provisions of this Section 8.4. Neither the alteration, amendment or repeal of this Section 8.4, nor the adoption of any provision of this Agreement inconsistent with this Section 8.4, shall eliminate or reduce the effect of this Section 8.4 in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Section 8.4, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

ARTICLE IX

TRANSFERS OF INTERESTS

Section 9.1 **Restrictions on Transfer**.

(a) Except as provided in Section 4.6 and Section 9.1(c), no Member shall Transfer all or any portion of its Interest without the Managing Member's prior written consent, which consent shall be granted or withheld in the Managing Member's sole discretion. If, notwithstanding the provisions of this Section 9.1(a), all or any portion of a Member's Interests are Transferred in violation of this Section 9.1(a), involuntarily, by operation of law or otherwise, then without limiting any other rights and remedies available to the other parties under this Agreement or otherwise, the Transferee of such Interest (or portion thereof) shall not be admitted to the Company as a Member or be entitled to any rights as a Member hereunder, and the Transferor will continue to be bound by all obligations hereunder, unless and until the Managing Member consents in writing to such admission, which consent shall be granted or withheld in the Managing Member's sole discretion. Any attempted or purported Transfer of all or a portion of a Member's Interests in violation of this Section 9.1(a) shall be null and void and of no force or effect whatsoever. For the avoidance of doubt, the restrictions on Transfer contained in this Article IX shall not apply to the Transfer of any capital stock of PubCo; *provided* that no Class B Shares may be Transferred unless a corresponding number of Units are Transferred therewith in accordance with this Agreement.

(b) In addition to any other restrictions on Transfer herein contained, including the provisions of this Article IX, in no event may any Transfer or assignment of Interests by any Member be made (i) to any Person who lacks the legal right, power or capacity to own Interests; (ii) if such Transfer (A) would be considered to be effected on or through an "established securities market" or a "secondary market or the substantial equivalent thereof," as such terms are used in Treasury Regulations Section 1.7704-1, (B) would result in the Company having more than 100 partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined taking into account the rules of Treasury Regulations Section 1.7704-1(h)(3)), or (C) would cause the Company to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code or a successor provision or to be classified as a corporation pursuant to the Code or successor of the Code; (iii) if such Transfer would cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(e)(2) of the Code); (iv) if such Transfer would, in the opinion of counsel to the Company, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to the Plan Asset Regulations or otherwise cause the Company to be subject to regulation under ERISA; (v) if such Transfer requires the registration of such Interests or any Equity Securities issued upon any exchange of such Interests, pursuant to any applicable U.S. federal or state securities Laws; or (vi) if such Transfer subjects the Company to regulation under the Investment Company Act or the Investment Advisors Act of 1940, each as amended (or any succeeding law). Any attempted or purported Transfer of all or a portion of a Member's Interests in violation of this Section 9.1(b) shall be null and void and of no force or effect whatsoever.

(c) Notwithstanding the provisions in Section 9.1(a), but subject to the other provisions in this Article IX, a Member may Transfer all or a portion of its Units to a Permitted Transferee without the consent of any other Member or Person, but only if immediately after the proposed Transfer by such Member, taking into consideration the anti-abuse rule set forth in Treasury Regulations Section 1.7704-1(h)(3), and as determined in the reasonable discretion of the Managing Member:

(i) in the case of a proposed Transfer by a Goldman Entity, all Goldman Entities, in the aggregate, would not represent more than 4 "partners" for purposes of calculating the number of "partners" in the Company under Treasury Regulations Section 1.7704-1(h)(l)(ii);

(ii) in the case of a proposed Transfer by a Beekman Entity, all Beekman Entities, in the aggregate, would not represent more than 4 "partners" for purposes of calculating the number of "partners" in the Company under Treasury Regulations Section 1.7704-1(h)(l)(ii); or

(iii) in the case of a proposed Transfer by a Member other than a Goldman Entity, a Beekman Entity and any member of the PubCo Holdings Group, such Member and its Transferees (for the avoidance of doubt, other than any member of the PubCo Holding Group), in the aggregate, would not represent more than one "partner" for purposes of calculating the number of "partners" in the Company under Treasury Regulations Section 1.7704-1(h)(l)(ii).

(d) Notwithstanding any of the provisions in Section 9.1(a), but subject to the other provisions in this Article IX, each of One Water Ventures, LLC, a Georgia limited liability company and LMI Holdings, LLC, a Florida limited liability company may Transfer all or a portion of its Units to any of its members as of the date hereof without the consent of any other Member or Person.

Section 9.2 **Notice of Transfer**.

(a) Other than in connection with Transfers made pursuant to Section 4.6, each Member shall, after complying with the provisions of this Agreement, but in any event no later than three Business Days following any Transfer of Interests, give written notice to the Company of such Transfer. Each such notice shall describe the manner and circumstances of the Transfer.

(b) A Member making a Transfer (including a deemed Transfer for U.S. federal income tax purposes as described in Section 4.6(g)) permitted by this Agreement shall, unless otherwise determined by the Managing Member, (i) have delivered to the Company an affidavit of non-foreign status with respect to such Transferor that satisfies the requirements of Section 1446(f)(2) of the Code or other documentation establishing a valid exemption from withholding pursuant to Section 1446(f) of the Code or (ii) contemporaneously with the Transfer, properly withhold and remit to the Internal Revenue Service the amount of tax required to be withheld upon the Transfer by Section 1446(f) of the Code (and provide evidence to the Company of such withholding and remittance promptly thereafter).

Section 9.3 **Transferee Members**. A Transferee of Interests pursuant to this Article IX shall have the right to become a Member only if (a) the requirements of this Article IX are met, (b) such Transferee executes an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement and assuming all of the Transferor's then existing and future Liabilities arising under or relating to this Agreement, (c) such Transferee represents that the Transfer was made in accordance with all applicable securities Laws, (d) the Transferor or Transferee shall have reimbursed the Company for all reasonable expenses (including attorneys' fees and expenses) of any Transfer or proposed Transfer of a Member's Interest, whether or not consummated and (e) if such Transferee or his or her spouse is a resident of a community property jurisdiction, then such Transferee's spouse shall also execute an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement to the extent of his or her community property or quasi-community property interest, if any, in such Member's Interest. Unless agreed to in writing by the Managing Member, the admission of a Member shall not result in the release of the Transferor from any Liability that the Transferor may have to each remaining Member or to the Company under this Agreement or any other Contract between the Managing Member, the Company or any of its Subsidiaries, on the one hand, and such Transferor or any of its Affiliates, on the other hand. Written notice of the admission of a Member shall be sent promptly by the Company to each remaining Member.

Section 9.4 **Legend**. Each certificate representing a Unit, if any, will be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933.

THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SUCH ACT.

THE TRANSFER AND VOTING OF THESE SECURITIES IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ONE WATER MARINE HOLDINGS, LLC (THE ISSUER OF THESE SECURITIES) AS IT MAY BE AMENDED, SUPPLEMENTED AND/OR RESTATED FROM TIME TO TIME, AND NO TRANSFER OF THESE SECURITIES WILL BE VALID OR EFFECTIVE UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER OF SUCH SECURITIES."

ARTICLE X

ACCOUNTING; CERTAIN TAX MATTERS

Section 10.1 **Books of Account**. The Company shall, and shall cause each Subsidiary to, maintain true books and records of account in which full and correct entries shall be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP, and shall set aside on its books all such proper accruals and reserves as shall be required under GAAP.

Section 10.2 **Tax Elections**.

(a) The Company and any eligible Subsidiary shall make an election (or continue a previously made election) pursuant to Section 754 of the Code for the taxable year of the Company that includes the date hereof and shall not thereafter revoke such election. In addition, the Company shall make the following elections on the appropriate forms or tax returns, if permitted under the Code or applicable law:

(i) to adopt a taxable year allowable under law;

(ii) to adopt the accrual method of accounting for U.S. federal income tax purposes;

(iii) to elect to amortize the organizational expenses of the Company as permitted by Section 709(b) of the Code;

(iv) except where the Managing Member elects to apply Section 10.5(e), to elect out of the application of the partnership-level audit and adjustment rules of the Partnership Tax Audit Rules by making an election under Section 6226(a) of the Code, commonly known as the "push out" election, or any analogous election under state or local tax law, if applicable; and

(v) except as otherwise provided herein, any other election the Managing Member may in Good Faith deem appropriate and in the best interests of the Company.

(b) Upon request of the Managing Member, each Member shall cooperate in Good Faith with the Company in connection with the Company's efforts to make any election pursuant to this Section 10.2.

Section 10.3 **Tax Returns; Information**. The Managing Member shall arrange for the preparation and timely filing of all income and other tax and informational returns of the Company. The Managing Member shall furnish to each Member a copy of each approved return and statement, together with any schedules (including Schedule K-1) or other information that a Member may require in connection with such Member's own tax affairs as soon as practicable (but in no event more than 75 days after the end of each Fiscal Year). The Members agree to (a) take all actions reasonably requested by the Company or the Company Representative to comply with the Partnership Tax Audit Rules, including where applicable, filing amended returns as provided in Sections 6225 or 6226 of the Code and providing confirmation thereof to the Company Representative and (b) furnish to the Company (i) all reasonably requested certificates or statements relating to the tax matters of the Company (including without limitation an affidavit of non-foreign status pursuant to Section 1446(f)(2) of the Code), and (ii) all pertinent information in its possession relating to the Company's operations that is reasonably necessary to enable the Company's tax returns to be prepared and timely filed.

Section 10.4 **Company Representative**. The Managing Member is specially authorized and appointed to act as the Company Representative and in any similar capacity under state or local Law. The Company and the Members (including any Member designated as the Company Representative prior to the date hereof) shall cooperate fully with each other and shall use reasonable best efforts to cause the Managing Member (or any other Person subsequently designated) to become the Company Representative with respect to any taxable period of the Company with respect to which the statute of limitations has not yet expired, including (as applicable) by filing certifications pursuant to Treasury Regulations Section 301.6231(a)(7)-1(d). In acting as Company Representative, the Managing Member shall act, to the maximum extent possible, to cause income, gain, loss, deduction, credit of the Company and adjustments thereto, to be allocated or borne by the Members in the same manner as such items or adjustments would have been borne if the Company could have effectively made an election under Section 6221(b) of the Code (commonly known as the "election out") or similar state or local provision with respect to the taxable period at issue. The Company Representative may retain, at the Company's expense, such outside counsel, accountants and other professional consultants as it may reasonably deem necessary in the course of fulfilling its obligations as Company Representative.

Section 10.5 **Withholding Tax Payments and Obligations**.

(a) Withholding Tax Payments. Each of the Company and its Subsidiaries may withhold from distributions, allocations or portions thereof if it is required to do so by any applicable Law, and each Member hereby authorizes the Company and its Subsidiaries to withhold or pay on behalf of or with respect to such Member, any amount of U.S. federal, state or local or non-U.S. taxes that the Managing Member determines, in Good Faith, that the Company or any of its Subsidiaries is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement.

(b) Other Tax Payments. To the extent that any tax is paid by (or withheld from amounts payable to) the Company or any of its Subsidiaries and the Managing Member determines, in Good Faith, that such tax (including any Company Level Tax) relates to one or more specific Members, such tax shall be treated as an amount of tax withheld or paid with respect to such Member pursuant to this Section 10.5. Any determinations made by the Managing Member pursuant to this Section 10.5 shall be binding on the Members.

(c) Tax Contribution and Indemnity Obligation. Any amounts withheld or paid with respect to a Member pursuant to Section 10.5(a) or (b) shall be offset against any distributions to which such Member is entitled concurrently with such withholding or payment (a "***Tax Offset***"); *provided* that the amount of any distribution subject to a Tax Offset shall be treated as having been distributed to such Member pursuant to Section 6.1 or Section 11.3(b)(iii) at the time such Tax Offset is made. To the extent that (i) there is a payment of Company Level Taxes relating to a Member or (ii) the amount of such Tax Offset exceeds the distributions to which such Member is entitled during the same Fiscal Year as such withholding or payment ("***Excess Tax Amount***"), the amount of such (i) Company Level Taxes or (ii) Excess Tax Amount, as applicable, shall, upon notification to such Member by the Managing Member, give rise to an obligation of such Member to make a capital contribution to the Company (a "***Tax Contribution Obligation***"), which Tax Contribution Obligation shall be immediately due and payable. In the event a Member defaults with respect to its obligation under the prior sentence, the Company shall be entitled to offset the amount of a Member's Tax Contribution Obligation against distributions to which such Member would otherwise be subsequently entitled until the full amount of such Tax Contribution Obligation has been contributed to the Company or has been recovered through offset against distributions, and any such offset shall not reduce such Member's Capital Account. Any contribution by a Member with respect to a Tax Contribution Obligation shall increase such Member's Capital Account but shall not reduce the amount (if any) that a Member is otherwise obligated to contribute to the Company. Each Member hereby unconditionally and irrevocably grants to the Company a security interest in such Member's Units to secure such Member's obligation to pay the Company any amounts required to be paid pursuant to this Section 10.5. Each Member shall take such actions as the Company may reasonably request in order to perfect or enforce the security interest created hereunder. Each Member hereby agrees to indemnify and hold harmless the Company, the other Members, the Company Representative and the Managing Member from and against any liability (including any liability for Company Level Taxes) with respect to income attributable to or distributions or other payments to such Member.

(d) Continued Obligations of Former Members. Any Person who ceases to be a Member shall be deemed to be a Member solely for purposes of this Section 10.5, and the obligations of a Member pursuant to this Section 10.5 shall survive until 30 days after the closing of the applicable statute of limitations on assessment with respect to the taxes withheld or paid by the Company or a Subsidiary that relate to the period during which such Person was actually a Member; *provided*, *however*, that if the Managing Member determines in its sole discretion that seeking indemnification for Company Level Taxes from a former Member is not practicable, or that seeking such indemnification has failed, then, in either case, the Managing Member may (A) recover any liability for Company Level Taxes from the substituted Member that acquired directly or indirectly the applicable interest in the Company from such former Member or (B) treat such liability for Company Level Taxes as a Company expense.

(e) Managing Member Discretion Regarding Recovery of Taxes. Notwithstanding the foregoing, the Managing Member may choose not to recover an amount of Company Level Taxes or other taxes withheld or paid with respect to a Member under this Section 10.5 to the extent that there are no distributions to which such Member is entitled that may be offset by such amounts, if the Managing Member determines, in its reasonable discretion, that such a decision would be in the best interests of the Members (e.g., where the cost of recovering the amount of taxes withheld or paid with respect to such Member is not justified in light of the amount that may be recovered from such Member).

ARTICLE XI

DISSOLUTION AND TERMINATION

Section 11.1 **Liquidating Events**. The Company shall dissolve and commence winding up and liquidating upon the first to occur of the following (each, a "***Liquidating Event***"):

(a) The sale of all or substantially all of the assets of the Company; and

(b) The determination of (i) the Managing Member and (ii) if at such time the Members (other than any member of the PubCo Holdings Group) beneficially own, in the aggregate, more than 2.5% of the then-outstanding Units, the holders of at least 66 2/3% of the outstanding Units held by Members other than the PubCo Holdings Group and, for so long as a Goldman Entity or a Beekman Entity hold an interest herein, such Goldman Entity and Beekman Entity, to dissolve, wind up and liquidate the Company; *provided* that no such Liquidating Event shall be consummated until at least 5 Business Days after written notice is provided to the Members that such determination has been made in accordance with the foregoing, and, for the avoidance of doubt, any Member, including any Member not consenting to such determination, shall have the right to file a Redemption Notice prior to the consummation of such Liquidating Event.

The Members hereby agree that the Company shall not dissolve prior to the occurrence of a Liquidating Event and that no Member shall seek a dissolution of the Company, under Section 18-802 of the Act or otherwise, other than based on the matters set forth in clauses (a) and (b) above. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, the Members hereby agree to continue the business of the Company without a winding up or liquidation. In the event of a dissolution pursuant to Section 11.1(b), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 11.3 in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with applicable laws and regulations, unless, with respect to any class of Units, holders of a majority of the Units of such class consent in writing to a treatment other than as described above.

Section 11.2 **Bankruptcy**. For purposes of this Agreement, the "bankruptcy" of a Member shall mean the occurrence of any of the following: (a) any Governmental Entity shall take possession of any substantial part of the property of that Member or shall assume control over the affairs or operations thereof, or a receiver or trustee shall be appointed, or a writ, order, attachment or garnishment shall be issued with respect to any substantial part thereof, and such possession, assumption of control, appointment, writ or order shall continue for a period of 90 consecutive days; or (b) a Member shall admit in writing of its inability to pay its debts when due, or make an assignment for the benefit of creditors; or apply for or consent to the appointment of any receiver, trustee or similar officer or for all or any substantial part of its property; or shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debts, dissolution, liquidation or similar proceeding under the Laws of any jurisdiction; or (c) a receiver, trustee or similar officer shall be appointed for such Member or with respect to all or any substantial part of its property without the application or consent of that Member, and such appointment shall continue undischarged or unstayed for a period of 90 consecutive days or any bankruptcy, insolvency, reorganization, arrangements, readjustment of debt, dissolution, liquidation or similar proceedings shall be instituted (by petition, application or otherwise) against that Member and shall remain undismissed for a period of 90 consecutive days.

Section 11.3 **Procedure**.

(a) In the event of the dissolution of the Company for any reason, the Members shall commence to wind up the affairs of the Company and to liquidate the Company's investments; *provided* that if a Member is in bankruptcy or dissolved, another Member, who shall be the Managing Member ("***Winding-Up Member***") shall commence to wind up the affairs of the Company and, subject to Section 11.4(a), such Winding-Up Member shall have full right and unlimited discretion to determine in Good Faith the time, manner and terms of any sale or sales of the Property or other assets pursuant to such liquidation, having due regard to the activity and condition of the relevant market and general financial and economic conditions. The Members shall continue to share profits, losses and distributions during the period of liquidation in the same manner and proportion as though the Company had not dissolved. The Company shall engage in no further business except as may be necessary, in the reasonable discretion of the Managing Member or the Winding-Up Member, as applicable, to preserve the value of the Company's assets during the period of dissolution and liquidation.

(b) Following the payment of all expenses of liquidation and the allocation of all Profits and Losses as provided in Article V, the proceeds of the liquidation and any other funds of the Company shall be distributed in the following order of priority:

(i) *First*, to the payment and discharge of all of the Company's debts and Liabilities to creditors (whether third parties or Members), in the order of priority as provided by Law, except any obligations to the Members in respect of their Capital Accounts;

(ii) *Second*, to set up such cash reserves that the Managing Member reasonably deems necessary for contingent or unforeseen Liabilities or future payments described in Section 11.3(b)(i) (which reserves when they become unnecessary shall be distributed in accordance with the provisions of clause (iii) below); and

(iii) *Third*, the balance to the Members, *pro rata* in accordance with the number of Units owned by each Member.

(c) No Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

(d) Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate and the Managing Member or the Winding-Up Member, as the case may be, shall have the authority to execute and record a certificate of cancellation of the Company, as well as any and all other documents required to effectuate the dissolution and termination of the Company.

Section 11.4 **Rights of Members**.

(a) Each Member irrevocably waives any right that it may have to maintain an action for partition with respect to the property of the Company.

(b) Except as otherwise provided in this Agreement, (i) each Member shall look solely to the assets of the Company for the return of its Capital Contributions and (ii) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions or allocations.

Section 11.5 **Notices of Dissolution**. In the event a Liquidating Event occurs or an event occurs that would, but for the provisions of Section 11.1, result in a dissolution of the Company, the Company shall, within 30 days thereafter, (a) provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Managing Member), and (b) comply, in a timely manner, with all filing and notice requirements under the Act or any other applicable Law.

Section 11.6 **Reasonable Time for Winding Up**. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets in order to minimize any losses that might otherwise result from such winding up.

Section 11.7 **No Deficit Restoration**. No Member shall be personally liable for a deficit Capital Account balance of that Member, it being expressly understood that the distribution of liquidation proceeds shall be made solely from existing Company assets.

ARTICLE XII

GENERAL

Section 12.1 **Amendments; Waivers**.

(a) The terms and provisions of this Agreement may be waived, modified or amended (including by means of merger, consolidation or other business combination to which the Company is a party) with the approval of (y) the Managing Member and (z) if at such time the Members (other than the PubCo Holdings Group) beneficially own, in the aggregate, more than 2.5% of the then-outstanding Units, the holders of at least 66 2/3% of the outstanding Units held by Members other than the PubCo Holdings Group; *provided* that no waiver, modification or amendment shall be effective until at least 5 Business Days after written notice is provided to the Members that the requisite consent has been obtained for such waiver, modification or amendment, and, for the avoidance of doubt, any Member, including any Member not providing written consent, shall have the right to file a Redemption Notice prior to the effectiveness of such waiver, modification or amendment; *provided*, *further*, that no amendment to this Agreement may:

(i) modify the limited liability of any Member, or increase the liabilities or obligations of any Member, in each case, without the consent of each such affected Member;

(ii) materially alter or change any rights, preferences or privileges of any Interests in a manner that is different or prejudicial (or would have a different or prejudicial effect) relative to any other Interests, without the approval of a majority in interest of the Members holding the Interests affected in such a different or prejudicial manner;

(iii) materially alter or change any rights, preferences or privileges of either a Goldman Entity or a Beekman Entity in its capacity as a holder of Interests or otherwise under this Agreement in a manner that is different or prejudicial (or that would have a different or prejudicial effect) relative to one another or other holder of Interests (including Pubco or a member of the Pubco Group), without the approval of the party affected in a different or prejudicial manner;

(iv) (A) amend or alter Section 8.4 without the prior written consent of Beekman and Goldman, or (B) alter or change any rights, preferences or privileges of any Member that are expressly for the benefit of such Member, without the approval of such member; or

(v) modify the requirement that a majority of the directors of PubCo who are independent within the meaning of the rules of the Nasdaq Stock Market (or such other principal United States securities exchange on which the Class A Shares are listed) and Rule 10A-3 of the Securities Act and do not hold any Units that are subject to the applicable Redemption must approve a Cash Election pursuant to Section 4.6(d) without the approval of a majority of the directors of PubCo who are independent within the meaning of the rules of the Nasdaq Stock Market (or such other principal United States securities exchange on which the Class A Shares are listed) and Rule 10A-3 of the Securities Act.

(b) Notwithstanding the foregoing clause (a), the Managing Member, acting alone, may amend this Agreement, including Exhibit A, (i) to reflect the admission of new Members, as provided by the terms of this Agreement, (ii) to the minimum extent necessary to comply with or administer in an equitable manner the Partnership Tax Audit Rules in any manner determined by the Managing Member, and (iii) as necessary to avoid the Company being classified as a "publicly traded partnership" within the meaning of Section 7704(b) of the Code.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 12.2 **Further Assurances**. Each party agrees that it will from time to time, upon the reasonable request of another party, execute such documents and instruments and take such further action as may be required to accomplish the purposes of this Agreement.

Section 12.3 **Successors and Assigns**. All of the terms and provisions of this Agreement shall be binding upon the parties and their respective successors and assigns, but shall inure to the benefit of and be enforceable by the successors and assigns of any Member only to the extent that they are permitted successors and assigns pursuant to the terms hereof. No party may assign its rights hereunder except as herein expressly permitted.

Section 12.4 **Certain Representations by Members**. Each Member, by executing this Agreement and becoming a Member, whether by making a Capital Contribution, by admission in connection with a permitted Transfer or otherwise, represents and warrants to the Company and the Managing Member, as of the date of its admission as a Member, that such Member (or, if such Member is disregarded for U.S. federal income tax purposes, such Member's regarded owner for such purposes) is either: (i) not a partnership, grantor trust or Subchapter S corporation for U.S. federal income tax purposes (e.g., an individual or Subchapter C corporation), or (ii) is a partnership, grantor trust or Subchapter S corporation for U.S. federal income tax purposes, but (A) permitting the Company to satisfy the 100-partner limitation set forth in Treasury Regulations Section 1.7704-1(h)(1)(ii) is not a principal purpose of any beneficial owner of such Member in investing in the Company through such Member, (B) such Member was formed for business purposes prior to or in connection with the investment by such Member in the Company or for estate planning purposes, and (C) no beneficial owner of such Member has a redemption or similar right with respect to such Member that is intended to correlate to such Member's right to Redemption pursuant to Section 4.6.

Section 12.5 **Entire Agreement**. This Agreement, together with all Exhibits and Schedules hereto and all other agreements referenced therein and herein, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein and therein.

Section 12.6 **Rights of Members Independent**. The rights available to the Members under this Agreement and at Law shall be deemed to be several and not dependent on each other and each such right accordingly shall be construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a Member and/or the Company from time to time and no such exercise shall exhaust the rights or preclude another Member from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

Section 12.7 **Governing Law**. This Agreement, the legal relations between the parties and any Action, whether contractual or non-contractual, instituted by any party with respect to matters arising under or growing out of or in connection with or in respect of this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and performed in such state and without regard to conflicts of law doctrines.

Section 12.8 **Jurisdiction and Venue**. The parties hereto hereby agree and consent to be subject to the jurisdiction of any federal court of the District of Delaware or the Delaware Court of Chancery over any action, suit or proceeding (a "***Legal Action***") arising out of or in connection with this Agreement. The parties hereto irrevocably waive the defense of an inconvenient forum to the maintenance of any such Legal Action. Each of the parties hereto further irrevocably consents to the service of process out of any of the aforementioned courts in any such Legal Action by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing in this Section 12.8 shall affect the right of any party hereto to serve legal process in any other manner permitted by law.

Section 12.9 **Headings**. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 12.10 **Counterparts**. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts any may delivered by email or other electronic means. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

Section 12.11 **Notices**. Any notice or other communication hereunder must be given in writing and (a) delivered in person, (b) transmitted by facsimile, by telecommunications mechanism or electronically or (c) mailed by certified or registered mail, postage prepaid, receipt requested as follows:

If to the Company or the Managing Member, addressed to it at:

One Water Marine Holdings, LLC
6275 Lanier Islands Parkway
Buford, GA 30518
Attention: Jack Ezzell, CFO
Email:

With copies (which shall not constitute notice) to:

Vinson & Elkins L.L.P.
2001 Ross Avenue, Suite 3900
Dallas, TX 75201
Attention: Peter Marshall
Email:

or to such other address or to such other Person as either party shall have last designated by such notice to the other parties. Each such notice or other communication shall be effective (i) if given by telecommunication or electronically, when transmitted to the applicable number or email address so specified in (or pursuant to) this Section 12.11 and an appropriate answerback is received or, if transmitted after 4:00 p.m. local time on a Business Day in the jurisdiction to which such notice is sent or at any time on a day that is not a Business Day in the jurisdiction to which such notice is sent, then on the immediately following Business Day, (ii) if given by mail, on the first Business Day in the jurisdiction to which such notice is sent following the date three days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, on the Business Day when actually received at such address or, if not received on a Business Day, on the Business Day immediately following such actual receipt.

Section 12.12 **Representation By Counsel; Interpretation**. The parties acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law, or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived.

Section 12.13 **Severability**. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Entity, the remaining provisions of this Agreement, to the extent permitted by Law shall remain in full force and effect, *provided* that the essential terms and conditions of this Agreement for all parties remain valid, binding and enforceable.

Section 12.14 **Expenses**. Except as otherwise provided in this Agreement, each party shall bear its own expenses in connection with the transactions contemplated by this Agreement.

Section 12.15 **Waiver of Jury Trial**. EACH OF THE COMPANY, THE MEMBERS, THE MANAGING MEMBER AND ANY INDEMNITEES SEEKING REMEDIES HEREUNDER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.

Section 12.16 **No Third Party Beneficiaries**. Except as expressly provided in Sections 7.4, nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under this Agreement or otherwise create any third party beneficiary hereto.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, each of the parties hereto has caused this Fourth Amended and Restated Limited Liability Company Agreement to be executed as of the day and year first above written.

COMPANY:

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

MANAGING MEMBER:

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

PUBCO:

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

MEMBERS:

ADC INVESTMENTS, LLC

By: /s/ A. Derrill Crowe
Name: A. Derrill Crowe
Title: President

/s/ Anthony Aisquith
ANTHONY AISQUITH

AUBURN OWMH, LLLP

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Member

/s/ Scott Cunningham
SCOTT CUNNINGHAM

/s/ Donnie Drummonds
DONNIE DRUMMONDS

/s/ Jack Ezzell
JACK EZZELL

/s/ Alan Giddens
ALAN GIDDENS

/s/ Michael Gold
MICHAEL GOLD

/s/ J. Clarke Legler, II

J. Clarke Legler, II

L13, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Management, LLC

JBL Investment Holdings, LLLP

By: /s/ Jeff Lamkin
Name: Jeff Lamkin
Title: Manager, Sea Oats Group

/s/ Kenneth M. Kirschner

Kenneth M. Kirschner

/s/ Pete Knowles

Pete Knowles

/s/ Mitchell W. Legler

Mitchell W. Legler

Landis Marine Holdings, LLC

By: /s/ Michael C. Smith
Name: Michael C. Smith
Title: Manager

OWM BIP Investor, LLC

By: /s/ John G. Troiano
Name: John G. Troiano
Title: Manager

/s/ Peter H. Bos, III

Peter H. Bos, III

Philip Singleton Irrevocable Trust
Dated December 24, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

Austin Singleton Irrevocable Trust
Dated December 30, 2015

By: /s/ Philip Austin Singleton
Name: Philip Austin Singleton
Title: Trustee

Special Situations Investing Group II, LLC

By: /s/ Greg Watts
Name: Greg Watts
Title: Authorized Signatory

/s/ Keith Style

Keith Style

Teresa D. Bos 2015 Trust

By: /s/ Pete Knowles
Name: Pete Knowles
Title: Trustee

/s/ Cindy Thompson

Cindy Thompson

/s/ Dave Witty

Dave Witty

EXHIBIT A

Member
ADC Investments, LLC
Anthony Aisquith
Auburn OWMH, LLLP
Scott Cunningham
Donnie Drummonds
Jack Ezzell
Alan Giddens
Michael Gold
J. Clarke Legler, II
L13, LLLP
JBL Investment Holdings, LLLP
Kenneth M. Kirschner
Pete Knowles
Mitchell W. Legler
Landis Marine Holdings, LLC
OneWater Marine Inc.
OWM BIP Investor, LLC
Peter H. Bos, III
Philip Singleton Irrevocable Trust, Dated December 24, 2015
Austin Singleton Irrevocable Trust, Dated December 30, 2015
Special Situations Investing Group II, LLC
Keith Style
Teresa D. Bos 2015 Trust
Cindy Thompson
Dave Witty

Exhibit 10.3

Execution Version

SPECIFIC TERMS IN THIS EXHIBIT HAVE BEEN REDACTED BECAUSE SUCH TERMS ARE BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED. THESE REDACTED TERMS HAVE BEEN MARKED IN THIS EXHIBIT WITH THREE ASTERISKS [***].

AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

dated as of February 11, 2020

among

ONE WATER ASSETS & OPERATIONS, LLC,
SINGLETON ASSETS & OPERATIONS, LLC,
LEGENDARY ASSETS & OPERATIONS, LLC,
SOUTH FLORIDA ASSETS & OPERATIONS, LLC,
MIDWEST ASSETS & OPERATIONS, LLC,
BOSUN'S ASSETS & OPERATIONS, LLC,
and
SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC,

as the Companies,

ONE WATER MARINE HOLDINGS, LLC,
ONEWATER MARINE INC.,
and
CERTAIN SUBSIDIARIES OF SUCH PERSONS,

as Guarantors,

VARIOUS LENDERS,

and

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,

as Administrative Agent, Collateral Agent, Syndication Agent, Documentation Agent and Lead Arranger

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$110,000,000 Senior Secured Credit Facilities

TABLE OF CONTENTS

APPENDICES:

SCHEDULES:

EXHIBITS:

AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

This **AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT**, dated as of February 11, 2020, is entered into by and among **ONE WATER ASSETS & OPERATIONS, LLC**, a Delaware limited liability company ("**OWAO**"), **SINGLETON ASSETS & OPERATIONS, LLC**, a Georgia limited liability company ("**Singleton**"), **LEGENDARY ASSETS & OPERATIONS, LLC**, a Florida limited liability company ("**Legendary**"), **SOUTH FLORIDA ASSETS & OPERATIONS, LLC**, a Florida limited liability company ("**South Florida**"), **MIDWEST ASSETS & OPERATIONS, LLC**, a Delaware limited liability company ("**Midwest**"), **BOSUN'S ASSETS & OPERATIONS, LLC**, a Delaware limited liability company ("**BAO**"), **SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC**, a Delaware limited liability company ("**South Shore**"), and certain other Subsidiaries of PubCo, as Companies, **ONE WATER MARINE HOLDINGS, LLC**, a Delaware limited liability company ("**Holdings**"), **ONEWATER MARINE INC.**, a Delaware corporation ("**PubCo**") and certain Subsidiaries of PubCo and Holdings, as Guarantors, the Lenders party hereto from time to time, and **GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.** ("**GSSLG**"), as administrative agent (in such capacity, "**Administrative Agent**") and collateral agent (in such capacity, "**Collateral Agent**") for the Lenders, and the undersigned Exiting Lender (as defined below).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in **Section 1.1** hereof;

WHEREAS, in connection with the initial public offering of PubCo, the parties hereto desire to refinance certain credit facilities made available to the Companies pursuant to that certain Credit and Guaranty Agreement dated as of October 28, 2016 (as amended, the "**Prior Credit Agreement**"), by and among Holdings, the Companies, GSSLG and the lenders party thereto;

WHEREAS, Lenders have agreed to extend certain credit facilities to the Companies, in an aggregate amount not to exceed $110,000,000, consisting of up to $10,000,000 aggregate principal amount of Revolving Commitments and $100,000,000 aggregate principal amount of Multi-Draw Term Loan Commitments, the proceeds of which will be used to (a) with respect to Multi-Draw Term Loans, (i) refinance the Existing Indebtedness and Indebtedness under the Prior Credit Agreement, (ii) consummate the OWAO Preferred Redemption, (iii) pay fees and expenses in connection with the Transactions and (iv) fund Permitted Acquisitions, and (b) with respect to Revolving Loans, provide for (i) the ongoing working capital requirements of the Companies and (ii) general corporate purposes of Holdings and its Subsidiaries;

WHEREAS, the Companies have agreed to secure all of the Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on certain of their assets, including a pledge of all of the Capital Stock of each of their respective Subsidiaries;

WHEREAS, Guarantors have agreed to guarantee the Obligations and to secure the Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on certain of their respective assets, including a pledge of all of the Capital Stock of each of their respective Subsidiaries (including the Companies); and

WHEREAS, subject to the conditions precedent set forth herein, the parties hereto desire to amend and restate the Prior Credit Agreement in its entirety in the form of this Agreement to (a) reflect the initial public offering of PubCo and the transactions contemplated thereby and (b) amend certain terms of the Prior Credit Agreement in certain respects as provided in this Agreement.

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

SECTION 1. DEFINITIONS AND INTERPRETATION

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

"**Acquisition**" means the acquisition of, by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures, in each case in the ordinary course of business), the business, all or substantially all of the property or assets of, or a majority of the Capital Stock or other evidence of beneficial ownership of, any Person, any division or line of business, or any other business unit of any Person.

"**Acquisition Consideration**" means, with respect to any Permitted Acquisition, the aggregate purchase consideration for such Permitted Acquisition and all other payments by PubCo or any of its Subsidiaries in exchange for, or as part of, or in connection with, such Permitted Acquisition, whether paid in cash, by issuance of a note, or by exchange of Capital Stock or of other assets or otherwise , and, in each case, whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, and whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, Earn Out Obligations, Seller Financing Indebtedness, and agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow, profits or other performance (or the like) of any Person or business. For purposes of this Agreement, any such consideration not consisting of Cash paid or payable upon the closing of any such Permitted Acquisition shall be valued at (a) the principal amount thereof in the case of notes or other debt Securities, (b) the stated amount thereof in the case of fixed post-closing installments or similar Seller Financing Indebtedness obligations, (c) the maximum payout amount in the case of any capped Earn Out Obligations or similar deferred contingent payment obligations, and (d) in the case of any other consideration, including non-Cash consideration not described in any other clause of this sentence, the reasonably estimable fair market value thereof (as determined in good faith by the applicable Chief Financial Officer).

"**Adjusted LIBO Rate**" means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBO Rate Loan, the greater of (x) 1.50% per annum, and (y) the rate per annum obtained by dividing (i) (a) the rate per annum equal to the rate determined by Administrative Agent to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other Person that takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on the ICE LIBOR USD page of the Reuters Screen (or any replacement Reuters page that displays such rate) or on the appropriate page of any other information service that publishes that rate from time to time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date (the rate referenced in this **clause (a)**, the "**Eurodollar Screen Rate**"), or (b) in the event the Eurodollar Screen Rate is not available, the rate per annum equal to the offered rate, truncated at five decimal digits, that is set forth on or in such other available quotation page or service as is acceptable to Administrative Agent in its sole discretion and that provides an average ICE Benchmark Administration Limited Interest Settlement Rate or another London interbank offered rate administered by any other Person that takes over the administration of such rate for deposits (for delivery on the first day of the relevant period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding **clauses (a) and (b)** are not available or if such information, in the reasonable judgment of Administrative Agent, shall cease to accurately reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Administrative Agent, the rate per annum equal to the rate determined by Administrative Agent to be the offered rate, truncated at five decimal digits, to first class banks in the London interbank market for deposits (for delivery on the first day of the relevant period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one, minus (b) the Applicable Reserve Requirement.

"**Adjustment Event**" as defined in the definition of Applicable Margin.

"**Administrative Agent**" as defined in the preamble hereto.

"**Adverse Proceeding**" means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the Knowledge of any Credit Party or any of its Subsidiaries, threatened against or affecting any Credit Party or any of its Subsidiaries or any property of any Credit Party or any of its Subsidiaries.

"**Affected Lender**" as defined in **Section 2.16(c)**.

"**Affected Loans**" as defined in **Section 2.16(c)**.

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the current power (i) to vote 10% or more of the Capital Stock having ordinary voting power for the election of members of the Board of Directors of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ability to exercise voting power, by contract or otherwise. Notwithstanding anything in this definition to the contrary, neither GSSLG nor any of its affiliates shall be considered an "Affiliate" of any Credit Party or any Subsidiary of any Credit Party.

"**Agent**" means each of Administrative Agent, Collateral Agent, Syndication Agent, Documentation Agent and any other Person appointed as an agent, arranger, bookrunner or similar title or capacity under or otherwise in connection with the Credit Documents.

"**Agent Affiliates**" as defined in **Section 10.1(b)(iii)**.

"**Aggregate Amounts Due**" as defined in **Section 2.15**.

"**Aggregate Payments**" as defined in **Section 7.2**.

"**Agreement**" means this Amended and Restated Credit and Guaranty Agreement.

"**Anti-Corruption and Anti-Bribery Laws**" means any and all requirements of law related to anti-bribery or anti-corruption matters, including the United States Foreign Corrupt Practices Act of 1977.

"**Anti-Terrorism and Anti-Money Laundering Laws**" means any and all requirements of law related to engaging in, financing, or facilitating terrorism or money laundering, including the PATRIOT Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq.), Executive Order 13224 (effective September 24, 2001) and each of the laws, regulations, and executive orders administered by OFAC (31 C.F.R., Subtitle B, Chapter V).

"**Applicable Margin**" means (i) with respect to Loans that are LIBO Rate Loans, (a) from the Closing Date until the date of delivery of the Compliance Certificate and the financial statements for the period ending March 31, 2021, the greater of (x) a percentage, per annum, determined by reference to the Senior Leverage Ratio in effect from time to time as set forth below and (y) 6.50%, per annum; and (b) thereafter, a percentage, per annum, determined by reference to the Senior Leverage Ratio in effect from time to time as set forth below:

Tier	Senior Leverage Ratio	Applicable Margin for Loans
1	Greater than or equal to 1.50:1.00	7.00%
2	Less than 1.50:1.00 and greater than or equal to 1.00:1.00	6.50%
3	Less than 1.00:1.00	5.50%

and (ii) with respect to any Loans that are Base Rate Loans, an amount equal to (a) the Applicable Margin for LIBO Rate Loans as set forth in **clause (i)(a)** or **(i)(b)** above, as applicable, minus (b) 1.00% per annum. The Applicable Margin shall be subject to reduction or increase, as applicable and as set forth in the table above, on a quarterly basis upon the occurrence of each Adjustment Event and shall not increase or decrease between Adjustment Events except as otherwise expressly set forth herein. With respect to changes in the Applicable Margin resulting from the delivery of the applicable financial statements and a Compliance Certificate calculating the Senior Leverage Ratio pursuant to **Section 5.1(b)**, **(c)** or **(d)** (each such delivery an "**Adjustment Event**") no change in the Applicable Margin shall be effective until the Business Day immediately following the date on which Administrative Agent shall have received such documents. At any time when an Event of Default has occurred and is continuing or the Company Representative has not submitted to Administrative Agent the applicable information as and when required under **Section 5.1(b)**, **(c)** or **(d)** or the Compliance Certificate, as applicable, the Applicable Margin, at Administrative Agent's election, shall be determined as if the Senior Leverage Ratio were at Tier 1 as set forth in the table above. Without limitation of any other provision of this Agreement or any other remedy available to Administrative Agent or Lenders under any of the Credit Documents, to the extent that any financial statements or any information contained in any Compliance Certificate delivered pursuant to **Section 5.1(b)**, **(c)** or **(d)** or the calculation of the Senior Leverage Ratio as set forth in the corresponding Compliance Certificate, as applicable, delivered in connection with an Adjustment Event is incorrect in any manner and such financial statements or other information, if correct, would have led to the application of a higher Applicable Margin for any period (the "**Applicable Period**"), then (x) the Company Representative or any other Credit Party shall immediately deliver to Administrative Agent and Lenders corrected financial statements or other corrected information for such Applicable Period, (y) Administrative Agent may recalculate the Applicable Margin based upon such corrected financial statements or such other corrected information, and (z) upon notice thereof to the Company Representative, the Loans shall bear interest based upon such recalculated Applicable Margin retroactively from the date of delivery of the erroneous financial statements or other erroneous information in question. Nothing in this paragraph shall limit the right of Administrative Agent or any Lender under **Section 2.8** or **Section 8**.

"**Applicable Reserve Requirement**" means, at any time, for any LIBO Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities that includes deposits by reference to which the applicable Adjusted LIBO Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets that include LIBO Rate Loans. A LIBO Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBO Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"**Approved Electronic Communications**" means any notice, demand, communication, information, document or other material that any Credit Party provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein that is distributed to Agents or Lenders by means of electronic communications pursuant to **Section 10.1(b)**.

"**Approved Floorplan Financing**" means any floorplan inventory financing that is provided to any of the Companies (other than OWAO) pursuant to Approved Floorplan Financing Documents and is permitted under **Section 6.1(l)**.

"**Approved Floorplan Financing Documents**" means, collectively or individually as the context requires, (i) that certain Sixth Amended and Restated Inventory Financing Agreement dated as of the Closing Date, by and among Wells Fargo Commercial Distribution Finance, LLC and the Companies, and each other "Loan Document" under and as defined therein, in each case as in effect on the Closing Date; (ii) any amendments, restatements, supplements, consents, waivers or other modifications to any of the documents described in **clause (i)** of this definition in accordance with this Agreement and (iii) the definitive documentation of any new floorplan inventory financing, including any refinancing or replacement of any existing Approved Floorplan Financing, in each case under this **clause (iii)** to the extent permitted under **Section 6.1(l)** and consented to by Administrative Agent.

"**Approved Subordinated Debt**" means any Indebtedness and other obligations of any Credit Parties under any Approved Subordinated Debt Documents that is permitted under **Section 6.1(k)**.

"**Approved Subordinated Debt Cap**" means, at any time, an amount determined as the product of (i) 0.50 multiplied by (ii) Consolidated Adjusted EBITDA as of the last day of the most recently ended month for which financial statements have been or were required to be delivered pursuant to **Section 5.1(a)**.

"**Approved Subordinated Debt Documents**" means, collectively or individually as the context requires, (i) the definitive documentation (solely to the extent that the terms and conditions of such definitive documentation are permitted under **Section 6.1(k)**) of any Indebtedness or other obligations of any Credit Party as of the Closing Date consisting of Seller Financing Indebtedness, Earn Out Obligations or Disqualified Capital Stock in respect of Permitted Acquisitions, in each case, as described on **Schedule 6.1(k)**, (ii) any amendments, restatements, supplements, consents, waivers or other modifications to any of the definitive documentation described on **Schedule 6.1(k)** in accordance with this Agreement and (iii) the definitive documentation of any other Indebtedness or other obligations of any Credit Parties consisting of Seller Financing Indebtedness, Earn Out Obligations or Disqualified Capital Stock in respect of Permitted Acquisitions, in each case, under this **clause (iii)** to the extent that the terms and conditions of such definitive documentation are permitted under **Section 6.1(k)** and are consented to by Administrative Agent in its reasonable discretion.

"**Asset Sale**" means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer (including through a plan of division), exclusive license (as licensor or sublicensor), or other disposition to, or any exchange of property with, any Person (other than to or with the Companies or any Credit Party that is a Wholly-Owned Guarantor Subsidiary of Holdings), in one transaction or a series of transactions, of all or any part of any Credit Party's or any of its Subsidiaries' respective businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased, or licensed, including the Capital Stock of any of PubCo's Subsidiaries, other than inventory sold or leased to non-Affiliate customers in the ordinary course of business. For purposes of clarification, "Asset Sale" shall include (x) the sale or other disposition for value of any contracts and (y) the early termination or modification of any contract resulting in the receipt by any Credit Party's or any of its Subsidiaries of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts that would have been due through the date of termination or modification without giving effect thereto).

"**Asset Sale Reinvestment Amounts**" as defined in **Section 2.12(a)**.

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of **Exhibit D**, with such amendments or modifications as may be approved by Administrative Agent.

"**Assignment Effective Date**" as defined in **Section 10.6(b)**.

"**Authorized Officer**" means, as applied to any Person that is an entity, any duly authorized individual Natural Person holding the position of chairman of the Board of Directors (if an officer), chief executive officer, president, vice president, Chief Financial Officer, treasurer, or, if approved by Administrative Agent, any other officer position with similar authority; provided, that the secretary or assistant secretary of such Person, or another officer of such Person reasonably satisfactory to Administrative Agent, shall have delivered an incumbency certificate to Administrative Agent verifying the authority of such Authorized Officer.

"**Availability**" means, at any time of determination with respect to the Revolving Commitments or the Multi-Draw Term Loan Commitments, as the case may be, the lesser of:

(a) with respect to any Class of Commitments, an amount equal to the lesser of (i) the aggregate amount of undrawn Commitments of such Class and (ii) the difference of (A) the Maximum Credit Amount less (B) the aggregate outstanding principal (or equivalent) balance of Consolidated Total Debt (including any outstanding Loans and any other Indebtedness that will be incurred simultaneously with or on the same date as such Credit Extension but excluding any Approved Floorplan Financing, any Indebtedness under any Approved Subordinated Debt, and any Deferred TRA Obligations) at such time; and

(b) with respect to all Commitments, an amount equal to the lesser of (i) the aggregate amount of undrawn Commitments of all Classes, and (ii) the difference of (A) the Maximum Credit Amount less (B) the aggregate outstanding principal (or equivalent) balance of Consolidated Total Debt (including any outstanding Loans and any other Indebtedness that will be incurred simultaneously with or on the same date as such Credit Extension but excluding any Approved Floorplan Financing, any Indebtedness under any Approved Subordinated Debt and any Deferred TRA Obligations) at such time.

Availability shall be computed (A) giving pro forma effect to all Credit Extensions proposed to be made on the relevant date of determination and (B) including pro forma adjustments to Consolidated Adjusted EBITDA for any Subject Transaction in accordance with the definition of Consolidated Adjusted EBITDA.

"**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 that is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" means Title 11 of the United States Code.

"**BAO**" as defined in the preamble.

"**Base Rate**" means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (iii) the sum of (a) Adjusted LIBO Rate (after giving effect to any Adjusted LIBO Rate "floor") that would be payable on such day for a LIBO Rate Loan with a one-month Interest Period plus (b) the difference between the Applicable Margin for LIBO Rate Loans and the Applicable Margin for Base Rate Loans, and (iv) 4.50%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Benchmark Delayed Discontinuance Event**" means the occurrence of one or more of the following events with respect to the Adjusted LIBO Rate: (1) a public statement or publication of information by or on behalf of the administrator of the Adjusted LIBO Rate announcing that such administrator will cease at a future date to provide the Adjusted LIBO Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted LIBO Rate, a resolution authority with jurisdiction over the administrator for the Adjusted LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted LIBO Rate, which states that the administrator of the Adjusted LIBO Rate will cease to provide the Adjusted LIBO Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the Adjusted LIBO Rate; or (3) a public statement or publication of information by the administrator of the Adjusted LIBO Rate that it will invoke, permanently or indefinitely, its insufficient submissions policy.

"**Benchmark Discontinuance Event**" means a Benchmark Delayed Discontinuance Event or a Benchmark Immediate Discontinuance Event.

"**Benchmark Immediate Discontinuance Event**" means (1) a public statement by the regulatory supervisor for the administrator of the Adjusted LIBO Rate or any Governmental Authority having jurisdiction over Administrative Agent announcing that the Adjusted LIBO Rate is no longer representative or may no longer be used; (2) a public statement or publication of information by or on behalf of the administrator of the Adjusted LIBO Rate announcing that such administrator has ceased to provide the Adjusted LIBO Rate, permanently or indefinitely, and there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted LIBO Rate, a resolution authority with jurisdiction over the administrator for the Adjusted LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted LIBO Rate, which states that the administrator of the Adjusted LIBO Rate has ceased to provide the Adjusted LIBO Rate permanently or indefinitely, and there is no successor administrator that will continue to provide the Adjusted LIBO Rate; (4) the Adjusted LIBO Rate is not published by the administrator of the Adjusted LIBO Rate for five consecutive Business Days and such failure is not the result of a temporary moratorium, embargo or disruption declared by the administrator of the Adjusted LIBO Rate or by the regulatory supervisor for the administrator of the Adjusted LIBO Rate; (5) a public statement or publication of information by the administrator of the Adjusted LIBO Rate that it has invoked, permanently or indefinitely, its insufficient submissions policy; or (6) a Benchmark Delayed Discontinuance Event has occurred and the Adjusted LIBO Rate event about which a public statement or publication of information is made giving rise to such Benchmark Delayed Discontinuance Event has actually occurred or transpired.

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in form and substance reasonably acceptable to Administrative Agent.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Beneficiary**" means each Agent and Lender.

"**Benefit Plan**" means any of (i) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (ii) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code or (iii) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**BHC Act Affiliate**" means, as to any Person, an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Board of Directors**" means, (i) with respect to any corporation or company, the board of directors of the corporation or company or any committee thereof duly authorized to act on behalf of such board, (ii) with respect to a partnership, the board of directors or equivalent governing body of the general partner of the partnership, (iii) with respect to a limited liability company, the manager, the managing member or members or any controlling committee or board of managers (or equivalent governing body) of such company or the sole member or the managing member thereof, and (iv) with respect to any other Person, the entity, individual, board or committee of such Person serving a similar function.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor Governmental Authority.

"**Business Day**" means (i) any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York, or the State of Texas or is a day on which banking institutions located in any such state are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBO Rate or any LIBO Rate Loans, the term "**Business Day**" means any day that is a Business Day described in **clause (i)** and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP (subject to **Section 1.2**), is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Lease Obligation**" means, as applied to any Person that is a lessee under any Capital Lease, that portion of obligations under such Capital Lease that is properly classified as a liability on a balance sheet in conformity with GAAP (subject to **Section 1.2**).

"**Capital Stock**" means any and all shares, stock, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership or profits interests in a Person that is another type of entity, including partnership interests, membership interests, voting trust certificates, certificates of interest, and profits interests, participations, or similar arrangements, and any and all warrants, rights or options to purchase, or other arrangements or rights to acquire, subscribe, convert to or otherwise receive or participate in the economic or other rights associated with any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account; provided, however, that notwithstanding anything to the contrary contained herein, for purposes of calculating compliance with the requirements of **Sections 3** and **6** hereof "Cash" shall exclude any amounts that would not be considered "cash" under GAAP or "cash" as recorded on the books of the Companies and the Guarantors.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the U.S. Federal Government, or (b) issued by any agency of the U.S., the obligations of which are backed by the full faith and credit of the U.S. and mature within one year after such date; (ii) marketable direct obligations issued by any state of the U.S. or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A 1 from S&P or at least P 1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the U.S. or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $250,000,000; and (iv) shares of any money market mutual fund that (a) has at least 90% of its assets invested continuously in the types of investments referred to in **clauses (i) and (ii)** above, and (b) has the highest rating obtainable from both S&P and Moody's.

"**Change in Law**" means the occurrence, after the date hereof, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary,(x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" means, at any time after the date hereof, (i) any Person or "group" (within the meaning of Rules 13d 3 and 13d 5 under the Exchange Act) (a) shall have acquired current beneficial ownership of 35% or more on a fully diluted basis of the voting and/or economic interest in the Capital Stock of PubCo or (b) shall have obtained the current power (whether or not exercised) to elect a majority of the members of the Board of Directors of PubCo, (ii) a majority of the Board of Directors of PubCo shall cease to constitute Continuing Directors, (iii) the PubCo Holdings Group shall cease to beneficially own and control, directly or indirectly, at least the percentage on a fully diluted basis of economic and voting interests in Holdings it owns and controls as of the Closing Date (as such percentage may be reduced in connection with a Permitted Acquisition with the consent of Requisite Lenders and Administrative Agent) or cease to have power to elect a majority of the members of the Board of Directors of Holdings; (iv) Holdings shall cease to beneficially own and control, directly or indirectly, 100% of the common membership interests in OWAO, (v) OWAO shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of each other Company (except as permitted by Section 6.9); (vi) any "change of control" or similar event under the Approved Floorplan Financing or any Approved Subordinated Debt Documents shall occur; and (vii) a Change of Control (as defined in the Tax Receivable Agreement) shall have occurred.

"**Chief Financial Officer**" means, as applied to any Person that is an entity, any duly authorized individual Natural Person holding the position of chief financial officer or, if approved by Administrative Agent, any other officer position with similar financial responsibility; provided, that the secretary or assistant secretary of such Person, or another officer of such Person satisfactory to Administrative Agent, shall have delivered an incumbency certificate to Administrative Agent verifying the authority of such Authorized Officer.

"**Class**" means (i) with respect to Lenders, each of the following classes of Lenders: (a) Lenders having Multi-Draw Term Loan Exposure, (b) Lenders having Revolving Exposure, and (c) Lenders having New Multi-Draw Term Loan Exposure of each applicable Series, (ii) with respect to Loans, each of the following classes of Loans: (a) Multi-Draw Term Loans, (b) Revolving Loans, and (c) each Series of New Multi-Draw Term Loans, and (iii) with respect to Commitments, each of the following classes of Commitments: (a) Multi-Draw Term Loan Commitments, (b) Revolving Commitments, and (c) New Multi-Draw Term Loan Commitments.

"**Closing Date**" means February 11, 2020.

"**Closing Date Certificate**" means a certificate dated as of the Closing Date and substantially in the form of **Exhibit F-1**.

"**Closing Date Mortgaged Property**" as defined in **Section 3.1(h)(i)**.

"**Closing Date Multi-Draw Term Loan**" as defined in **Section 2.1(d)**.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted or purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages, the Landlord Consent and Estoppels, any Intellectual Property Security Agreements and all other instruments, documents and agreements that are expressly designated pursuant to their terms to be "Collateral Documents" or are otherwise executed and delivered by or on behalf of any Credit Party or any other Person pursuant to this Agreement or any of the other Credit Documents in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Collateral Questionnaire**" means a collateral questionnaire or perfection certificate in form satisfactory to Collateral Agent that provides information with respect to the real, personal or mixed property of each Credit Party.

"**Commitment**" means, with respect to any Lender, such Lender's Revolving Commitment, Multi-Draw Term Loan Commitment, or, if applicable, New Multi-Draw Term Loan Commitment, and "**Commitments**" means such commitments of all Lenders.

"**Company**" or **Companies**" means, individually or collectively, as the context may require, each Person that is a party to this Agreement as a borrower from time to time, including, as of the Closing Date, OWAO, Singleton, Legendary, South Florida, Midwest, BAO, and South Shore.

"**Company Representative**" as defined in **Section 2.23**.

"**Compliance Certificate**" means a certificate of the Chief Financial Officer of Company Representative substantially in the form of **Exhibit C**.

"**Consolidated Adjusted EBITDA**" means, for any period, an amount determined for PubCo and its Subsidiaries on a consolidated basis equal to (i) Consolidated Net Income plus (ii) in each case to the extent reducing Consolidated Net Income, the sum, without duplication, of the amounts for such period of (a) Consolidated Interest Expense, plus (b) provisions for taxes based on income, plus (c) total depreciation expense, plus (d) total amortization expense, plus (e) other non-Cash charges reducing Consolidated Net Income (excluding any such non-Cash charge to the extent that it represents an accrual or reserve for potential Cash charges in any future period or amortization of a prepaid Cash charge that was paid in a prior period), plus (f) total rent expense, plus (g) Permitted Add-Backs, minus (iii) in each case to the extent increasing Consolidated Net Income, the sum, without duplication of the amounts for such period of (a) other non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period), plus (b) interest income, plus (c) other non-ordinary course income, plus (d) rent expense paid in cash plus (e) interest paid in cash under any Approved Floorplan Financing Document.

Notwithstanding the foregoing or anything to the contrary in this Agreement:

(i) for all purposes other than for purposes of calculating Consolidated Excess Cash Flow, any calculation of Consolidated Adjusted EBITDA from and after the closing date of the SunTrust Leaseback shall include an adjustment reducing Consolidated Adjusted EBITDA by the "run rate" additional cash rent expense that would have accrued during the relevant period if the SunTrust Leaseback was closed at the beginning of such period;

(ii) with respect to any Fiscal Month set forth on **Schedule 1.1(b)**, the Consolidated Adjusted EBITDA for such Fiscal Month shall be the amount set forth opposite thereto on **Schedule 1.1(b)**;

(iii) for purposes of "annualizing" any calculation of Consolidated Adjusted EBITDA under this Agreement, no add-backs, adjustments or other income or gain items that are in the nature of "one-time" or "non-recurring" items or are otherwise made in respect of transactions, events, or circumstances that are not expected to recur in future periods may not be "annualized" unless approved by Administrative Agent in its sole discretion; and

(iv) with respect to any period during which a Permitted Acquisition or an Asset Sale has occurred (each, a "**Subject Transaction**"), for purposes of determining compliance with the financial covenants set forth in **Section 6.8** or any other calculation herein using Consolidated Adjusted EBITDA (other than for purposes of calculating Consolidated Excess Cash Flow) Consolidated Adjusted EBITDA shall be calculated with respect to such period on a pro forma basis (which pro forma adjustment (excluding any pro forma adjustment made with respect to Permitted Acquisitions within the meaning of clause (a) of the definition thereof) may only be included in determining such compliance to the extent approved by Administrative Agent in its sole discretion) with respect to (A) the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of PubCo and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period) and (B) other pro forma adjustments certified in good faith by a Chief Financial Officer of the Company Representative or the Companies and approved by Administrative Agent in its sole discretion.

"**Consolidated Capital Expenditures**" means, for any period, the aggregate of all expenditures of PubCo and its Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included in "purchase of property and equipment or similar items", or that should otherwise be capitalized, as reflected in the consolidated statement of cash flows of PubCo and its Subsidiaries.

"**Consolidated Cash Interest Expense**" means, for any period, Consolidated Interest Expense for such period, excluding any paid-in-kind interest, any amortization of deferred financing costs, and any realized or unrealized gains or losses attributable to Interest Rate Agreements to the extent categorized as interest expense pursuant to GAAP.

"**Consolidated Current Assets**" means, as at any date of determination, the total assets of PubCo and its Subsidiaries on a consolidated basis that are properly classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"**Consolidated Current Liabilities**" means, as at any date of determination, the total liabilities of PubCo and its Subsidiaries on a consolidated basis that are properly classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"**Consolidated Excess Cash Flow**" means, for any period, an amount (if positive) determined for PubCo and its Subsidiaries on a consolidated basis equal to:

(i) the sum, without duplication, of the amounts for such period of (a) Consolidated Adjusted EBITDA, plus (b) to the extent deducted in the calculation Consolidated Adjusted EBITDA (1) interest income, plus (2) other non-ordinary course income (excluding any gains or losses attributable to Asset Sales), plus (c) the Consolidated Working Capital Adjustment; minus

(ii) the sum, without duplication, of the amounts for such period paid from Internally Generated Cash of (a) to the extent permitted hereunder, voluntary prepayments and scheduled payments (but not, for the avoidance of doubt, mandatory prepayments) of Consolidated Total Debt (including cash payments with respect to interest accrued at the PIK Rate that has been capitalized as principal, but excluding (x) repayments of Revolving Loans except to the extent the Revolving Commitments are permanently reduced in connection with such repayments and (y) repayments of the Approved Floorplan Financing), plus (b) Consolidated Capital Expenditures (net of any proceeds of (x) Net Asset Sale Proceeds to the extent reinvested in accordance with **Section 2.12**, (y) Net Insurance/Condemnation Proceeds to the extent reinvested in accordance with **Section 2.12**, and (z) any proceeds of related financings with respect to such expenditures), plus (c) Consolidated Cash Interest Expense, plus (d) provisions for current taxes based on income of PubCo and its Subsidiaries and payable in cash with respect to such period (and, without duplication, Permitted Tax Distributions payable in cash with respect to such period), plus (e) Restricted Junior Payments made in cash, plus (f) Permitted Add-Backs, plus (g) Permitted TRA Payments.

"**Consolidated Fixed Charges**" means, for any period, the sum, without duplication, of the amounts determined for PubCo and its Subsidiaries on a consolidated basis equal to (i) Consolidated Interest Expense (excluding amounts included in Consolidated Interest Expense consisting of amortization of deferred financing costs), (ii) scheduled payments of principal on Consolidated Total Debt, (iii) Consolidated Maintenance Capital Expenditures and (iv) the current portion of taxes provided for with respect to such period in accordance with GAAP (including Permitted Tax Distributions made during such period). Notwithstanding the foregoing, with respect to any period during which a Subject Transaction has occurred, for purposes of determining compliance with the financial covenants set forth in **Section 6.8(a)** the components of Consolidated Fixed Charges shall be calculated with respect to such period on a pro forma basis (which pro forma adjustment (excluding any pro forma adjustment made with respect to Permitted Acquisitions within the meaning of clause (a) of the definition thereof) may only be included in determining such compliance to the extent approved by Administrative Agent in its sole discretion) with respect to (A) the historical audited financial statements of any business so acquired or to be acquired or sold or to be sold and the consolidated financial statements of PubCo and its Subsidiaries, which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period) and (B) other pro forma adjustments certified in good faith by a Chief Financial Officer of the Company Representative or the Companies and approved by Administrative Agent in its sole discretion.

"**Consolidated Interest Expense**" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of PubCo and its Subsidiaries determined on a consolidated basis with respect to all outstanding Consolidated Total Debt, including all commissions, discounts and other fees and charges owed with respect to letters of credit, but excluding, however, (i) any amounts referred to in **Section 2.9(d)** payable on or before the Closing Date, and (ii) any interest expense attributable to any Approved Floorplan Financing.

"**Consolidated Liquidity**" means, at any time of determination, an amount determined for PubCo and its Subsidiaries on a consolidated basis equal to the sum of (i) Qualified Cash of PubCo and its Subsidiaries, plus (ii) Availability under the Revolving Commitments; provided that, at any time that the condition set forth in **Section 3.2(a)(iv)** cannot be satisfied as of such time, the Availability under the Revolving Commitments shall be deemed to be zero.

"**Consolidated Maintenance Capital Expenditures**" means, for any period, the aggregate of all Consolidated Capital Expenditures of PubCo and its Subsidiaries during such period to the extent such Consolidated Capital Expenditures are incurred to maintain existing property and equipment rather than to build or acquire new property and equipment or otherwise grow and expand the Credit Parties' business. "Consolidated Maintenance Capital Expenditures" shall exclude amounts (including consideration) incurred pursuant to a Permitted Acquisition upon or after the closing thereof in accordance with the definitive purchase agreement for such Permitted Acquisition as approved by Administrative Agent.

"**Consolidated Net Income**" means, for any period, (i) the net income (or loss) of PubCo and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) in each case to the extent otherwise included in such net income (or loss) and without duplication: (a) the income (or loss) of any Person in which any Credit Party owns Capital Stock if such Person is not a Wholly-Owned Guarantor Subsidiary, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of PubCo or is merged into or consolidated with PubCo or any of its Subsidiaries or that Person's assets are acquired by PubCo or any of its Subsidiaries, (c) the income of any Subsidiary of PubCo to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in **clauses (a)** through **(d)** above) any net extraordinary gains or net extraordinary losses.

"**Consolidated Senior Debt**" means Consolidated Total Debt excluding any Approved Subordinated Debt.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of PubCo and its Subsidiaries determined on a consolidated basis in accordance with GAAP (subject to **Section 1.2**).

"**Consolidated Working Capital**" means, as at any date of determination, the difference (which may be a negative number) of Consolidated Current Assets minus Consolidated Current Liabilities.

"**Consolidated Working Capital Adjustment**" means, for any period of determination on a consolidated basis, the difference (which may be a negative number) of (i) Consolidated Working Capital as of the beginning of such period minus (ii) Consolidated Working Capital as of the end of such period.

"**Consumer Finance Laws**" means all laws, rules, and regulations of any jurisdiction applicable to any Credit Party or any Affiliate thereof from time to time concerning or relating to consumer financial activities, including, without limitation, the brokering, soliciting, arranging, or making of loans or other financing transactions for the purchase of consumer goods and related products and services, and the soliciting, arranging, brokering, or underwriting of insurance products for consumers and the receipt of referral fees relating to insurance products.

"**Continuing Directors**" means the directors (or equivalent governing body) of PubCo on the Closing Date and each other director (or equivalent) of PubCo, if, in each case, such other Person's nomination for election to the board of directors (or equivalent governing body) of PubCo is approved by at least 51% of the then Continuing Directors before giving effect to such approval.

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

"**Contributing Guarantors**" as defined in **Section 7.2**.

"**Controlled Entity**" means any Credit Party's Controlled Affiliates. As used in this definition, "Control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

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

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

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of **Exhibit G** delivered by a Credit Party pursuant to **Section 5.10**.

"**Covered Party**" has the meaning assigned to such term in **Section 10.28**.

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

"**Credit Document**" means any of this Agreement, the Collateral Documents, the Fee Letter, the Intercreditor Agreement, and all other documents, certificates, instruments, including any promissory notes issued from time to time hereunder to evidence the Loans, or agreements that are expressly designated pursuant to their terms to be "Credit Documents" or are otherwise executed and delivered by or on behalf of a Credit Party or any other Person for the benefit of any Agent or any Lender in connection herewith, excluding the New Holdings Common Units and any other documents related solely thereto.

"**Credit Extension**" means the making of a Loan.

"**Credit Party**" means the Companies, as borrowers, and each Guarantor.

"**Customer Information**" means any personally identifiable information any Company obtains from or about an individual Natural Person who is a prospective customer, current customer, or past customer of such Company or that otherwise is protected as "personal information" or the equivalent under applicable laws.

"Dealership Level Revenue" means, with respect to any dealership location of any Credit Party for any period, the total revenue attributed to such dealership for such period, calculated in a manner consistent with GAAP.

"**Debtor Relief Laws**" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the U.S., any state or territory thereof, the District of Columbia or any other applicable jurisdictions.

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

"**Default Rate**" means any interest payable pursuant to **Section 2.8**.

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" means subject to **Section 2.18**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Companies or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by Administrative Agent or the Company Representative, to confirm in writing to Administrative Agent and the Company Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by Administrative Agent and the Company Representative), or (d) has, or has a direct or indirect parent company that (i) has become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, trustee, conservator, administrator, assignee for the benefit of creditors, or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) has become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a) through (d)** above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.20**) upon delivery of written notice of such determination to the Company Representative and each Lender.

"**Deferred TRA Obligations**" means, at any time of determination, the amount of past-due obligations to pay accrued Permitted TRA Payments for which payment is deferred as contemplated in Section 4.3(b) of the Tax Receivable Agreement as in effect on the Closing Date.

"**Deposit Account**" means any "deposit account" as defined in Article 9 of the UCC.

"**Director**" means any Natural Person constituting the Board of Directors or an individual member thereof.

"**Dispose**" means, with respect to any Person, any conveyance, sale, lease (as lessor), license (as licensor), exchange, assignment, transfer or other disposition by such Person of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of Cash, Cash Equivalents, Securities or any other property or assets. For purposes of clarification, "Dispose" shall include (i) the sale or other disposition for value of any contracts, (ii) the early termination or modification of any contract by any Person resulting in the receipt by such Person of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for previously accrued and unpaid amounts due through the date of termination or modification) or (iii) any sale of merchant accounts (or any rights thereto (including any rights to any residual payment stream with respect thereto)).

"**Disqualified Capital Stock**" means any Capital Stock, that, by its terms (or by the terms of any other instrument, agreement or Capital Stock into which it is convertible or for which it is exchangeable), or upon the occurrence of any event or condition (i) matures or is mandatorily redeemable (other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise,(ii) is redeemable at the option of the holder or beneficial owner thereof (in each case, other than solely for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part,(iii) provides for the scheduled payments of dividends, distributions or other Restricted Junior Payments in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other obligation, instrument, agreement, or Capital Stock that would meet any of the conditions in **clauses (i), (ii), or (iii)** of this definition, in each case, prior to the date that is one hundred eighty days after the Latest Maturity Date.

"**Distribution**" as defined in **Section 7.7**.

"**Documentation Agent**" means GSSLG as the documentation agent hereunder.

"**Dollars**" and the sign "**$**" mean the lawful money of the U.S.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the U.S., any state thereof or the District of Columbia.

"**Earn Out Obligations**" means any obligation or liability consisting of an earnout or similar deferred purchase price that is issued or otherwise incurred as consideration for any acquisition of any property.

"**EEA Financial Institution**" means (i) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country that is a parent of an institution described in **clause (i)** of this definition, or (iii) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in **clause (i)** or **clause (ii)** 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 other Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means (i) in the case of the Revolving Loans or Revolving Commitments and, prior to the Multi-Draw Term Loan Commitment Termination Date, the Multi-Draw Term Loans and Multi-Draw Term Loan Commitments, (a) any Lender with Revolving Exposure, Multi-Draw Term Loan Exposure or any Affiliate (other than a Natural Person) of a Lender with Revolving Exposure or Multi-Draw Term Loan Exposure, (b) a commercial bank organized under the laws of the U.S., or any state thereof, and having total assets in excess of $100,000,000, (c) a commercial bank organized under the laws of any other country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and that has total assets in excess of $100,000,000, provided that such bank is acting through a branch or agency located in the U.S., and (d) a finance company, insurance company, or other financial institution or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of $100,000,000, (ii) in the case of the Multi-Draw Term Loans following the Multi-Draw Term Loan Commitment Termination Date, provided that with respect to **subclauses (b), (c), and (d)** of this **clause (i)**, Administrative Agent's consent shall be required for any such Person to become a Lender or participant, (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and extends credit or buys loans as one of its businesses, provided that with respect to **subclause (b)** of this **clause (ii)**, Administrative Agent's consent shall be required for any such Person to become a Lender or participant, and (iii) any other Person (other than a Natural Person) approved by Administrative Agent and, solely to the extent no Default or Event of Default shall have occurred and then be continuing, the Company Representative (which consent of Company Representative shall not be unreasonably withheld or delayed and in any event, shall be deemed satisfied if Company Representative does not consent or object in writing to Administrative Agent with 5 Business Days of receiving notice thereof); provided, (x) neither (A) a Credit Party nor any Affiliate of a Credit Party nor (B) the Management Investors nor any Affiliate of any Management Investor shall, in any event, be an Eligible Assignee and (y) no Person owning or controlling any trade obligations or Indebtedness of any Credit Party other than the Obligations (including, but not limited to, any Approved Floorplan Financing and any Approved Subordinated Debt) or any Capital Stock of any Credit Party (in each case, other than Persons approved by Administrative Agent) shall, in any event, be an Eligible Assignee.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA that is or was sponsored, maintained or contributed to by, or required to be contributed by, any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to PubCo or any of its Subsidiaries or any Facility.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

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

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in material liability to PubCo, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of material liability on PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential material liability therefor, or the receipt by PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission that could give rise to the imposition on PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against PubCo, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person).

"**Event of Default**" means each of the conditions or events set forth in **Section 8.1**.

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Excluded Swap Obligation**" means, with respect to any Credit Party at any time, any obligation (a "**Swap Obligation**") of such Credit Party 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, 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 illegal at such time 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 for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time such guarantee or grant of a security interest becomes effective with respect to such related Swap Obligation.

"**Existing Indebtedness**" means, collectively, (a) all outstanding Earn Out Obligations, Seller Financing Indebtedness and other similar obligations outstanding and (b) any other existing Indebtedness of Holdings and its Subsidiaries outstanding immediately prior to the Closing Date, in each case, excluding (i) Indebtedness outstanding under the Approved Floorplan Financing Documents and the TCF Agreement, (ii) Indebtedness outstanding under ordinary course capital leases, purchase money indebtedness, equipment financings, real estate financings, letters of credit and surety bonds permitted under this Agreement; (iii) Indebtedness under the Prior Credit Agreement, which shall be deemed Obligations under this Agreement as and to the extent set forth herein, and (iv) existing outstanding Indebtedness of Holdings and its Subsidiaries as described on **Schedule 6.1** hereto.

"**Exiting Lender**" as defined in **Section 10.27**.

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Fair Share**" as defined in **Section 7.2**.

"**Fair Share Contribution Amount**" as defined in **Section 7.2**.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules, or official practices adopted pursuant to any such agreements.

"**Federal Funds Effective Rate**" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the next Business Day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the preceding Business Day as so published on the next Business Day, and (ii) if no such rate is so published on such next Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to GSSLG or any other Lender selected by Administrative Agent on such day on such transactions as determined by Administrative Agent.

"**Fee Letter**" means the amended and restated letter agreement dated as of the Closing Date among the Credit Parties and Administrative Agent.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the Chief Financial Officer of the Company Representative that, as of the date of such certification, such financial statements fairly present, in all material respects, the financial condition of PubCo and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" as defined in **Section 5.1(i)**.

"**First Priority**" means, (i) with respect to any Lien purported to be created in any Collateral not consisting of Capital Stock pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien, and (ii) with respect to any Lien purported to be created in any Collateral consisting of Capital Stock, that such Lien is the highest priority Lien to which such Collateral is subject, other than any non-consensual Permitted Liens for Taxes, statutory obligations, or other obligations that arise and have higher priority by operation of law.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of PubCo and its Subsidiaries ending on September 30 of each calendar year.

"**Fixed Charge Coverage Ratio**" means the ratio as of the last day of any Fiscal Quarter of (a) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ending, to (b) Consolidated Fixed Charges for such four-Fiscal Quarter period.

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

"**Flood Hazard Property**" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Flood Program**" means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004.

"**Flood Zone**" means areas having special flood hazards as described in the National Flood Insurance Act of 1968.

"**Floorplan Collateral**" as defined in the Intercreditor Agreement.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Fraudulent Transfer Laws**" as defined in **Section 2.23**.

"**Fund**" means any Person (other than a Natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"**Funding Borrower**" as defined in **Section 2.23**.

"**Funding Guarantor**" as defined in **Section 7.2**.

"**Funding Notice**" means a notice substantially in the form of **Exhibit A-1**.

"**GAAP**" means, subject to **Section 1.2**, U.S. generally accepted accounting principles in effect as of the date of determination thereof.

"**Goldman**" means Special Situations Investing Group II, LLC.

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

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" as defined in the Pledge and Security Agreement.

"**GS**" means, (a) GSSLG, and (b) any affiliate of Goldman, including GSSLG and its predecessors in interest, in each case solely to the extent such Person described in this definition is a Lender hereunder.

"**GSSLG**" as defined in the preamble hereto.

"**Guaranteed Obligations**" as defined in **Section 7.1**.

"**Guarantor**" means (i) each Company, to the extent that such Company is not already the primary obligor in respect of any Obligations, (ii) Holdings and each Subsidiary of Holdings (other than the Companies), (iii) PubCo and each Subsidiary of PubCo (other than Holdings and the Companies), and (iv) each other Person that guarantees, pursuant to **Section 5.10**, **Section 7.1** or otherwise, all or any part of the Obligations.

"**Guarantor Subsidiary**" means each Guarantor other than Holdings.

"**Guaranty**" means (i) the guaranty of each Guarantor set forth in **Section 7**, and (ii) each other guaranty of the Obligations that is made by any other Guarantor in favor of Collateral Agent for the benefit of Secured Parties.

"**Hazardous Materials**" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or that may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Hedge Agreement**" means any Interest Rate Agreement and any other derivative or hedging contract, agreement, confirmation, or other similar transaction or arrangement that is entered into by PubCo or any of its Subsidiaries and not for speculative purposes, including any commodity, equity or debt exchange, swap, collar, cap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or forward rate agreement, spot or forward foreign currency or commodity purchase or sale, listed or over-the-counter option or similar derivative right related to any of the foregoing, non-deliverable forward or option, foreign currency swap agreement, currency exchange rate price hedging arrangement, or other arrangement designed to protect against fluctuations in interest rates or currency exchange rates, commodity, currency, or Securities values, or any combination of the foregoing agreements or arrangements.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender that are in effect as of the Closing Date or, to the extent allowed by law, under such applicable laws that may be in effect after the Closing Date and allow a higher maximum nonusurious interest rate than applicable laws in effect as of the Closing Date.

"**Historical Financial Statements**" means as of the Closing Date, (i) the audited financial statements of Holdings and its Subsidiaries for the Fiscal Year ended September 30, 2019, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (ii) for the interim period from September 30, 2019 to the Closing Date, internally prepared, unaudited financial statements of Holdings and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for each quarterly period completed prior to 45 days before the Closing Date, and for each monthly period completed prior to 30 days before the Closing Date (but in any event, including monthly unaudited financial statements of Holdings and its Subsidiaries relating to the period ending December 31, 2019), in the case of **clauses (i)** and **(ii)**, certified by the Chief Financial Officer of Holdings that they fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

"**Holdings**" as defined in the preamble hereto.

"**Holdings Existing LLC Agreement**" means that certain Third Amended & Restated Limited Liability Company Agreement of Holdings dated as of March 1, 2017, as amended, restated, supplemented or otherwise modified prior to the date of this Agreement.

"**Holdings LLC Agreement**" means that certain Fourth Amended & Restated Limited Liability Company Agreement of Holdings dated as of the Closing Date, as amended, restated, supplemented or otherwise modified in accordance with this Agreement.

"**Increased Cost Lender**" as defined in **Section 2.21**.

"**Indebtedness**," as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) Capital Lease Obligations; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), including any Earn Out Obligations and Seller Financing Indebtedness; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit or similar instrument issued for the account of (or similar credit transaction entered into for the benefit of) that Person or as to which that Person is otherwise liable for reimbursement of drawings or is otherwise an obligor; (vii) Disqualified Capital Stock, with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price (for purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement, and as if such price were based upon, or measured by, the fair market value of such Disqualified Capital Stock); (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or provide any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this **clause (x)**, the primary purpose or intent thereof is as described in **clause (ix)** above; (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedge Agreement, in each case whether entered into for hedging or speculative purposes or otherwise, provided, the "principal" amount of obligations under any Hedge Agreement that has not been terminated shall be deemed to be the Net Mark-to-Market Exposure of any Credit Party and its Subsidiaries thereunder; and (xii) any obligations consisting of accounts payable or other monetary liabilities that do not fall into the foregoing categories of Indebtedness but are overdue more than 60 days (unless subject to a dispute in good faith).

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special, or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the statements contained in the commitment letter dated January 21, 2020, entered into by Administrative Agent and the Credit Parties with respect to the transactions contemplated by this Agreement, or (iii) any Environmental Claim or Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of PubCo or any of its Subsidiaries.

"**Indemnitee**" means, each of any Agent and any Lender, and each of their respective affiliates, officers, partners, members, Directors, trustees, employees, agents and sub-agents.

"**Indemnitee Agent Party**" as defined in **Section 9.6**.

"**Installment**" as defined in **Section 2.10**.

"**Installment Date**" as defined in **Section 2.10**.

"**Insurance/Condemnation Reinvestment Amounts**" as defined in **Section 2.12(b)**.

"**Insurance/Condemnation Reinvestment Period**" as defined in **Section 2.12(b)**.

"**Intellectual Property**" means any and all proprietary, industrial and intellectual property rights under the law of any jurisdiction or under international treaties, both statutory and common law, including: (a) utility models, supplementary protection certificates, patents and applications for same, and extensions, divisionals, continuations, continuations-in-part, reexaminations, and reissues thereof; (b) trademarks, service marks, trade names, slogans, domain names, logos, trade dress and other indicia of source or origin (including all goodwill associated with the foregoing), and registrations and applications for registrations thereof; (c) copyrights, moral rights, database rights, and other rights in works of authorship and registrations and applications for registration of the foregoing; and (d) trade secrets, know-how, and rights in confidential information, including designs, formulations, concepts, compilations of information, methods, techniques, documentation, algorithms, procedures, and processes, whether or not patentable.

"**Intellectual Property Asset**" means, at any time of determination, any interest (including any fee, license or other interest) then owned by any Credit Party in any Intellectual Property.

"**Intellectual Property Security Agreement**" as defined in the Pledge and Security Agreement.

"**Intercompany Note and Subordination**" means a "global" intercompany promissory note and subordination that evidences and subordinates certain Indebtedness and other monetary liabilities owed among Credit Parties and their Subsidiaries and certain other controlled Affiliates, as applicable, substantially in the form of **Exhibit I**.

"**Intercreditor Agreement**" means that certain Amended and Restated Intercreditor and Collateral Access Agreement dated as of the Closing Date, by and among Wells Fargo Commercial Distribution Finance, LLC, GSSLG and the Credit Parties.

"**Interest Payment Date**" means with respect to (i) any Base Rate Loan, (a) the last day of each calendar quarter, commencing on the first such date to occur after the Closing Date, and (b) the final maturity date of such Loan; and (ii) any LIBO Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a LIBO Rate Loan, an interest period of one-, two-, three- or six months, as selected by the Company Representative in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on (and including) the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to **clauses (c) and (d)**, of this definition, end on the last Business Day of a calendar month; (c) no Interest Period with respect to any portion of any Class of Multi-Draw Term Loans shall extend beyond such Class's Term Loan Maturity Date; and (d) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the earlier of the dates specified in clauses (i) and (ii) of the definition of Revolving Commitment Termination Date.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with PubCo's and its Subsidiaries' operations, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

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

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended.

"**Internally Generated Cash**" means, with respect to any period, any cash of Holdings or any Subsidiary generated during such period as a result of such Person's operations, excluding Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds, Net Equity Proceeds, and any cash that is generated from an incurrence of Indebtedness or any other liability.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by PubCo or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person, including the establishment or other creation of a Subsidiary or any other interest in the Securities of any Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Credit Party or any Subsidiary of any Credit Party from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for customary moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business and consistent with past practice) or capital contributions by any Credit Party or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales of inventory to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

"**IRS**" means the Internal Revenue Service.

"**Joinder Agreement**" means an agreement substantially in the form of **Exhibit J**.

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

"**Knowledge**" means, with respect to any Person, the actual or constructive knowledge, after due inquiry, of (i) any Director or executive officer of any such Person that is not a Natural Person, or (ii) the individual if such Person is a Natural Person. "**Known**" has a correlative meaning.

"**Landlord Consent and Estoppel**" means, with respect to any Leasehold Property in respect of which a Mortgage is required pursuant to this Agreement, a letter, certificate or other instrument in writing from the lessor under the related lease, pursuant to which, among other things, the landlord agrees to provide Collateral Agent certain leasehold mortgagee protections and consents to the granting of a Mortgage on such Leasehold Property by the Credit Party tenant, such Landlord Consent and Estoppel to be in form and substance acceptable to Collateral Agent in its reasonable discretion, but in any event sufficient for Collateral Agent to obtain a Title Policy with respect to such Mortgage.

"**Latest Maturity Date**" means, as of any time of determination, the latest possible maturity or expiration date applicable to any Loan or Commitment hereunder at such time, in each case as extended in accordance with this Agreement from time to time, as the case may be.

"**Lead Arranger**" means GSSLG, as the lead arranger of the Commitments.

"**Leasehold Property**" means any leasehold interest of any Credit Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"**Leasehold Property Documents**" means, with respect to each Leasehold Property that is a Material Real Estate Asset:

(a) a Landlord Consent and Estoppel;

(b) evidence that such Leasehold Property is a Recorded Leasehold Interest;

(c) a title report reasonably satisfactory to Collateral Agent issued by a title company with respect thereto, dated not more than thirty days prior to the Closing Date and issued by a title company reasonably satisfactory to Collateral Agent, together with copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent;

(d) a subordination non-disturbance agreement duly executed by any Person that has a Lien on the fee interest in such Material Real Estate Asset and the Companies, in form and substance reasonably satisfactory to Collateral Agent and in recordable;

(e) to the extent available, copies of any surveys of all such Material Real Estate Asset and reports and other information regarding environmental matters relating to such Material Real Estate Assets*;*

(f) one or more fully executed and notarized Mortgages encumbering such Material Real Estate Asset, in each case in proper form for recording in all appropriate places in all applicable jurisdictions; and

(g) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in the state in which such Material Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgage to be recorded in such state and such other matters as Collateral Agent may reasonably request, in form and substance reasonably satisfactory to Collateral Agent.

"**Legendary**" as defined in the preamble hereto.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement or a Joinder Agreement.

"**Leverage Incurrence Multiple**" means, as of any date of determination during the periods set forth below, the correlative multiple set forth opposite such period below:

Fiscal Quarter	Leverage Incurrence Multiple
Closing Date until September 30, 2021	2.00x
December 31, 2021 through March 31, 2022	1.75x
June 30, 2022 through September 30, 2022	1.50x
December 31, 2022 through March 31, 2023	1.25x
June 30, 2023 and each Fiscal Quarter thereafter	1.00x

"**LIBO Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"**Lien**" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"**Loan**" means a Multi-Draw Term Loan, a Revolving Loan, and a New Multi-Draw Term Loan.

"**Management Investors**" means, collectively or individually as the context requires, P. Austin Singleton, Jr. and Anthony Aisquith.

"**Margin Stock**" as defined in Regulation U.

"**Master Reorganization Agreement**" means the Master Reorganization Agreement dated as of the Closing Date by and among Holdings, OWAO and PubCo.

"**Material Adverse Effect**" means a material adverse effect on, or material adverse developments with respect to, (i) the business operations, properties, assets, condition (financial or otherwise) of PubCo and its Subsidiaries, taken as a whole; (ii) a significant portion of the industry or business segment in which PubCo or its Subsidiaries operate or rely upon if such effect or development is reasonably likely to have a material adverse effect on PubCo and its Subsidiaries, taken as a whole; (iii) the ability of any Credit Party to fully and timely perform its Obligations; (iv) the legality, validity, binding effect, or enforceability against a Credit Party of a Credit Document to which it is a party; (v) the validity, perfection or priority (subject to Permitted Liens) of a Lien in favor of Collateral Agent for the benefit of Secured Parties with respect to any material portion of the Collateral; or (vi) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Material Brand**" means Malibu / Axis, Bennington, Harris, Yamaha, Cobalt, Regal, Sea Hunt, Everglades and Chris-Craft.

"**Material Contract**" means (i) any contract or other arrangement to which any Credit Party or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, (ii) any contract with a boat manufacturer constituting a Material Brand and, without duplication, those contracts and arrangements listed on **Schedule 4.16**, and (iii) any other contract or arrangement with any counterparty or its Affiliates from which any Credit Parties and their Subsidiaries, on an aggregate basis for all contracts with such counterparty or any of its Affiliates, have received or are anticipated to receive earnings in excess of 2.5% of Consolidated Adjusted EBITDA on an annual basis; provided that, any such contract or other arrangement described in **clause (iii)** of this definition that is terminated and replaced in accordance with **Section 6.18**, shall no longer constitute a Material Contract for purposes of this definition upon such replacement.

"**Material Real Estate Asset**" means any and all of the following: (a) any fee owned Real Estate Assets having a fair market value in excess of $200,000 as of the date of the acquisition thereof, (b) any Leasehold Property that (i) has aggregate payments under the terms of the lease of such property greater than or equal to $250,000 per annum; (ii) is the corporate headquarters of any Credit Party; or (iii) at the time of entering, acquiring, extending, restating or renewing the corresponding lease, relates to one or more dealership locations that have generated trailing twelve month Dealership Level Revenue of at least $25,000,000, (c) any Real Estate Asset that Administrative Agent determines after the Closing Date, in its reasonable discretion, to be material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of any of Credit Parties and their Subsidiaries and designate in writing to be a "Material Real Estate Asset", and (d) any Real Estate Asset listed on **Schedule 1.1(a)**.

"**Maturity Date**" means the earlier of (i) February 11, 2025, and (ii) the date that all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

"**Maximum Credit Amount**" means, at any time of determination, an amount equal to the product of (a) the sum of the trailing twelve months Consolidated Adjusted EBITDA of PubCo and its Subsidiaries as of the last day of the most recently ended month for which financial statements have been or were required to be delivered pursuant to **Section 5.1(a)** multiplied by (b) the then in effect Leverage Incurrence Multiple. The Maximum Credit Amount shall be determined on a Pro Forma Basis.

"**Midwest**" as defined in the preamble hereto.

"**Moody's**" means Moody's Investors Service, Inc.

"**Mortgage**" means a mortgage, deed of trust, or similar instrument in form and substance reasonably acceptable to Administrative Agent.

"**Mortgaged Real Estate Documents**" means, with respect to each Material Real Estate Asset that is required to be subject to a Mortgage pursuant to this Agreement:

(i) one or more fully executed and notarized Mortgages encumbering such Material Real Estate Asset, in each case in proper form for recording in all appropriate places in all applicable jurisdictions;

(ii) (a) ALTA mortgagee title insurance policies or, solely to the extent that Collateral Agent in its sole discretion waives the requirement for a policy to be issued, unconditional commitments therefor, in each case issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to each Material Real Estate Asset (each, a "**Title Policy**"), each such Title Policy to be in amounts not less than the fair market value of each Material Real Estate Asset, together with a title report issued by a title company with respect thereto and dated not more than thirty days prior to the date of the applicable Mortgage, (b) copies of all documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent, and (c) evidence reasonably satisfactory to Collateral Agent that such Credit Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each such Material Real Estate Asset in the appropriate real estate records;

(iii) (A) completed Flood Certificate with respect to each such Material Real Estate Asset, which Flood Certificate shall (x) be addressed to Collateral Agent and (y) otherwise comply with the Flood Program and be in form and substance satisfactory to Collateral Agent in its sole discretion; (B) if the Flood Certificate indicates that such Material Real Estate Asset is located in a Flood Zone, the Company Representative's written acknowledgment of receipt of written notification from Collateral Agent (x) as to the existence of such Material Real Estate Asset in a Flood Zone and (y) as to whether the community in which such Material Real Estate Asset is located is participating in the Flood Program; and (C) if such Material Real Estate Asset is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that each Company has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program or, solely to the extent agreed to by Collateral Agent in its sole discretion, excluded any structures existing in such Flood Zone from any such Mortgage in a manner satisfactory to Collateral Agent in its sole discretion;

(iv) ALTA surveys of such Material Real Estate Asset (other than any Leasehold Property, unless reasonably requested by Collateral Agent), certified to Collateral Agent and dated not more than thirty days prior to the date of the applicable Mortgage and otherwise in form and substance reasonably satisfactory to Collateral Agent;

(v) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in the state in which such Material Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgage to be recorded in such state and such other matters as Collateral Agent may reasonably request, in form and substance reasonably satisfactory to Collateral Agent; and

(vi) reports and other information, in each case in form, scope and substance satisfactory to Administrative Agent in its reasonable discretion, regarding environmental matters relating to such Material Real Estate Asset, including any Phase I Report requested by Collateral Agent with respect to such Material Real Estate Asset.

"**Multi-Draw Term Loan**" means, individually or collectively as the context requires, any Multi-Draw Term Loan made by a Lender to the Companies pursuant to **Section 2.1(a)**, including any Previously Funded Multi-Draw Term Loan.

"**Multi-Draw Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund a Multi-Draw Term Loan or purchase a Previously Funded Multi-Draw Term Loan and "**Multi-Draw Term Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Multi-Draw Term Loan Commitment, if any, as of the Closing Date, is set forth on **Appendix A-2** or, thereafter, in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Multi-Draw Term Loan Commitments as of the Closing Date immediately prior to giving effect to the Closing Date Multi-Draw Term Loan, is $100,000,000.

"**Multi-Draw Term Loan Commitment Period**" means the time period commencing after the Closing Date through and including the Multi-Draw Term Loan Commitment Termination Date.

"**Multi-Draw Term Loan Commitment Termination Date**" means the earliest to occur of (i) the date the Multi-Draw Term Loan Commitments are permanently reduced to zero pursuant to **Section 2.11(b)** or **2.13** or as a result of Multi-Draw Term Loans being funded in the aggregate amount of the Multi-Draw Term Loan Commitments, (ii) the date of the termination of the Multi-Draw Commitments pursuant to **Section 8.1**, and (iii) February 11, 2022.

"**Multi-Draw Term Loan Exposure**" means, with respect to any Lender, as of any time of determination, the sum of (x) the outstanding principal amount of the Multi-Draw Term Loans of such Lender, plus (y) the amount of such Lender's unused Multi-Draw Term Loan Commitments.

"**Multiemployer Plan**" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**NAIC**" means The National Association of Insurance Commissioners, and any successor thereto.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report or dashboard in the form previously provided before the Closing Date, in either case, describing the operations of PubCo and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.

"**Natural Person**" means a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments received by any Credit Party or any of its Subsidiaries from such Asset Sale (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of a milestone payment, as applicable), but only as and when so received), minus (ii) any bona fide direct costs incurred in connection with such Asset Sale to the extent paid or payable to non-Affiliates, including (a) sales commissions, (b) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale during the tax period the sale occurs (including, without duplication, Permitted Tax Distributions in respect thereof), (c) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by any Credit Party or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"**Net Equity Proceeds**" means an amount equal to any Cash proceeds from a capital contribution to, or the issuance of any Capital Stock of, any Credit Party or any of its Subsidiaries (other than pursuant to any employee stock or stock option compensation plan), net of underwriting discounts and commissions and other reasonable, out-of-pocket costs and expenses associated therewith, including reasonable legal fees and expenses, in each case, solely to the extent such discounts, commissions, costs, fees and expenses are paid to non-Affiliates.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any Cash payments or proceeds received by any Credit Party or any of its Subsidiaries (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of any Credit Party or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by any Credit Party or any of its Subsidiaries in connection with the adjustment or settlement of any claims of any Credit Party or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in **clause (i)(b)** of this definition to the extent paid or payable to non-Affiliates, including income or gains taxes payable by any Credit Party or any of its Subsidiaries as a result of any gain recognized in connection therewith during the tax period the Cash payments or proceeds are received (including, without duplication, Permitted Tax Distributions).

"**Net Mark-to-Market Exposure**" of a Person means, as of any time of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in **clause (xi)** of the definition thereof. As used in this definition, "unrealized losses" means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the time of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that time).

"**New Holdings Common Units**" means the "Units" under the Holdings LLC Agreement issued on the Closing Date.

"**New Multi-Draw Term Loan Commitments**" has the meaning set forth in **Section 2.22**.

"**New Multi-Draw Term Loan Exposure**" means, with respect to any Lender, as of any time of determination, the sum of (x) the outstanding principal amount of the New Multi-Draw Term Loans of such Lender, plus (y) the amount of such Lender's unused New Multi-Draw Term Loan Commitments.

"**New Multi-Draw Term Loan Lender**" has the meaning set forth in **Section 2.22**.

"**New Multi-Draw Term Loan Maturity Date**" means the date that New Multi-Draw Term Loans of a particular Series shall become due and payable in full hereunder, as specified in the applicable Joinder Agreement, including by acceleration or otherwise.

"**New Multi-Draw Term Loans**" has the meaning set forth in **Section 2.22**.

"**Non-Consenting Lender**" as defined in **Section 2.21**.

"**Non-Defaulting Lender**" means, at any time, each Lender that is not a Defaulting Lender at such time.

"**Non U.S. Lender**" as defined in **Section 2.18(c)**.

"**Notice**" means a Funding Notice or a Conversion/Continuation Notice.

"**Obligation Aggregate Payments**" as defined in **Section 2.23(b)**.

"**Obligation Fair Share**" as defined in **Section 2.23(b)**.

"**Obligation Fair Share Contribution Amount**" as defined in **Section 2.23(b)**.

"**Obligation Fair Share Shortfall**" as defined in **Section 2.23(b)**.

"**Obligations**" means all obligations (whether now existing or hereafter arising, absolute or contingent, joint, several, or independent) of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders or any of them under any Credit Document, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, in each case excluding, with respect to any Credit Party, Excluded Swap Obligations with respect to such Credit Party.

"**Obligee Guarantor**" as defined in **Section 7.7**.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury and any successor Governmental Authority.

"**Organizational Documents**" means (i) with respect to any corporation or company, its certificate, memorandum, or articles of incorporation or organization, and its bylaws, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement, and (iv) with respect to any limited liability company, its articles of organization and its operating agreement. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

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

"**Other Taxes**" means any and all present or future stamp, court, intangible, recording, filing or documentary, excise, property, or similar Taxes (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution, delivery or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Credit Document.

"**OWAO**" as defined in the preamble hereto.

"**OWAO Preferred Redemption**" means the redemption by OWAO of all of the preferred units of OWAO outstanding immediately prior to the Closing Date.

"**Paid in Full**" and "**Payment in Full**" mean, with respect to any or all of the Obligations or Guaranteed Obligations, as the context requires, that each of the following events has occurred, as applicable: (a) the payment or repayment in full in immediately available funds of (i) the principal amount of all outstanding Loans, (ii) all accrued and unpaid interest, fees, premiums or other charges owing in respect of any Loan or Commitment or otherwise under any Credit Document, and (iii) all accrued and unpaid costs and expenses payable by any Credit Party to any Agent or Lender pursuant to any Credit Document, including any and all indemnification and reimbursement claims that have been asserted by any such Person prior to such time, (b) the payment or repayment in full in immediately available funds or all other outstanding Obligations or Guaranteed Obligations (except for contingent obligations with respect to which no claim has been asserted), (c) the termination in writing of all of the Commitments, and (d) to the extent the payment in full of the Obligations is made in connection with the provision of a payoff letter requested by any Credit Party and to the extent requested by Administrative Agent in connection therewith, receipt by Administrative Agent of a release from the Credit Parties in favor of the Secured Parties in form and substance acceptable to Administrative Agent as consideration for such payoff letter.

"**Participant Register**" as defined in **Section 10.6(h)**.

"**PATRIOT Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Permitted Acquisition**" means any Acquisition by any Credit Party or any of their Wholly-Owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, in each case of a substantial portion of the assets of, at least 75% of the Capital Stock of, or a business line or unit or division of, any Person; provided, (a) in the case of any Acquisition, the Acquisition Consideration for which constitutes less than $5,000,000 (excluding amounts paid for inventory or working capital), delivery of customary reporting and legal diligence requirements as reasonably requested by Administrative Agent and (b) in the case of any other Acquisition, Administrative Agent consents in writing to such acquisition and, without limiting any other additional conditions or information that Administrative Agent may require, each of the following conditions is satisfied with respect to such acquisition:

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the Acquisition of Capital Stock, all of the Capital Stock (except for any such Capital Stock in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of any of the Credit Parties in connection with such Acquisition shall be owned 100% by the Credit Parties or a Wholly-Owned Guarantor Subsidiary thereof, and the Credit Parties shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of any of the Credit Parties, each of the actions set forth in **Sections 5.10**, **5.11** and/or **5.13**, as applicable;

(iv) in the case of any Acquisition consummated by any of the PubCo Holdings Group, all assets of the target acquired in connection therewith shall be contributed or otherwise transferred to a Wholly-Owned Guarantor Subsidiary of Holdings concurrently with the closing of such Acquisition; provided that, any entity acquired or created in connection with such Acquisition may remain part of the PubCo Holdings Group so long as it does not have any material assets, liabilities, or obligations other than (x) Capital Stock in Holdings and (y) any liabilities in respect of intercompany Indebtedness to any other Credit Party to the extent permitted hereunder, in each case, after giving effect to such contribution or transfer;

(v) any Person or assets or division as acquired in accordance herewith (x) shall be in the same business or lines of business in which the Companies are engaged as of the Closing Date and (y) for the four-quarter period most recently ended prior to the date of such Acquisition, shall have generated earnings before income taxes, depreciation, and amortization during such period that shall exceed the amount of capital expenditures related to such Person or assets or division during such period (calculated in substantially the same manner as Consolidated Adjusted EBITDA and Consolidated Capital Expenditures are calculated);

(vi) the Acquisition shall be non-hostile and shall have been approved by the Board of Directors of the Person acquired or the Person from whom such assets or division is acquired, as applicable;

(vii) the Credit Parties shall have delivered to Administrative Agent and Lenders at least ten Business Days prior to such proposed acquisition, and Administrative Agent and Requisite Lenders shall have satisfactorily completed their review of, each of the following in form and substance satisfactory to Requisite Lenders in their respective sole discretion:

(a) all relevant financial information with respect to such acquisition, including, without limitation, the aggregate consideration for such acquisition and historical financial statements evidencing EBITDA that satisfies **clause (v)** above;

(b) a quality of earnings report detailing proposed adjustments;

(c) a due diligence memorandum prepared by the Credit Parties' counsel regarding such counsel's due diligence review of the target's business, assets, liabilities, operations and condition (financial or otherwise), including customary lien and litigation searches, all in scope and determination satisfactory to Requisite Lenders in their respective sole discretion;

(d) copies of any letter of intent or term sheet entered into in connection with such acquisition and a draft acquisition agreement (including all schedules and other attachments) therefor in form and substance satisfactory to Requisite Lenders in their respective sole discretion;

(e) if such acquisition is to be funded with the proceeds of Loans, a draft Funding Notice therefor, including calculations demonstrating satisfaction of the conditions set forth in **Section 3.2** before and after giving effect to such acquisition, certified by the Chief Financial Officer of the Company Representative;

(f) a summary memorandum prepared by management detailing the acquisition rationale, turnaround plan, requested add-back justifications, and any other material information related to such acquisition;

(g) drafts of any material third-party consents or other material approvals required in connection with such acquisition, including any such consents or approvals required by any Governmental Authority or under any Approved Floorplan Financing, the TCF Agreement or under any Material Contract; and

(h) any other information related to such acquisition that is reasonably requested by any Lender or its counsel; and

(viii) at least five Business Days prior to the closing of such acquisition that will be funded with Loans, the Companies shall have delivered a final executed Funding Notice therefor, including calculations demonstrating satisfaction of the conditions set forth in **Section 3.2** before and after giving effect to such acquisition, certified by the Chief Financial Officer of the Company Representative.

"**Permitted Add-Backs**" means, for any period, each of the following amounts determined for such period: (i) Transaction Costs, (ii) the adjustments set forth on **Schedule 1.1(b)**, (iii) all payments made on or about the date hereof in connection with the Specified IPO Transactions, including, without limitation, fees, expenses and redemptions of Capital Stock; and (iv) the amount of synergies resulting from Permitted Acquisitions, in each case to the extent reasonably projected by the Company Representative in good faith; provided that (a) such synergies are reasonably identifiable and factually supportable by a quality of earnings report prepared by a nationally recognized accounting firm or other third party advisor acceptable to Administrative Agent, (b) no synergies may be included pursuant to this clause (iv) to the extent duplicative of any expenses or charges relating thereto that are either excluded in computing Consolidated Net Income or included (i.e., added back) in computing Consolidated Adjusted EBITDA for such period, and (c) such synergies may only be included to the extent approved by Administrative Agent in its reasonable discretion, (v) fees, costs and expenses payable by PubCo or any of its Subsidiaries in connection with Permitted Acquisitions, not to exceed $500,000 in the aggregate during any consecutive twelve month period (or such greater amount as otherwise agreed to in writing by Administrative Agent) and (vi) other items approved by Administrative Agent and Requisite Lenders from time to time in their sole discretion.

"**Permitted Exchange**" means (i) any transaction pursuant to Section 4.6(a) or Section 4.6(m) (excluding any Cash Election (as defined in the Holdings LLC Agreement)) of the Holdings LLC Agreement in which "Units" are exchanged for "Class A Shares" (as such terms are defined in the Holdings LLC Agreement) of PubCo as described in the Holdings LLC Agreement and the Registration Statement and (ii) in connection with a Permitted Acquisition consummated by the PubCo Holdings Group, any cash redemption of such "Units" to the extent reasonably necessary to fund such Permitted Acquisition.

"**Permitted Liens**" means each of the Liens permitted pursuant to **Section 6.2**.

"**Permitted Premium Financing**" means Indebtedness permitted pursuant to **Section 6.1(n)**.

"**Permitted Tax Distributions**" means distributions by Holdings to all members of Holdings on a pro rata basis in an amount that is not in excess of the amount sufficient to result in a distribution to PubCo to enable the PubCo Holdings Group to timely satisfy its U.S. federal, state and local and non-U.S. tax obligations, other than any obligations to remit any withholdings withheld from payments to third parties (determined, for the avoidance of doubt, by taking into account any tax benefits with respect to which any distributions described in the definition of "Permitted TRA Payments" are made).

"**Permitted TRA Payments**" means distributions by Holdings to all members of Holdings on a pro rata basis in an amount that is not in excess of the amount necessary for PubCo to satisfy its payment obligations under the Tax Receivable Agreement as in effect on the date hereof except that "Permitted TRA Payments" shall not include any payment obligations of PubCo pursuant to Article IV of the Tax Receivable Agreement; for the avoidance of doubt, regularly scheduled payments required under Section 3.1 of the Tax Receivable Agreement that are deferred and paid at a later time in accordance with Section 4.3(b) of the Tax Receivable Agreement are Permitted TRA Payments.

"**Person**" means and includes Natural Persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Phase I Report**" means, with respect to any Facility, a report that (i) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (ii) was conducted no more than six months prior to the date such report is required to be delivered hereunder, by one or more environmental consulting firms reasonably satisfactory to Administrative Agent, (iii) includes an assessment of asbestos-containing materials at such Facility, (iv) is accompanied by (a) an estimate of the reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity identified in the Phase I Report as giving rise to an actual or potential material violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim, and (b) a current compliance audit setting forth an assessment of PubCo's, its Subsidiaries' and such Facility's current and past compliance with Environmental Laws and an estimate of the cost of rectifying any non-compliance with current Environmental Laws identified therein and the cost of compliance with reasonably anticipated future Environmental Laws identified therein.

"**PIK Election Date**" as defined in **Section 2.6(e)**.

"**PIK Rate**" means a rate expressed as a percentage equal to 2.00%, per annum.

"**Platform**" as defined in **Section 10.1(b)**.

"**Pledge and Security Agreement**" means the Amended and Restated Pledge and Security Agreement dated as of the Closing Date by the Companies and each Guarantor in favor of Agent, in form and substance reasonably acceptable to Administrative Agent.

"**Pre-IPO Related Tax Distributions**" as defined in Section 2.1(b) of the Master Reorganization Agreement.

"**Previously Funded Multi-Draw Term Loans**" as defined in **Section 2.1(a)(i)**.

"**Prime Rate**" means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty largest banks), as in effect from time to time, or, if such source or rate is unavailable, any replacement or successor source or rate as determined by Administrative Agent. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"**Principal Office**" means, for Administrative Agent, such Person's "Principal Office" as set forth on **Appendix B**, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to the Company Representative, Administrative Agent and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be 200 West Street, New York, New York, 10282 (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to the Company Representative and each Lender); provided further that all wires to Administrative Agent shall be made to the wiring instructions provided by Administrative Agent in writing from time to time.

"**Prior Credit Agreement**" as defined in the Recitals.

"**Pro Forma Basis**" means a calculation giving pro forma effect to (i) the adjustments related to Subject Transactions described in "Consolidated Adjusted EBITDA" and "Consolidated Fixed Charges", as applicable, and (ii) when used with respect to determining the permissibility of any specific transaction hereunder, such specific transaction as if it were a Subject Transaction.

"**Pro Rata Share**" means (i) with respect to all payments, computations and other matters relating to the Multi-Draw Term Loan of any Lender, the percentage obtained by dividing (a) the Multi-Draw Term Loan Exposure of that Lender in respect of funded Multi-Draw Term Loans, by (b) the aggregate Multi-Draw Term Loan Exposure of all Lenders in respect of the funded Multi-Draw Term Loans, (ii) with respect to all payments, computations, and other matters relating to unfunded Multi-Draw Term Loan Commitments, the percentage obtained by dividing (a) the Multi-Draw Term Loan Exposure in respect of unfunded Multi-Draw Term Loan Commitments of such Lender by (b) the aggregate Multi-Draw Term Loan Exposure in respect of Multi-Draw Term Loan Commitments of all Lenders, and (iii) with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender, by (b) the aggregate Revolving Exposure of all Lenders; and (iv) with respect to all payments, computations, and other matters relating to New Multi-Draw Term Loan Commitments or New Multi-Draw Term Loans of a particular Series, the percentage obtained by dividing (a) the New Multi-Draw Term Loan Exposure of that Lender with respect to that Series, by (b) the aggregate New Multi-Draw Term Loan Exposure of all Lenders with respect to that Series. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Revolving Exposure and the New Multi-Draw Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Revolving Exposure and the aggregate New Multi-Draw Term Loan Exposure of all Lenders.

"**Projections**" as defined in **Section 4.8**.

"**Protective Advances**" as defined in **Section 2.2(c)**.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**PubCo**" as defined in the preamble hereto.

"**PubCo Holdings Group**" means PubCo and each other Subsidiary of PubCo (other than Holdings and its Subsidiaries).

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned to such term in **Section 10.28**.

"**Qualified Cash**" means, at any time of determination, the aggregate balance sheet amount of unrestricted Cash and Cash Equivalents included in the consolidated balance sheet of Holdings and its Subsidiaries as of such time that (i) is free and clear of all Liens other than Liens in favor of Collateral Agent for the benefit of Secured Parties and non-consensual Permitted Liens, (ii) may be applied to payment of the Obligations without violating any law, contract, or other agreement, and (iii) is not Net Asset Sale Proceeds or Net Insurance/Condemnation Proceeds.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding $10,000,000 at the time such Swap Obligation is incurred or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(ii) of the Commodity Exchange Act.

"**Qualified IPO**" as defined in **Section 3.1(d)(i)**.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Recipient**" means (i) any Agent, (ii) any Lender, (iii) Lead Arranger or (iv) any other Person receiving payments under any Credit Document, as applicable.

"**Record Document**" means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to Collateral Agent.

"**Recorded Leasehold Interest**" means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in Collateral Agent's reasonable judgment, to give constructive notice of such Leasehold Property to third party purchasers and encumbrancers of the affected real property.

"**Register**" as defined in **Section 2.5(b)**.

"**Registered Intellectual Property**" means all Intellectual Property owned, in whole or in part, by any Credit Party and registered with any Governmental Authority, including all applications for any such registration.

"**Registration Statement**" means Amendment No. 6 to Form S-1 Registration Statement Registration No. 333-232639, filed by PubCo with the SEC on January 27, 2020, as amended, restated, supplemented or replaced from time to time prior to the Closing Date.

"**Regulation D**" means Regulation D of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation T**" means Regulation T of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" means Regulation U of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" means Regulation X of the Board of Governors and all official rulings and interpretations thereunder or thereof.

"**Related Fund**" means any Fund that is managed, advised, or administered by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) an entity or affiliate of an entity that manages, administers, or advises a Lender.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Replacement Lender**" as defined in **Section 2.21**.

"**Required Prepayment Date**" as defined in **Section 2.13(c)**.

"**Requisite Class Lenders**" means, at any time of determination for any Class of Lenders, Loans, and/or Commitments, as applicable, Lenders of such Class holding more than 50% of the aggregate Voting Power Determinants of such Class of Loans and Commitments held by all Lenders; provided that (i) the amount of Voting Power Determinants of any Defaulting Lender shall be disregarded for purposes of this definition (including clause (ii) of this proviso), and (ii) to the extent the total number of Lenders (treating all Lenders that are Affiliates as a single Lender) of any Class is greater than one, solely for purposes of any requested consent, waiver, amendment, or other modification requiring the affirmative vote of "Requisite Class Lenders" (but, for the avoidance of doubt, not for the purpose of exercising or enforcing any rights and remedies available under any Credit Document or applicable law), "Requisite Class Lenders" shall also include at least two (treating all Lenders that are Affiliates as a single Lender) Lenders of such Class.

"**Requisite Lenders**" means one or more Lenders having or holding Multi-Draw Term Loan Exposure, New Multi-Draw Term Loan Exposure and/or Revolving Exposure and representing more than 50% of the aggregate Voting Power Determinants of all Lenders; provided that (i) the amount of Voting Power Determinants of any Defaulting Lender shall be disregarded for purposes of this definition (including clause (ii) of this proviso), and (ii) to the extent that the total number of Lenders (treating all Lenders that are Affiliates as a single Lender) is greater than one, solely for purposes of any requested consent, waiver, amendment, or other modification requiring the affirmative vote of "Requisite Lenders" (but, for the avoidance of doubt, not for the purpose of exercising or enforcing any rights and remedies available under any Credit Document or applicable law), "Requisite Lenders" shall also include at least two (treating all Lenders that are Affiliates as a single Lender) Lenders.

"**Restricted Junior Payment**" means (i) any dividend, other distribution, or liquidation preference, direct or indirect, on account of any shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock (other than any Disqualified Capital Stock) to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; (iv) management or similar fees payable to any Management Investor or any of its respective Affiliates (other than a Credit Party); and (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, Earn Out Obligations or Seller Financing Indebtedness. For the avoidance of doubt, "Restricted Junior Payments" shall include Permitted TRA Payments made by Holdings.

"**Revolving Commitment**" means the commitment of a Lender to make or otherwise fund any Revolving Loan and "Revolving Commitments" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Commitment, if any, is set forth on **Appendix A-1** or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Closing Date is $10,000,000.

"**Revolving Commitment Period**" means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

"**Revolving Commitment Termination Date**" means the earliest to occur of the following: (i) the Multi-Draw Term Loan Commitment Termination Date, if the Multi-Draw Term Loans are not made on or before that date; (ii) the Maturity Date; (iii) the date the Revolving Commitments are permanently reduced to zero pursuant to **Sections 2.11(b)** or **2.13**; and (iv) the date of the termination of the Revolving Commitments pursuant to **Section 8.1**.

"**Revolving Exposure**" means, with respect to any Lender as of any time of determination, (i) prior to the termination of the Revolving Commitments, that Lender's Revolving Commitment; and (ii) after the termination of the Revolving Commitments, the aggregate outstanding principal amount of the Revolving Loans of that Lender.

"**Revolving Loan**" means a Loan made by a Lender to the Companies pursuant to **Section 2.2(a)**.

"**S&P**" means S&P Global Ratings, or any successor to its rating agency business.

"**Sanctioned Country**" means, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions, including, as of the Closing Date, the Crimea region of Ukraine, Cuba, Iran, North Korea, and Syria.

"**Sanctioned Person**" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in **clause (i)** or **(ii)** of this definition.

"**Sanctions**" means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by OFAC, U.S. Department of State, or U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury of the United Kingdom, or (iii) any other relevant sanctions authority.

"**Secured Parties**" as defined in the Pledge and Security Agreement.

"**Securities**" means any stock, shares, membership interests, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, including any Capital Stock and any Hedge Agreements or other derivatives.

"**Securities Account**" means any "securities account" as defined in Article 8 of the UCC and any "commodity account" as defined in Article 9 of the UCC.

"**Securities Act**" means the Securities Act of 1933.

"**Seller Financing Indebtedness**" means any obligation or liability consisting of fixed deferred purchase price, installment payments, or promissory notes that, in each case, is issued or otherwise incurred as consideration for any acquisition of any property.

"**Senior Leverage Ratio**" means (i) with respect to determining quarterly financial covenant compliance pursuant to **Section 6.8(b)**, the ratio as of the last day of the relevant Fiscal Quarter of (a) Consolidated Senior Debt (excluding (w) any Deferred TRA Obligations, (x) the Approved Floorplan Financing, (y) Indebtedness under the TCF Agreement, and (z) any interest on the Obligations that has been capitalized to the principal balance of the Obligations) as of such day, to (b) Consolidated Adjusted EBITDA for the four Fiscal Quarter period ending on such day, and (ii) with respect to any determination thereof pursuant to any other provision of this Agreement, the ratio as of the time of determination of (a) Consolidated Senior Debt (excluding (w) any Deferred TRA Obligations, (x) the Approved Floorplan Financing, (y) Indebtedness under the TCF Agreement, and (z) any interest on the Obligations that has been capitalized to the principal balance of the Obligations) as of such time, to (b) Consolidated Adjusted EBITDA for the trailing twelve month period ending on such date (or if such date of determination is not the last day of a Fiscal Quarter in respect of which financial statements and a compliance certificate are being delivered, for the four-Fiscal Quarter period ending as of the most recently concluded Fiscal Quarter for which financial statements have previously been or were required to be delivered).

"**Singleton**" as defined in the preamble hereto.

"**Solvency Certificate**" means a certificate of the Chief Financial Officer of the Company Representative substantially in the form of **Exhibit F-2**.

"**Solvent**" means, with respect to any Credit Party, that as of the date of determination, both (i) (a) the sum of such Credit Party's debt (including contingent liabilities) does not exceed the present fair saleable value of such Credit Party's present assets; (b) such Credit Party's capital is not unreasonably small in relation to its business as contemplated on such date of determination and reflected in the Projections or with respect to any transaction contemplated or to be undertaken after such date of determination; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "solvent" within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under FASB Accounting Standards Codification Topic 450-20).

"**South Florida**" as defined in the preamble hereto.

"**South Shore**" as defined in the preamble hereto.

"**Specified IPO Documents**" as defined in **Section 3.1(a)(ii)**.

"**Specified IPO Transactions**" means each of the transactions consummated in connection with (a) the recapitalization of the Credit Parties in connection with the Qualified IPO, and (b) the effectiveness of the Qualified IPO substantially concurrently with the Closing Date, in each case, as and to the extent separately described in the Registration Statement.

"**Subject Transaction**" as defined in "Consolidated Adjusted EBITDA".

"**Subordinated Indebtedness**" means Indebtedness that is structurally or otherwise subordinated in payment or lien ranking to the Obligations or related Liens on terms and conditions satisfactory to Administrative Agent and Requisite Lenders in their respective sole discretion, including the Approved Subordinated Debt.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election or appointment of the Person or Persons (whether Directors, trustees, or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**SunTrust Leaseback**" means, collectively, the Companies' leaseback of certain assets pursuant to those certain Lease Agreements dated August 5, 2019 and all other documentation relating thereto, by and among OWM MARY ESTHER FL LANDLORD, LLC, a Delaware limited liability company, OWM POMPANO BEACH FL LANDLORD, LLC, a Delaware limited liability company, OWM ISLAMORADA FL LANDLORD, LLC, a Delaware limited liability company, and OWM CANTON GA LANDLORD, LLC, a Delaware limited liability company, as landlords, and certain of the Companies, as tenants.

"**Supported QFC**" has the meaning assigned to such term in **Section 10.28**.

"**Swap Obligation**" as defined in "Excluded Swap Obligation".

"**Syndication Agent**" means Goldman Sachs Specialty Lending Group, L.P. as the syndication agent of the Commitments.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding), together with interest, penalties and other additions thereto, of any nature and whatever called, imposed, levied, collected, withheld or assessed by any Governmental Authority; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located on all or part of the overall net income (whether worldwide, or only insofar as such overall net income is considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"**Tax Receivable Agreement**" means that certain Tax Receivable Agreement dated as of the Closing Date by and among PubCo, the "TRA Holders" (as therein defined) and the other Persons party thereto, together with any other tax receivable agreement approved by Administrative Agent in its sole discretion from time to time.

"**TCF Agreement**" means that certain Inventory Security Agreement dated as of June 19, 2015, by and among Singleton, Holdings and TCF Inventory Finance, Inc., as amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date.

"**Terminated Lender**" as defined in **Section 2.21**.

"**Title Policy**" as defined in the definition of Mortgaged Real Estate Documents.

"**Total Leverage Ratio**" means (i) with respect to determining quarterly financial covenant compliance pursuant to **Section 6.8(c)**, the ratio as of the last day of the relevant Fiscal Quarter of (a) Consolidated Total Debt (excluding (w) any Deferred TRA Obligations, (x) the Approved Floorplan Financing, (y) Indebtedness under the TCF Agreement, and (z) any interest on the Obligations that has been capitalized to the principal balance of the Obligations) as of such day, to (b) Consolidated Adjusted EBITDA for the four Fiscal Quarter period ending on such day, and (ii) with respect to any determination thereof pursuant to any other provision of this Agreement, the ratio as of the time of determination of (a) Consolidated Total Debt (excluding (w) any Deferred TRA Obligations, (x) the Approved Floorplan Financing, (y) Indebtedness under the TCF Agreement, and (z) any interest on the Obligations that has been capitalized to the principal balance of the Obligations) at such time, to (b) Consolidated Adjusted EBITDA for the trailing twelve month period ending on such date (or if such date of determination is not the last day of a Fiscal Quarter in respect of which financial statements and a compliance certificate are being delivered, for the four-Fiscal Quarter period ending as of the most recently concluded Fiscal Quarter for which financial statements have previously been or were required to be delivered).

"**Total Utilization of Revolving Commitments**" means, as at any time of determination, the aggregate principal amount of all outstanding Revolving Loans.

"**Trade Announcements**" as defined in **Section 10.17**.

"**Transactions**" means, collectively, the execution, delivery and performance by the applicable Credit Parties of this Agreement and each other Credit Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof (including, without limitation, to refinance the Existing Indebtedness and Indebtedness under the Prior Credit Agreement and to consummate the OWAO Preferred Redemption), the payment of Transaction Costs, the grant of Liens by the Credit Parties on Collateral pursuant to the Collateral Documents, the execution, delivery and performance of the Specified IPO Documents, and the consummation of the Specified IPO Transactions.

"**Transaction Costs**" means the fees, costs and expenses payable by PubCo or any of its Subsidiaries on or before the Closing Date in connection with the Transactions to the extent approved in writing by Administrative Agent in its reasonable discretion.

"**Type of Loan**" means with respect to either Multi-Draw Term Loans or Revolving Loans, a Base Rate Loan or a LIBO Rate Loan.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent statute or law) as in effect in any applicable jurisdiction.

"**U.S.**" means the United States of America.

"**U.S. Lender**" as defined in **Section 2.18(c)**.

"**U.S. Special Resolution Regimes**" has the meaning assigned to such term in **Section 10.28**.

"**U.S. Tax Compliance Certificate**" means a certificate substantially in the form of one of **Exhibits E-1**, **E-2**, **E-3** or **E-4**, as applicable.

"**Voting Power Determinants**" means, collectively, Multi-Draw Term Loan Exposure, New Multi-Draw Term Loan Exposure and/or Revolving Exposure.

"**Waivable Mandatory Prepayment**" as defined in **Section 2.13(c)**.

"**WARN**" as defined in **Section 4.19**.

"**Weighted Average Yield**" means, with respect to any Loan on any date of determination, the weighted average yield to maturity, in each case, based on the interest rate applicable to such Loan on such date and giving effect to all upfront or similar fees or original issue discount payable with respect to such Loan.

"**Wholly-Owned**" means, in reference to any Subsidiary of a specified Person, that 100% of the Capital Stock of such Subsidiary (other than (x) Directors' qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) is owned, directly or indirectly, by such Person and/or one or more of such specified Person's other Subsidiaries that also qualify as Wholly-Owned Subsidiaries under this definition.

"**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.

1.2. Accounting Terms, Financial Statements, Calculations, Etc. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company Representative to Lenders pursuant to **Section 5.1(a)**, **5.1(b)** and **5.1(c)** shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in **Section 5.1(e)**, if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, (i) for purposes of determining compliance with the financial covenants contained in this Agreement, any election by any Credit Party to measure an item of Indebtedness using fair value (as permitted by Accounting Standards Codification Section 825-10 or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made and (ii) 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 any change in accounting treatment of "operating" and "capital" leases scheduled to become effective for fiscal years beginning after December 15, 2018 as set forth in the Accounting Standards Update No. 2016-02, Leases (Topic 842), issued by the Financial Accounting Standards Board in February 2016, or any similar publication issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect prior to December 15, 2018. For purposes of determining pro forma compliance with any financial covenant as of any date prior to the initial test date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such initial test date. Notwithstanding anything to the contrary in this Agreement, for purposes of determining compliance with any basket, accordion or incremental feature, test, or condition under any provision of this Agreement or any other Credit Document, no Credit Party may retroactively divide, classify, re-classify or deem or otherwise treat a historical transaction as having occurred in reliance on a basket or exception that was not available at the time of such historical transaction or if and to the extent that such basket or exception was relied upon for any later transaction. When used herein, the term "financial statements" shall be construed to include all notes and schedules thereto. Whenever the terms "PubCo" or "Holdings" are used in respect of a financial covenant or a related definition, they shall be construed to mean "PubCo and its Subsidiaries on a consolidated basis" unless the context clearly requires otherwise. Except as otherwise provided therein, this **Section 1.2** shall apply equally to each other Credit Document as if fully set forth therein, mutatis mutandis.

1.3. Interpretation, Etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any requirement for a referenced agreement, instrument, certificate or other document to be in "substantially" the form of an Appendix, Schedule, or Exhibit hereto means that such referenced document shall be in the form of such Appendix, Schedule, or Exhibit with such modifications to such form as are approved by Administrative Agent, and, in the case of any Collateral Document, Collateral Agent, in each case in such Agent's sole discretion. The words "hereof", "hereunder", "hereby", and words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The use herein of the words "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The use herein of the words "continuing", "continuance", "existing", or any words of similar import or derivatives of any such words in reference to any Event of Default means that such Event of Default has not been expressly waived. The word "will" shall be construed as having the same meaning and effect as the word "shall". The words "assets" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties of any relevant Person or Persons. The terms lease and license shall be construed to include sub-lease and sub-license. Whenever the context may require, any pronoun shall be construed to include the corresponding masculine, feminine, and neuter forms. References to Persons include their respective permitted successors and assigns. Except as otherwise expressly provided herein, references to statutes, legislative acts, laws, regulations, and rules shall be deemed to refer to such statutes, acts, laws, regulations, and rules as in effect from time to time, including any amendments of the same and any successor statutes, acts, laws, regulations, and rules, unless any such reference is expressly limited to refer to any statute, act, law, regulation, or rule "as in effect on" a specified date. Except as otherwise expressly provided herein, any reference in or to this Agreement (including any Appendix, Schedule, or Exhibit hereto), any other Credit Document, or any other agreement, instrument, or other document shall be construed to refer to the referenced agreement, instrument, or document as assigned, amended, restated, supplemented, or otherwise modified from time to time, in each case in accordance with the express terms of this Agreement and any other relevant Credit Document unless such reference is expressly limited to refer to such agreement, instrument, or other document "as in effect on" a specified date. Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Person but is intended to have substantially the same effects as the prohibited action. Except as otherwise provided therein, this **Section 1.3** shall apply equally to each other Credit Document as if fully set forth therein, mutatis mutandis.

1.4. Divisions. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation, or liability of any Person becomes the asset, right, obligation, or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

SECTION 2. LOANS

2.1. Multi-Draw Term Loans.

(a) Multi-Draw Term Loan Commitments.

(i) Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Closing Date and at any time after the Closing Date and prior to the Multi-Draw Commitment Termination Date, one or more Multi-Draw Term Loans to the Companies in an aggregate amount not to exceed such Lender's Multi-Draw Term Loan Commitment immediately prior to giving effect to any such Multi-Draw Term Loan; provided that, solely with respect to the Closing Date, Multi-Draw Term Loans in an amount equal to the outstanding principal amount of and accrued and unpaid interest on existing term loans owing to the Exiting Lender under the Prior Credit Agreement ("**Previously Funded Multi-Draw Term Loans**") will be funded by Lenders (in accordance with their Pro Rata shares of Multi-Draw Term Loan Commitments) to the Exiting Lender to the extent deemed necessary and in a manner approved by Administrative Agent in its sole discretion for purposes of Lenders purchasing such Previously Funded Multi-Draw Term Loans at par plus accrued interest thereon in lieu of funding new Multi-Draw Term Loans in such amount.

(ii) Upon the effectiveness of this Agreement on the Closing Date and the funding of any such par and accrued interest amount in respect of Previously Funded Multi-Draw Term Loans, the entirety of such funded amounts shall for all purposes hereunder be deemed to constitute and be referred to as, and are hereby continued as, Multi-Draw Term Loans hereunder, without constituting a novation or satisfaction of such Previously Funded Multi-Draw Term Loans.

The Companies may make multiple borrowings under the Multi-Draw Term Loan Commitments subject to Availability and the other conditions set forth in **Section 3.2**. Any amount borrowed under this **Section 2.1(a)** and subsequently repaid or prepaid may not be reborrowed. Subject to **Sections 2.10(a)** and **2.12**, all amounts owed hereunder with respect to the Multi-Draw Term Loans shall be Paid in Full no later than the Maturity Date. Each Lender's Multi-Draw Term Loan Commitment shall (x) automatically and permanently be reduced by the amount of each Multi-Draw Term Loan made hereunder, and (y) terminate immediately and without further action by any Person on the Multi-Draw Term Loan Commitment Termination Date.

(b) Borrowing Mechanics for Multi-Draw Term Loans.

(i) Following the Closing Date, whenever the Companies desire that Lenders make Multi-Draw Term Loans, the Company Representative shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least five Business Days in advance of the proposed Credit Date. Except as otherwise provided herein, a Funding Notice for a Multi-Draw Term Loan that is a LIBO Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the Companies shall be bound to make a borrowing in accordance therewith. Promptly upon receipt by Administrative Agent of any such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Multi-Draw Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Multi-Draw Term Loans available to the Companies on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account as designated in writing to Administrative Agent on a Funding Notice by the Company Representative.

(c) During the Multi-Draw Term Loan Commitment Period, drawings under the Multi-Draw Term Loan Commitments (i) shall be made in an aggregate minimum amount of $1,000,000 and integral multiples of $250,000 in excess of that amount and (ii) may not be requested more than twice (or such greater amount as approved in writing by Administrative Agent) per Fiscal Quarter.

(d) The Multi-Draw Term Loan made on the Closing Date (the "**Closing Date Multi-Draw Term Loan**") is in an aggregate principal amount equal to $100,000,000.

2.2. Revolving Loans.

(a) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof (including **Section 3.2** and sufficient Availability therefor), each Lender severally agrees to make Revolving Loans to the Companies in an aggregate amount up to but not exceeding such Lender's Revolving Commitment; provided, that after giving effect to the making of any Revolving Loans in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this **Section 2.2(a)** may be repaid and reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be Paid in Full no later than such date.

(b) Borrowing Mechanics for Revolving Loans.

(i) Revolving Loans shall be made in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount.

(ii) Subject to **Section 3.2(b)**, whenever the Companies desire that Lenders make Revolving Loans, the Company Representative shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date; provided that, if such Credit Date is the Closing Date, such Funding Notice may be delivered on the Closing Date. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a LIBO Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the Companies shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, will be provided by Administrative Agent to each applicable Lender with reasonable promptness, but (if Administrative Agent received such notice by 10:00 a.m. (New York City time)) not later than 3:00 p.m. (New York City time) on the same day as Administrative Agent's receipt of such Notice from the Company Representative.

(iv) Each Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Revolving Loans available to the Companies on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by Administrative Agent from Lenders to be credited to the account as designated in writing to Administrative Agent on a Funding Notice by the Company Representative.

(v) Reallocation of Revolving Loans. In connection with the effectiveness of this Agreement and any borrowings or extensions of Revolving Loans made on the Closing Date, each Lender (other than the Exiting Lender) shall advance, purchase and/or continue Revolving Loans in an aggregate amount not less than its Pro Rata Share of Revolving Commitments on the Closing Date, which Revolving Loans shall be disbursed to Administrative Agent and used to repay Loans outstanding to each Lender who holds Revolving Loans in an aggregate amount greater than its Revolving Commitment as of the Closing Date.

(c) Protective Advances. Subject to the limitations set forth below, and whether or not an Event of Default or a Default shall have occurred and be continuing, Administrative Agent is authorized by the Companies and the Lenders, from time to time in Administrative Agent's sole discretion (but Administrative Agent shall have absolutely no obligation to), to make Revolving Loans to the Companies on behalf of the Revolving Lenders, that Administrative Agent, in its sole discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by any Credit Party pursuant to the terms of this Agreement and the other Credit Documents, including payments of principal, interest, fees and reimbursable expenses (any of such Loans are in this **clause (c)** referred to as "**Protective Advances**"); provided, that the amount of Revolving Loans plus Protective Advances shall not exceed the Revolving Commitments then in effect. Protective Advances may be made even if the conditions precedent set forth in **Section 3** have not been satisfied. All Protective Advances shall be Base Rate Loans (subject to any permitted conversion to a LIBO Rate Loan in accordance with the terms of this Agreement). Protective Advances shall not exceed $1,500,000 in the aggregate at any time without the prior consent of Requisite Lenders. Each Protective Advance shall be secured by the Liens in favor of Collateral Agent in and to the Collateral and shall constitute Obligations hereunder. The Companies shall pay the unpaid principal amount and all unpaid and accrued interest of each Protective Advance on the earlier of the Revolving Commitment Termination Date and the date on which demand for payment is made by Administrative Agent.

2.3. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Companies a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to the Companies until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement, and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to the Companies on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by the Companies through and including the time of the Companies' receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify the Company Representative and the Companies shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent at a rate equal to 10% per annum. Nothing in this **Section 2.3(b)** shall be deemed to relieve any Lender from its obligation to fulfill its Multi-Draw Term Loan Commitments and Revolving Commitments hereunder or to prejudice any rights that the Companies may have against any Lender as a result of any default by such Lender hereunder.

2.4. Use of Proceeds. The proceeds of the Multi-Draw Term Loans shall be used to (a) refinance the Existing Indebtedness and Indebtedness under the Prior Credit Agreement, (b) consummate the OWAO Preferred Redemption, (c) provide for, and pay fees and expenses in connection with, the Transactions, and (d) solely during the Multi-Draw Term Loan Commitment Period, fund Permitted Acquisitions. The proceeds of the Revolving Loans shall be applied for (a) the ongoing working capital requirements of the Companies and (b) for general corporate purposes of Holdings and its Subsidiaries. Notwithstanding anything to the contrary in this Agreement, no Credit Extension or proceeds thereof may be used in any manner that conflicts with **Section 4.18(b)** or **Section 4.25(a)**.

2.5. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of the Companies to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Companies, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Companies' Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or an agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The Register shall be available for inspection by the Company Representative or any Lender (with respect to (i) any entry relating to such Lender's Loans, and (ii) the identity of the other Lenders (but not any information with respect to such other Lenders' Loans)) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record or shall cause to be recorded in the Register the Commitments and the Loans in accordance with the provisions of **Section 10.6**, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on the Companies and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Companies' Obligations in respect of any Loan. The Companies hereby designate Administrative Agent to serve as the Companies' non-fiduciary agent solely for purposes of maintaining the Register as provided in this **Section 2.5**, and each Company hereby agrees that, to the extent Administrative Agent serves in such capacity, its officers, Directors, employees, agents, sub-agents, and affiliates shall constitute "Indemnitees" for all purposes hereunder.

(c) Notes. If so requested by any Lender by written notice to the Company Representative (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, the Companies shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to **Section 10.6**) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after the Company Representative's receipt of such notice) a promissory note or notes, in form and substance reasonably acceptable to Administrative Agent, to evidence such Lender's Revolving Loans or, Multi-Draw Term Loans, as the case may be.

2.6. Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Revolving Loans:

(A) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(B) if a LIBO Rate Loan, at the Adjusted LIBO Rate plus the Applicable Margin;

(ii) in the case of Multi-Draw Term Loans:

(A) if a Base Rate Loan, at the Base Rate plus the Applicable Margin;

(B) if a LIBO Rate Loan, at the Adjusted LIBO Rate plus the Applicable Margin; or

(iii) in the case of New Multi-Draw Term Loans, at the rate set forth in the Joinder Agreement.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any LIBO Rate Loan, shall be selected by the Company Representative and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(c) In connection with LIBO Rate Loans there shall be no more than five Interest Periods outstanding at any time. In the event the Company Representative fails to specify between a Base Rate Loan or a LIBO Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a LIBO Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event the Company Representative fails to specify an Interest Period for any LIBO Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Company Representative shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBO Rate Loans for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof to the Company Representative and each Lender.

(d) Interest payable pursuant to **Section 2.6(a)** shall be computed on the basis of a three hundred sixty day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or with respect to a Base Rate Loan being converted from a LIBO Rate Loan, the date of conversion of such LIBO Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a LIBO Rate Loan, the date of conversion of such Base Rate Loan to such LIBO Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided that, notwithstanding anything to the contrary in this Agreement, with respect to any cash pay interest due to be paid on any Interest Payment Date (such date, the "**PIK Election Date**"), the Company Representative may elect on a one time basis, by delivering irrevocable written notice of such election to Administrative Agent at least two (2) Business Days prior to the PIK Election Date, to pay such interest (or any portion thereof) due to be paid on the PIK Election Date and interest due to be paid during the period of twelve (12) months following the PIK Election Date, in each case, in kind upon which such interest and additional interest determined based on the PIK Rate and the proportion of cash interest elected to be paid in kind shall be added to the outstanding principal amount of the Loans effective as of such Interest Payment Date and each quarterly Interest Payment Date during such period. Amounts representing accrued interest that are added to the outstanding principal of Loans accruing such interest shall thereafter constitute principal and bear interest in accordance with **Section 2.6(a)** and otherwise be treated as Loans for purposes of this Agreement.

2.7. Conversion/Continuation.

(a) Subject to **Section 2.16** and so long as no Default or Event of Default shall have occurred and then be continuing, the Company Representative shall have the option:

(i) to convert at any time all or any part of any Multi-Draw Term Loan or Revolving Loan equal to $500,000 and integral multiples of $100,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a LIBO Rate Loan may only be converted on the expiration of the Interest Period applicable to such LIBO Rate Loan unless the Companies shall pay all amounts due under **Section 2.16** in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any LIBO Rate Loan, to continue all or any portion of such Loan equal to $500,000 and integral multiples of $100,000 in excess of that amount as a LIBO Rate Loan.

(b) Subject to **Section 3.2(b)**, the Company Representative shall deliver a Conversion/ Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBO Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any LIBO Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and the Companies shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then, for that day, such Loan shall be a Base Rate Loan.

2.8. Default Interest . Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall, at the election of Administrative Agent or Requisite Lenders or, in the case of any Event of Default under **Section 8.1(f)** or **(g)**, automatically without any such election, thereafter bear interest (including post-petition interest in any proceeding under any Debtor Relief Laws) payable in cash on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate that is 2% percent per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, any LIBO Rate Loans (a) may be converted to Base Rate Loans at the revocable election of Administrative Agent at any time after the occurrence of an Event of Default (irrespective of whether the Interest Period in effect at the time of such conversion has expired), and (b) unless Requisite Lenders otherwise consent in writing that LIBO Rate Loans are available, will automatically be converted to Base Rate Loans upon the expiration of the Interest Period in effect at the time any such increase in the interest rate is effective, and in each case thereupon shall become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of (i) the increased rates of interest provided for in this **Section 2.8** or (ii) any amount of interest that is less than the amount due, in each case is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.9. Fees.

(a) The Companies agree to pay to Lenders having Revolving Exposure commitment fees equal to (i) the average of the daily difference between (1) the Revolving Commitments, and (2) the Total Utilization of Revolving Commitments, times (ii) 0.50% per annum.

(b) The Companies agree to pay to Lenders having Multi-Draw Term Loan Commitments a commitment fee equal to (i) the daily average unused portion of their respective Multi-Draw Term Loan Commitments, times (ii) 0.50% per annum.

(c) All fees referred to in this **Section 2.9** shall be paid to Administrative Agent as set forth in **Section 2.14(a)** and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof. All fees referred to in **Sections 2.9(a)** and **(b)** shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on the last day of each month during the Revolving Commitment Period or Multi-Draw Term Loan Commitment Period, as applicable, commencing on the first such date to occur after the Closing Date, and on the Revolving Commitment Termination Date or Multi-Draw Term Loan Commitment Termination Date, as applicable.

(d) In addition to any of the foregoing fees, the Credit Parties agree to pay to Agents and the Lenders such other fees in the amounts and at the times as separately agreed upon, including the fees set forth in the Fee Letter.

2.10. Scheduled Payments.

(a) The principal amount of the Multi-Draw Term Loans shall be repaid in consecutive quarterly installments and at final maturity (each, an "**Installment**") on the last day of each Fiscal Quarter (each, an "**Installment Date**"), commencing March 31, 2022, in an amount equal to the product of (i) 1.25% multiplied by (ii) the aggregate principal amount of all Multi-Draw Term Loans made under this Agreement prior to such Installment Date (without reducing any such Installment to reflect payments of the outstanding principal of any Multi-Draw Term Loan after the initial funding thereof). Notwithstanding the foregoing, the Multi-Draw Term Loans, together with all other amounts owed hereunder with respect thereto, shall, in any event, be Paid in Full no later than the Maturity Date. The New Multi-Draw Term Loans, if any, shall be repaid in accordance with the amortization schedule for such New Multi-Draw Term Loans in the Joinder Agreement.

(b) Final Revolving Payment. All Revolving Loans, together with all other amounts owed hereunder with respect to any Revolving Commitments or Revolving Loans, shall be Paid in Full on the Revolving Commitment Termination Date.

2.11. Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time, the Companies may prepay any Loans on any Business Day in whole or in part, in an aggregate minimum amount of $250,000 and integral multiples of $100,000 in excess of that amount.

(ii) All such prepayments shall be made upon not less than three Business Days prior written or telephonic notice given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such written notice for Multi-Draw Term Loans or Revolving Loans, as the case may be, to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in **Section 2.13(a)** with respect to Revolving Loans and **Section 2.13(b)** with respect to Multi-Draw Term Loans.

(b) Voluntary Commitment Reductions.

(i) The Company Representative may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent (which written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part (x) the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction, or (y) any unused portion of the Multi-Draw Term Loan Commitments; provided, any such partial reduction of the Revolving Commitments and the Multi-Draw Term Loan Commitments shall be in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount.

(ii) The Company Representative's notice to Administrative Agent shall be irrevocable (unless otherwise agreed to by Administrative Agent in its sole discretion) (provided that such notice may condition such termination or reduction upon the consummation of one or more other transactions) and shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments or the Multi-Draw Term Loan Commitments shall be effective on the date specified in the Company Representative's notice and shall reduce the Revolving Commitment or the Multi-Draw Term Loan Commitment of each Lender, as applicable, proportionately to its Pro Rata Share thereof.

(c) Partial Payments. Notwithstanding anything in this **Section 2.11** to the contrary, the Companies shall not partially prepay any Multi-Draw Term Loan and/or partially reduce any Commitment unless the aggregate amount of the remaining Commitments plus the remaining outstanding principal amount under the Multi-Draw Term Loans is equal to at least fifty percent (50%) of the aggregate amount of the Commitments on the Closing Date; provided, however, that the Company may repay the Multi-Draw Term Loans in full at any time.

All voluntary prepayments pursuant to this **Section 2.11** shall be subject to any agreed upon premiums and any yield maintenance amounts contained in the Fee Letter or any other agreement between Administrative Agent and the Companies.

2.12. Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than the first Business Day following the date of receipt by any Credit Party of any Net Asset Sale Proceeds in excess of $250,000 in the aggregate since the Closing Date (excluding a sale (whether or not made in the ordinary course of business) of any portion of the Floorplan Collateral), the Companies shall prepay the Loans and/or the Commitments shall be permanently reduced as set forth in **Section 2.13(b)** in an aggregate amount equal to such Net Asset Sale Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing, upon delivery of a written notice to Administrative Agent, the Companies shall have the option, directly or through one or more Subsidiaries, to invest Net Asset Sale Proceeds (the "**Asset Sale Reinvestment Amounts**") in (i) long-term productive assets of the general type used in the business of the Companies if such assets are purchased or constructed within one hundred eighty days following receipt of such Net Asset Sale Proceeds (and so long as any such individual or aggregate investment is not in excess of $250,000 or, if consented to by Administrative Agent, more); or (ii) Permitted Acquisitions if (A) a definitive purchase agreement with respect to such Permitted Acquisition is executed within one hundred twenty days following receipt of such Net Asset Proceeds and (B) the transaction contemplated by such purchase agreement is consummated within one hundred eighty days of receipt thereof; provided further, pending any such reinvestment all Asset Sale Reinvestment Amounts shall, at the option of the Companies, be applied to prepay Revolving Loans to the extent then outstanding (without a reduction in Revolving Commitments) and, to the extent such Asset Sale Reinvestment Amounts exceed the amount required to prepay all such Revolving Loans, the balance thereof shall be held at all times prior to such reinvestment, in an escrow account in form and substance reasonably acceptable to Administrative Agent. In the event that the Asset Sale Reinvestment Amounts are not applied to the Obligations or reinvested by the Companies prior to the earliest of (1) the last day of such one hundred twenty day period (if a definitive purchase agreement with respect to a Permitted Acquisition has not been executed in accordance with the other provisions of this Agreement), (2) the last day of such one hundred eighty day period (if a definitive purchase agreement with respect to a Permitted Acquisition has been executed but the transactions contemplated thereby have not been consummated in accordance with the other provisions of this Agreement), and (3) the date of the occurrence of an Event of Default, Administrative Agent shall apply such Asset Sale Reinvestment Amounts to the Obligations as set forth in **Section 2.13(b)**.

(b) Insurance/Condemnation Proceeds. Except to the extent required to be applied as a prepayment of any Approved Floorplan Financing or Indebtedness under the TCF Agreement, no later than the first Business Day following the date of receipt by PubCo or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, the Companies shall prepay the Loans and/or the Commitments shall be permanently reduced as set forth in **Section 2.13(b)** in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, (i) so long as no Default or Event of Default shall have occurred and be continuing, and (ii) to the extent that aggregate Net Insurance/Condemnation Proceeds from the Closing Date through the applicable date of determination do not exceed $250,000 (such amounts, the "**Insurance/Condemnation Reinvestments Amounts**"), the Companies shall have the option, directly or through one or more of its Subsidiaries to invest such Insurance/Condemnation Reinvestment Amounts within one hundred eighty days of receipt thereof (the "**Insurance/Condemnation Reinvestment Period**") in long term productive assets of the general type used in the business of Holdings and its Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof; provided, further, pending any such investment all such Insurance/Condemnation Proceeds, as the case may be, shall be applied to prepay Revolving Loans to the extent outstanding (without a reduction in Revolving Commitments) and otherwise held at all times prior to such investment in an escrow account in form and substance reasonably satisfactory to Administrative Agent. In the event that such Insurance/Condemnation Reinvestment Amounts are not applied to the Obligations or reinvested by the Companies prior to the earlier of (i) the expiration of the applicable Insurance/Condemnation Reinvestment Period, and (ii) the occurrence of an Event of Default, then, such failure shall continue unremedied for a period of three Business Days, an Event of Default shall be deemed to have occurred and be continuing under this **Section 2.12(b)** until a prepayment is made (or any such escrow is applied by Administrative Agent as a prepayment) in an amount equal to such Insurance/Condemnation Reinvestment Amounts that have not been so reinvested.

(c) Issuance of Equity Securities. On the date of receipt by any Credit Party or any of its Subsidiaries of any Net Equity Proceeds (excluding any Net Equity Proceeds in connection with the Specified IPO), from any Person other than a Credit Party, excluding any such Net Equity Proceeds used for purposes approved in writing by Administrative Agent in its sole discretion, the Companies shall prepay the Loans and/or the Revolving Commitments shall be permanently reduced as set forth in **Section 2.13(b)** in an aggregate amount equal to 100% of such Net Equity Proceeds.

(d) Issuance of Debt. On the date of receipt by any Credit Party or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of any Credit Party or any of its Subsidiaries (excluding any Cash proceeds received with respect to any Indebtedness permitted to be incurred pursuant to **Section 6.1**), the Companies shall prepay the Loans and/or the Commitments shall be permanently reduced as set forth in **Section 2.13(b)** in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(e) Consolidated Excess Cash Flow. In the event that there shall be Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending on September 30, 2021), the Companies shall, not later than the third Business Day following the date on which audited financial statements are delivered or required to be delivered pursuant to **Section 5.1(c)** for such Fiscal Year, prepay the Loans and/or the Commitments shall be permanently reduced as set forth in **Section 2.13(b)** in an aggregate amount equal to 75% of such Consolidated Excess Cash Flow; provided that such Consolidated Excess Cash Flow for Fiscal Year 2021 shall be calculated for the period commencing on the first day of the first full fiscal month after the Closing Date and ending on the last day of such Fiscal Year rather than the entirety of such Fiscal Year. Any amounts prepaid pursuant to this **Section 2.12(e)** with respect to any Fiscal Year in excess of 75% of Consolidated Excess Cash Flow shall be treated as voluntary prepayments made pursuant to **Section 2.13(a)**.

(f) Revolving Loans. The Companies shall from time to time prepay the Revolving Loans to the extent necessary so that the Total Utilization of Revolving Commitments shall not at any time exceed the Revolving Commitments then in effect.

(g) Prepayment of Excess Outstanding Amounts. Within 3 Business Days after delivery of the financial statements pursuant to **Section 5.1(a)**, the Companies shall prepay Loans in an amount equal to 100% of the amount by which (i) the Consolidated Senior Debt (excluding (w) the Approved Floorplan Financing, (x) Indebtedness under the TCF Agreement, (y) any interest on the Obligations that has been capitalized to the principal balance of the Obligations and (z) any Deferred TRA Obligations) as of the date of such financial statements exceeds (ii) the product of (x) Consolidated Adjusted EBITDA for the twelve-month period ending on the last day of the fiscal month for which such financial statements were prepared, multiplied by (y) the maximum Senior Leverage Ratio permitted pursuant to **Section 6.8(b)** for the most recently ended Fiscal Quarter.

(h) Tax Refunds. On the date of receipt by any Credit Party or any of its Subsidiaries of any tax refunds in excess of $250,000 in the aggregate in any Fiscal Year, the Companies shall prepay Loans and/or Commitments shall be reduced as set forth in **Section 2.13(b)** in the amount of such tax refunds in excess of $250,000.

(i) Escrows and Indemnities. On the date of receipt by any Credit Party or any of its Subsidiaries of any payment in excess of $250,000 pursuant to the definitive documentation for any Permitted Acquisition which payment constitutes a release of any escrowed amounts or an indemnification obligation, the Companies shall prepay Loans and/or Commitments shall be reduced as set forth in **Section 2.13(b)** in the amount of 100% of such payments.

(j) Prepayment Certificate. Concurrently with any prepayment of the Loans and/or reduction of the Commitments pursuant to **Sections 2.12(a)** through **2.12(i)**, the Company Representative shall deliver to Administrative Agent a certificate of a Chief Financial Officer demonstrating the calculation of the amount of the applicable net proceeds or Consolidated Excess Cash Flow and compensation owing to Lenders under any of the Credit Documents, if any, as the case may be. In the event that the Companies shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, the Companies shall promptly make an additional prepayment of the Loans and/or the Commitments shall be permanently reduced in an amount equal to such excess, and the Company Representative shall concurrently therewith deliver to Administrative Agent (who shall promptly forward to each Lender) a certificate of a Chief Financial Officer demonstrating the derivation of such excess.

(k) Premiums. Any prepayments pursuant to this **Section 2.12** shall be subject to any agreed upon premiums and yield maintenance amounts contained in the Fee Letter or any other agreement between Administrative Agent and the Credit Parties.

2.13. Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments of Revolving Loans. Any prepayment of any Revolving Loan pursuant to **Section 2.11** shall be applied to repay outstanding Revolving Loans to the full extent thereof.

(b) Application of Other Prepayments to Loans. Any voluntary prepayments of Multi-Draw Term Loans pursuant to **Section 2.11** and any mandatory prepayment of any Loan pursuant to **Section 2.12** shall be applied as follows:

first, to the payment of all fees other than any premium, and all expenses specified in **Section 10.2**, in each case, to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the payment of the applicable premium (including any prepayment fee and yield maintenance or similar amounts), if any, on any Loan or Commitment;

fifth, except in connection with any Waivable Mandatory Prepayment that is waived in accordance with **Section 2.13(c)**, to prepay Multi-Draw Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) and shall be further applied in inverse order of maturity to reduce the remaining scheduled Installments of principal of the Multi-Draw Term Loans;

sixth, to permanently reduce the Multi-Draw Term Loan Commitments to the full extent thereof;

seventh, to prepay the Revolving Loans to the full extent thereof and to further permanently reduce the Revolving Commitments to the full extent thereof; and

eighth, to payment of any remaining Obligations then due and payable.

(c) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event the Companies are required to make any mandatory prepayment (a "**Waivable Mandatory Prepayment**") of the Multi-Draw Term Loans, not less than three Business Days prior to the date (the "**Required Prepayment Date**") on which the Companies are required to make such Waivable Mandatory Prepayment, the Company Representative shall notify Administrative Agent of the amount of such prepayment, and each Lender's option to elect not to receive its Pro Rata Share of such Waivable Mandatory Prepayment. Each such Lender may exercise an option to not receive such Waivable Mandatory Prepayment by giving written notice to the Company Representative and Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify the Company Representative and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Companies shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Multi-Draw Term Loans of such Lenders (which prepayment shall be applied to the scheduled installments of principal of the Multi-Draw Term Loans in accordance with **Section 2.13(b)**), and (ii) to the extent of any excess, to the Companies for working capital and general corporate purposes.

(d) Application of Prepayments of Loans to Base Rate Loans and LIBO Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to LIBO Rate Loans, in each case in a manner that minimizes the amount of any payments required to be made by the Companies pursuant to **Section 2.16(d)**.

2.14. General Provisions Regarding Payments.

(a) All payments by the Companies of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due by wire transfer to an account designated by Administrative Agent from time to time that is maintained by Administrative Agent or its Affiliates for the account of the Lenders or Administrative Agent. For purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by the Companies on the next Business Day.

(b) All payments in respect of the principal amount of any Loan (other than voluntary prepayments of Revolving Loans) shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payment received in respect of any Loan on a date when interest or premium is due and payable with respect to such Loan) shall be applied to the payment of interest and premium then due and payable before application to principal.

(c) Administrative Agent (or an agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/ Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any LIBO Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Whenever any payment to be made hereunder 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 be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(f) Administrative Agent shall deem any payment by or on behalf of the Companies hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to the Company Representative and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of **Section 8.1(a)**. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next Business Day) at the Default Rate from the date such amount was due and payable until the date such amount is Paid in Full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by any Agent hereunder or under any Collateral Document in respect of any of the Obligations, including all proceeds received by any Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: *first*, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to each Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by any Agent in connection therewith, and all amounts for which any Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as an Agent and not as a Lender) and all advances made by any Agent under any Collateral Document for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by any Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; *second*, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders; and *third*, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.15. Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Fee Letter, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) that is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of any Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Companies expressly consent to the foregoing arrangement and agree that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by the Companies to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this **Section 2.15** shall not be construed to apply to (a) any payment made by any Credit Party pursuant to and in accordance with the express terms of any Credit Document (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

2.16. Making or Maintaining LIBO Rate Loans.

(a) Changed Circumstances/Temporary LIBOR Unavailability. In the event that Administrative Agent determines (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBO Rate Loans, that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBO Rate Loans, (ii) by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBO Rate Loans on the basis provided for in the definition of Adjusted LIBO Rate, or (iii) the Adjusted LIBO Rate does not adequately and fairly reflect the cost to Lenders of making or maintaining such LIBO Rate Loans during such Interest Period, Administrative Agent will reasonably promptly give notice to the Company Representative and each Lender of such determination, whereupon (A) no Loans may be made as, or converted to, LIBO Rate Loans until such time as Administrative Agent notifies the Company Representative and Lenders that the circumstances giving rise to such notice no longer exist, and (B) any Funding Notice requesting LIBO Rate Loans shall be deemed a request for Base Rate Loans and any Conversion/Continuation Notice (to the extent it contemplates the continuation of, or conversion into, LIBO Rate Loans) shall be deemed to be rescinded by the Companies.

(b) LIBOR Discontinuation.

(i) If at any time Administrative Agent determines (which determination shall be final and conclusive absent manifest error) that (i) the circumstances set forth in **clause (a)** above have arisen and such circumstances are unlikely to be temporary or (ii) a Benchmark Discontinuance Event has occurred, Administrative Agent and the Companies shall endeavor to establish an alternate replacement rate of interest to the Adjusted LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for bank loans in the United States at such time as well as to Administrative Agent's operational requirements, and Administrative Agent and the Companies 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. If such replacement rate of interest as so determined would be less than zero, such rate shall be deemed to be zero. In order to account for the relationship of the replacement interest rate to the Adjusted LIBO Rate, additional spread adjustment and/or other adjustments may be taken into account in the replacement rate of interest to preserve the economic yield of the Lenders in effect as of, and as contemplated on, the Closing Date.

(ii) Notwithstanding anything to the contrary in **Section 10.5**, the amendment referred to in **clause (i)** above shall become effective without any further action or consent of any party to this Agreement (other than Administrative Agent and the Companies) so long as the Lenders shall have received at least five Business Days' prior written notice of such amendment thereof and Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment.

(iii) To the extent that a Benchmark Immediate Discontinuance Event has occurred, until an alternate rate of interest shall be determined in accordance with this paragraph, (x) no Loans may be made as, or converted to, LIBO Rate Loans, and (y) any Funding Notice requesting LIBO Rate Loans shall be deemed a request for Base Rate Loans and any Conversion/Continuation Notice (to the extent it contemplates the continuation of, or conversion into, LIBO Rate Loans) shall be deemed to be rescinded by the Companies.

(c) Illegality or Impracticability of LIBO Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Administrative Agent) that the making, maintaining, converting to, or continuation of its LIBO Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof that materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "**Affected Lender**" and such Affected Lender shall on that day give written or telephonic (promptly confirmed in writing) notice to the Company Representative and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBO Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBO Rate Loan then being requested by the Company Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Affected Lender's obligation to maintain its outstanding LIBO Rate Loans (the "**Affected Loans**") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBO Rate Loan then being requested by the Company Representative pursuant to a Funding Notice or a Conversion/Continuation Notice, the Company Representative shall have the option, subject to the provisions of **Section 2.16(d)**, to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written or telephonic (promptly confirmed in writing) notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender).

(d) Compensation for Breakage or Non Commencement of Interest Periods. The Companies shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its LIBO Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any LIBO Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any LIBO Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its LIBO Rate Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its LIBO Rate Loans is not made on any date specified in a notice of prepayment given by the Company Representative.

(e) Booking of LIBO Rate Loans. Any Lender may make, carry or transfer LIBO Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender; provided that if any Lender requires the Companies to pay any additional amounts to any Lender for the account of such Lender pursuant to this **Section 2.16(e)**, then such Lender shall (at the written request of the Company Representative) use reasonable efforts to designate a different branch office or the office of an Affiliate of such Lender for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgement of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to this **Section 2.16(e)** in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Companies hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.17. Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of **Section 2.18** (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law: (i) subjects such Lender (or its applicable lending office), Administrative Agent or any company controlling such Lender or Administrative Agent to any additional Tax (other than any Tax on the overall net income of such Person) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder, any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder, or its deposits, reserves, other liabilities or capital attributable thereto; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to LIBO Rate Loans that are reflected in the definition of Adjusted LIBO Rate) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender's obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) or Administrative Agent with respect thereto; then, in any such case, the Companies shall promptly pay to such Lender or Administrative Agent, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Person in its sole discretion shall determine) as may be necessary to compensate such Person on an after Tax basis for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender or Administrative Agent shall deliver to the Company Representative (in the case of a Lender, with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Person under this **Section 2.17(a)**, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Requirements and Liquidity Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any Change in Law regarding capital adequacy or liquidity, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any Change in Law regarding capital adequacy or liquidity, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Revolving Commitments, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such Change in Law (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy and liquidity), then from time to time, within five Business Days after receipt by the Company Representative from such Lender of the statement referred to in the next sentence, the Companies shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after Tax basis for such reduction. Such Lender shall deliver to the Company Representative (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this **Section 2.17(b)**, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 2.17** shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Companies shall not be required to compensate a Lender pursuant to this **Section 2.17** for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Company Representative of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.18. Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender).

(b) Withholding of Taxes. If any Credit Party, Administrative Agent, or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) the Company Representative shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as the Companies becomes aware of it; (ii) the Companies, Administrative Agent, or any other Person (acting as a withholding agent) shall pay or cause to be paid any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) unless otherwise provided in this **Section 2.18** the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 2.18**), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any Tax that it is required by clause (ii) above to pay, the Company Representative shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, with respect to any U.S. federal withholding tax, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender; provided that additional amounts shall be payable to a Lender to the extent that such Lender's assignor was entitled to receive such additional amounts.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non U.S. Lender**") shall, to the extent such Lender is legally entitled to do so, deliver to Administrative Agent for transmission to the Company Representative, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of the Company Representative or Administrative Agent (each in the reasonable exercise of its discretion), (i) two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Company Representative to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code, a U.S. Tax Compliance Certificate together with two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8IMY (or, in each case, any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Company Representative to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of U.S. federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**U.S. Lender**") shall deliver to Administrative Agent and the Company Representative on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from U.S. backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to U.S. federal income tax withholding matters pursuant to this **Section 2.18(c)** hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to the Company Representative two new copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, or W-9 (or, in any case, any successor form), or a U.S. Tax Compliance Certificate and two copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, or W-8IMY (or, in each case, any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Company Representative to confirm or establish that such Lender is not subject to deduction or withholding of U.S. federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and the Company Representative in writing of its inability to deliver any such forms, certificates or other evidence. The Companies shall not be required to pay any additional amount to any Lender under **Section 2.18(b)(iii)** if such Lender shall have failed to deliver the forms, certificates or other evidence required by the first sentence of this **Section 2.18(c)**.

(d) FATCA. Notwithstanding anything to the contrary therein, the Companies shall not be required to pay any additional amount pursuant to **Section 2.18(b)** with respect to any U.S. federal withholding tax imposed under FATCA. If a payment made to a Lender under any Credit 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 Internal Revenue Code, as applicable), such Lender shall deliver to the Company Representative and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company Representative or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Company Representative or Administrative Agent as may be necessary for the Companies and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of the preceding sentence of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

(e) Payment of Other Taxes by the Credit Parties. Without limiting the provisions of **Section 2.18(b)**, the Companies shall timely pay to the relevant Governmental Authorities in accordance with applicable law or, at the option of Administrative Agent timely reimburse it for the payment of, all Other Taxes.

(f) Indemnification by Credit Parties. Credit Parties shall jointly and severally indemnify Administrative Agent and any Lender for the full amount of Taxes for which additional amounts are required to be paid pursuant to **Section 2.18(b)** arising in connection with payments made under this Agreement or any other Credit Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 2.18**) paid or payable by Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Credit Party shall be conclusive absent manifest error. Such payment shall be due within ten days of such Credit Party's receipt of such certificate.

(g) Indemnification by the Lenders. Each Lender shall severally indemnify Administrative Agent for (i) Taxes for which additional amounts are required to be paid pursuant to **Section 2.18(b)** and **(f)** arising in connection with payments made under this Agreement or any other Credit Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 2.18**) attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Administrative Agent therefor and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 10.6(h)(i)** relating to the maintenance of a Participant Register and (iii) any Taxes on overall net income and other Taxes for which additional amounts are not required to be paid by any Credit Party pursuant to **Section 2.18** attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Credit Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Such payment shall be due within ten days of such Lender's receipt of such certificate. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this **paragraph (g)**.

(h) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this **Section 2.18**, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(i) Survival. Each party's obligations under this **Section 2.18** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

2.19. Obligation to Mitigate. Each Lender agrees that, if such Lender requests payment under **Sections 2.17** or **2.18**, then such Lender will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender if, as a result thereof, the additional amounts payable to such Lender pursuant to **Sections 2.17** or **2.18**, as the case may be, in the future would be eliminated or materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Commitments or Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Commitments or Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this **Section 2.19** unless the Companies agree to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Companies pursuant to this **Section 2.19** (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Company Representative (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.20. Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 8** or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to **Section 10.4** shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, as the Company Representative may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; third, if so determined by Administrative Agent and the Company Representative, to be held in a Deposit Account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, in accordance with **Section 2.20(d)**; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Companies as a result of any judgment of a court of competent jurisdiction obtained by the Companies against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in **Section 3.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of a Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.20(a)(i)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to **Section 2.9(a)** for any period during which that Lender is a Defaulting Lender (and the Companies shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Companies shall not be required to pay the remaining amount of any such fee.

(b) Defaulting Lender Cure. If the Company Representative and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Companies while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

2.21. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased Cost Lender**") shall give notice to the Company Representative that such Lender is an Affected Lender or that such Lender is entitled to receive payments under **Sections 2.17** or **2.18**, (ii) the circumstances that have caused such Lender to be an Affected Lender or that entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after the Company Representative's request for such withdrawal; or (b) (i) any Lender shall become and continue to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to **Section 2.20(b)** within five Business Days after the Company Representative's or Administrative Agent's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by **Section 10.5(b)**, the consent of Administrative Agent shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), Administrative Agent may (which, in the case of an Increased Cost Lender, only after receiving written request from the Company Representative to remove such Increased Cost Lender), by giving written notice to Company Representative and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Commitments, if any, in full to one or more Eligible Assignees (identified in consultation with Companies so long as no Event of Default exists) (each a "**Replacement Lender**") in accordance with the provisions of **Section 10.6** and such Terminated Lender shall pay the fees, if any, payable in connection with any such assignment from an Increased Cost Lender, a Non-Consenting Lender, or a Defaulting Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to **Section 2.9**; (2) on the date of such assignment, the Companies shall pay any amounts payable to such Terminated Lender pursuant to **Sections 2.17** or **2.18** or under any other Credit Document; provided, such assignment shall not be deemed a prepayment and the Companies shall not be required to pay any premiums or yield maintenance amounts or other similar amount that would be payable pursuant to the Fee Letter in connection with a voluntary prepayment or otherwise; (3) such assignment does not conflict with applicable law, and (4) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Revolving Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Administrative Agent exercises its option hereunder to cause an assignment by such Lender as an Increased Cost Lender, Non-Consenting Lender or Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with **Section 10.6**. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with **Section 10.6** on behalf of an Increased Cost Lender, Non-Consenting Lender or Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to **Section 10.6**.

2.22. Incremental Facilities. The Company Representative may by written notice to Administrative Agent elect to request the establishment of one or more new multi-draw term loan commitments (the "**New Multi-Draw Term Loan Commitments**"), by an amount not in excess of $20,000,000 in the aggregate and not less than $5,000,000 in the case of each such increase (or such lesser individual increase amount as may be approved by Administrative Agent in its sole discretion), and integral multiples of $1,000,000 in excess of that amount, and any such requested New Multi-Draw Term Loan Commitments shall only be permitted to the extent approved by Administrative Agent in its sole discretion. Each such notice shall specify the requested date on which the Company Representative proposes that the New Multi-Draw Term Loan Commitments shall be effective (each actual effective date, an "**Increased Amount Date**"), which shall be a date not less than ten Business Days after the date on which such notice is delivered to Administrative Agent (or such shorter period of time as is agreed to by Administrative Agent in its sole discretion). Upon receipt of such notice Administrative Agent shall be entitled to arrange a syndicate of one or more lenders to provide the new Multi-Draw Term Loans, which syndicate may consist of existing Lenders or any other Persons that are Eligible Assignees (each, a "**New Multi-Draw Term Loan Lender**"); provided that: (i) Administrative Agent may elect or decline, in its sole discretion, to arrange any such New Multi-Draw Term Loan Commitments; (ii) the opportunity to commit to provide all or a portion of the New Multi-Draw Term Loan Commitments shall be offered by the Companies first to the existing Lenders on a pro rata basis and, to the extent any such Lenders decline such offer after being provided a bona fide opportunity (which shall be deemed satisfied if any such Lender does not consent to provide such New Multi-Draw Term Loan Commitment within 10 Business Days of receiving notice thereof) to do so, only then may such opportunity be offered to any other Eligible Assignees (including other existing Lenders); (iii) any Lender approached to provide all or a portion of the New Multi-Draw Term Loan Commitments may elect or decline, in its sole discretion, to provide a New Multi-Draw Term Loan Commitment; (iv) any New Multi-Draw Term Loan Lender shall be acceptable to Administrative Agent in its sole discretion; (v) any such New Multi-Draw Term Loans may be unsecured or, to the extent secured, shall be secured on a pari or junior basis and shall not be secured by any property or assets other than the Collateral; (vi) such New Multi-Draw Term Loans shall rank either pari passu or junior in right of payment to all then existing Multi-Draw Term Loans under this Agreement; and (vii) any such New Multi-Draw Term Loans shall not be borrowed or guaranteed by any Person that is not an obligor in respect of the other then existing Multi-Draw Term Loans under this Agreement.

Such New Multi-Draw Term Loan Commitments, if approved by Administrative Agent and arranged in accordance with this **Section 2.22**, shall become effective, as of the requested Increased Amount Date; provided that (i) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to such New Multi-Draw Term Loan Commitments; (ii) both before and after giving effect to the making of any New Multi-Draw Term Loans and the application of the proceeds thereof, each of the conditions set forth in Section 3.2 shall be satisfied; (iii) PubCo and its Subsidiaries shall be in compliance on a Pro Forma Basis with each of the covenants set forth in **Section 6.8** as of the last day of the most recently ended Fiscal Quarter after giving effect to such New Multi-Draw Term Loan Commitments (assuming, for purposes of such test, that such New Multi-Draw Term Loan Commitments are fully funded); (iv) the New Multi-Draw Term Loan Commitments, shall be effected pursuant to one or more Joinder Agreements or amendments to this Agreement that are executed and delivered by the Companies, Administrative Agent and each New Multi-Draw Term Loan Lender, and each of which shall be recorded in the Register and shall be subject to the requirements set forth in **Section 2.18(c)**; (v) all other fees and expenses owing in respect of such increase to Administrative Agent, Collateral Agent, and the New Multi-Draw Term Loan Lenders, as applicable, will have been paid; and (vi) the Companies shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by Administrative Agent in connection with any such transaction. Any New Multi-Draw Term Loans made on an Increased Amount Date shall be designated, a separate series (a "**Series**") of Multi-Draw Term Loans for all purposes of this Agreement.

On any Increased Amount Date on which any New Multi-Draw Term Loan Commitments of any Series are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each New Multi-Draw Term Loan Lender shall make a Loan (or Loans, including but not limited to Multi-Draw Term Loans that may be funded after the Increased Amount Date for a period to be agreed upon at such time) available to the Companies (each a "**New Multi-Draw Term Loan**") in an amount equal to its New Multi-Draw Term Loan Commitment, and (ii) each New Multi-Draw Term Loan Lender shall become a Lender hereunder with respect to the New Multi-Draw Term Loan Commitment and the New Multi-Draw Term Loans made pursuant thereto.

Administrative Agent shall, after its approval of any requested New Multi-Draw Term Loan Commitments, promptly notify Lenders of the proposed Increased Amount Date, the proposed New Multi-Draw Term Loan Commitments, and the proposed New Multi-Draw Term Loan Lenders, as applicable.

The terms and provisions of the New Multi-Draw Term Loans and New Multi-Draw Term Loan Commitments shall be, except as otherwise set forth herein or in the Joinder Agreement, identical to the then existing Multi-Draw Term Loans. In any event (i) the weighted average life to maturity of all New Multi-Draw Term Loans of any Series shall be no shorter than the weighted average life to maturity of any of the Revolving Loans, the Multi-Draw Terms Loans (whichever is longest), (ii) the applicable New Multi-Draw Term Loan Maturity Date shall be no shorter than the Latest Maturity Date, (iii) the Weighted Average Yield applicable to the New Multi-Draw Term Loans shall be determined by the Company Representative and the applicable new Lenders and shall be set forth in each applicable Joinder Agreement; provided however that the Weighted Average Yield applicable to the New Multi-Draw Term Loans shall not be greater than the highest applicable Weighted Average Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to any other Class of Multi-Draw Term Loans unless the interest rate with respect to each existing Class of Multi-Draw Term Loans is increased so as to cause the then applicable Weighted Average Yield of each Class of Multi-Draw Term Loans to equal the Weighted Average Yield applicable to the New Multi-Draw Term Loans, and (iv) all other terms of the New Multi-Draw Term Loans and New Multi-Draw Term Loan Commitments, if not consistent with the terms of the Multi-Draw Term Loans, as applicable, must be acceptable to Administrative Agent in its sole discretion and, in any event, such terms may not be materially more favorable, taken as a whole, to the New Multi-Draw Term Loan Lenders than the terms of the Multi-Draw Term Loans. Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of Administrative Agent, to effect the provisions of this **Section 2.22**.

2.23. Companies as Co-Borrowers.

(a) Joint and Several Liability. All Obligations of the Companies under this Agreement and the other Credit Documents shall be joint and several Obligations of each Company. Anything contained in this Agreement and the other Credit Documents to the contrary notwithstanding, the Obligations of each Company hereunder, solely to the extent that such Company did not receive proceeds of Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, 11 U.S.C. §548, or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other liabilities of such Company, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Company in respect of intercompany Indebtedness to any other Credit Party or Affiliates of any other Credit Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Credit Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Company pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Company and other Affiliates of any Credit Party of Obligations arising under Guaranties by such parties.

(b) Subrogation. Until the Obligations shall have been Paid in Full, each Company shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy that it now has or may hereafter have against the other Company or any other guarantor of the Obligations. Each Company further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Company may have against the other Company, any collateral or security or any such other guarantor, shall be junior and subordinate to any rights Collateral Agent may have against the other Company, any such collateral or security, and any such other guarantor. The Companies under this Agreement and the other Credit Documents together desire to allocate among themselves, in a fair and equitable manner, their Obligations arising under this Agreement and the other Credit Documents. Accordingly, in the event any payment or distribution is made on any date by any Company under this Agreement and the other Credit Documents (a "**Funding Borrower**") that exceeds its Obligation Fair Share (as defined below) as of such date, that Funding Borrower shall be entitled to a contribution from the other Company in the amount of such other Company's Obligation Fair Share Shortfall (as defined below) as of such date, with the result that all such contributions will cause each Company's Obligation Aggregate Payments (as defined below) to equal its Obligation Fair Share as of such date. "**Obligation Fair Share**" means, with respect to a Company as of any date of determination, an amount equal to (i) the ratio of (x) the Obligation Fair Share Contribution Amount (as defined below) with respect to such Company to (y) the aggregate of the Obligation Fair Share Contribution Amounts with respect to all Companies, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Companies under this Agreement and the other Credit Documents in respect of the Obligations guaranteed. "**Obligation Fair Share Shortfall**" means, with respect to a Company as of any date of determination, the excess, if any, of the Obligation Fair Share of such Company over the Obligation Aggregate Payments of such Company. "**Obligation Fair Share Contribution Amount**" means, with respect to a Company as of any date of determination, the maximum aggregate amount of the Obligations of such Company under this Agreement and the other Credit Documents that would not render its Obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, 11 U.S.C. §548, or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the Obligation Fair Share Contribution Amount with respect to any Company for purposes of this Section 2.23, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or Obligations of contribution hereunder shall not be considered as assets or liabilities of such Company. "**Obligation Aggregate Payments**" means, with respect to a Company as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Company in respect of this Agreement and the other Credit Documents (including in respect of this Section 2.23) minus (B) the aggregate amount of all payments received on or before such date by such Company from the other Company as contributions under this Section 2.23. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Borrower. The allocation among the Companies of their Obligations as set forth in this Section 2.23, shall not be construed in any way to limit the liability of any Company hereunder or under any Credit Document.

(c) Representative of Companies. Each Company hereby appoints OWAO as its agent, attorney-in-fact and representative (in such capacity, the "**Company Representative**") for the purpose of (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to the Companies under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by the Companies or any Company under this Agreement, and (iv) all other purposes incidental to any of the foregoing. Each Company agrees that any action taken by OWAO, as Company Representative shall be binding upon each such Company to the same extent as if directly taken by such Company.

(d) Allocation of Loans. All Loans shall be made to OWAO, as borrower unless a different allocation of the Loans as between OWAO and any other Company with respect to any borrowing hereunder is included in the applicable Funding Notice.

(e) Obligations Absolute. Each Company hereby waives, for the benefit of Beneficiaries: (i) any right to require any Beneficiary, as a condition of payment or performance by such Company, to (A) proceed against any other Company, any guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (B) proceed against or exhaust any security held from any other Company, any guarantor or any other Person, (C) proceed against or have resort to any balance of any Deposit Account, Securities Account, or any other credit on the books of any Beneficiary in favor of any other Company or any other Person, or (D) pursue any other remedy in the power of any Beneficiary whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Company or any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Company or any Guarantor from any cause other than Payment in Full of all Obligations; (iii) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iv) any defense based upon any Beneficiary's errors or omissions in the administration of the Obligations, except behavior that amounts to willful misconduct as determined by a non-appealable judgment of a court of competent jurisdiction; (v) (A) any principles or provisions of law, statutory or otherwise, that are or might be in conflict with the terms hereof and any legal or equitable discharge of such Company's obligations hereunder, (B) the benefit of any statute of limitations affecting such Company's liability hereunder or the enforcement hereof, (C) any rights to set offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or under any Secured Hedge Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (vii) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

SECTION 3. CONDITIONS PRECEDENT

3.1. Conditions Precedent to Closing Date. The obligation of each Lender to enter into this Agreement and to make any Loan on the Closing Date is subject to the satisfaction, or waiver in accordance with **Section 10.5**, of the following conditions on or before the Closing Date (in each case, except to the extent required to be satisfied as a condition subsequent in accordance with **Section 5.15**):

(a) Credit Documents; IPO Documents. Administrative Agent shall have received sufficient copies of (i) this Agreement, the Fee Letter, an Intercompany Note and Subordination, promissory notes, if any are requested, the Pledge and Security Agreement, each Guaranty, and each other Credit Document to be dated as of the Closing Date, in each case as Administrative Agent shall request, in form and substance satisfactory to Administrative Agent, and executed and delivered by each applicable Credit Party and each other Person party thereto (with such originals as are reasonably requested by Administrative Agent); and (ii) definitive documentation governing the Specified IPO Transactions (collectively, the "**Specified IPO Documents**"), in each case, in form and substance satisfactory to Agent.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received in respect of each Credit Party (i) sufficient copies of each Organizational Document as Administrative Agent shall request, in each case certified by an Authorized Officer of such Credit Party and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Credit Party executing this Agreement and the Transactions contemplated hereby; (iii) resolutions of the Board of Directors of each Credit Party with respect to the authorization of such Credit Party to execute and deliver this Agreement and the other Credit Documents and to enter into the Transactions contemplated in those documents, in each case, to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by an appropriate Authorized Officer as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction material to the business of such Credit Party in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Organizational and Capital Structure. The legal, organizational and capital structure of the Credit Parties, both before and after giving effect to the Transactions occurring on the Closing Date, shall be satisfactory to Agent.

(d) Consummation of Qualified IPO.

(i) Substantially concurrently with the effectiveness of this Agreement, the sale or the listing for trading of common stock of PubCo on a bona fide nationally recognized securities exchange resulting in PubCo receiving gross proceeds (excluding any proceeds as a result of exercising the "greenshoe" option in connection therewith) of no less than $55,000,000 (such transaction, the "**Qualified IPO**").

(ii) Substantially concurrently with the Qualified IPO, the net cash proceeds of such Qualified IPO shall have been further contributed to Holdings substantially concurrently with such Qualified IPO.

(iii) The Specified IPO Transactions shall have been consummated in accordance with the Specified IPO Documents.

(iv) The Specified IPO Documents shall each be in form and substance satisfactory to Administrative Agent in its sole discretion, shall have been executed and delivered and be in full force and effect in accordance with their respective terms and no provision thereof shall have been modified or waived in any respect determined by Administrative Agent to be material, in each case without the consent of Administrative Agent.

(e) Existing Indebtedness. Substantially concurrently with the effectiveness of this Agreement, all Existing Indebtedness (other than Existing Indebtedness permitted to remain outstanding under **Section 9.02**), in each case, shall have been repaid, redeemed, defeased, discharged, refinanced or terminated (or irrevocable notice for the repayment or redemption thereof will be given to the extent accompanied by any prepayments or deposits required to defease, terminate and satisfy in full the obligations under any related indentures or notes) and all commitments thereunder shall have been terminated or continued, in each case by refinancing, payoff, release and termination documentation satisfactory to Administrative Agent.

(f) Transaction Costs. On or prior to the Closing Date, the Company Representative shall have delivered to Administrative Agent and each Lender their reasonable best estimate of the Transaction Costs (other than fees payable to any Agent).

(g) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with transactions contemplated by the Credit Documents and the Specified IPO Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the Specified IPO Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(h) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in certain Real Estate Assets, Administrative Agent and Collateral Agent shall have received from the Companies and each applicable Guarantor:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Real Estate Asset listed on **Schedule 3.1(h)** (each, a "**Closing Date Mortgaged Property**"), together with all other Mortgaged Real Estate Documents in respect of each such Closing Date Mortgaged Property, in each case, to the extent not already delivered; and

(ii) in the case of each Closing Date Mortgaged Property that is a Leasehold Property, if any, the Leasehold Property Documents for such Leasehold Property, in each case, to the extent not already delivered.

(i) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, each Credit Party shall have delivered to Collateral Agent:

(i) evidence satisfactory to Collateral Agent of the compliance by each Credit Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) (1) A completed Collateral Questionnaire dated the Closing Date and executed by an Authorized Officer of each Credit Party, together with all attachments contemplated thereby, including the results of a recent search, by a Person satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Credit Party in the jurisdictions specified in the Collateral Questionnaire, together with copies of all such filings disclosed by such search; (2) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens); and (3) fully executed and, as appropriate, notarized Intellectual Property Security Agreements, in proper form for filing or recording in all appropriate places in all applicable jurisdictions;

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party or any personal property Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iv) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(j) Environmental Reports. Administrative Agent shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to the Facilities, which reports shall include a Phase I Report for each of the Facilities specified by Administrative Agent.

(k) Financial Statements; Projections. Lenders shall have received from the Company Representative (i) the Historical Financial Statements, all in form and substance satisfactory to Agent, (ii) pro forma consolidated and consolidating balance sheets of PubCo and its subsidiaries as at the Closing Date, and reflecting the consummation of the Transactions occurring on the Closing Date, which pro forma financial statements shall be in form and substance satisfactory to Agent, (iii) pro forma consolidated and consolidating income statements of PubCo and its Subsidiaries as at the Closing Date, and reflecting the consummation of the Transactions occurring on the Closing Date, and (iv) projections of PubCo and its Subsidiaries for the fiscal periods requested by the Lenders, including quarterly projections for each quarter during such fiscal periods.

(l) Evidence of Insurance. Collateral Agent shall have received a certificate from each applicable Credit Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to **Section 5.5** is in full force and effect, together with endorsements naming Collateral Agent, for the benefit of Secured Parties, as additional insured and lender loss payee thereunder (but only respect to the Collateral or as its interests may otherwise appear and not with respect to the Floorplan Collateral) to the extent required under **Section 5.5**.

(m) Opinions of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of (i) Gold Law Partners, counsel for Credit Parties; (ii) Smith, Gambrell & Russell, LLP, counsel for Credit Parties, and (iii) local real estate counsel for the Credit Parties, in each case, as to such matters as Administrative Agent may reasonably request, each dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Credit Party hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(n) Fees and Expenses. The Companies shall have paid to Administrative Agent the fees payable on or before the Closing Date referred to in **Section 2.9** and all expenses payable pursuant to **Section 10.2** that have accrued and been invoiced two days before the Closing Date.

(o) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate from the Credit Parties dated as of the Closing Date and addressed to Administrative Agent and Lenders, and in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the Transactions occurring on the Closing Date, the Credit Parties, taken as a whole, are Solvent.

(p) Closing Date Certificate. The Credit Parties shall have delivered to Administrative Agent an originally executed Closing Date Certificate, together with all attachments thereto.

(q) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding, hearing, or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Administrative Agent, singly or in the aggregate, materially impairs the Transactions occurring on the Closing Date, or that could have a Material Adverse Effect.

(r) Approved Floorplan Financing Documents. Administrative Agent shall have received certified copies of the definitive documentation of the Companies' Approved Floorplan Financing, each of which shall be in form and substance satisfactory to Administrative Agent and shall include consents, amendments, terminations (including with respect to subordinations that are no longer relevant) and/or other modifications (including amending related UCC-1 financing statements consistent with the Intercreditor Agreement and consistent with this Agreement) necessary to permit the consummation of the Transactions occurring on the Closing Date. Such Companies' Approved Floorplan Financing shall have commitments and availability in such amounts and on such terms, including, but not limited to, with respect to the Intercreditor Agreement and any applicable subordination agreement, as are satisfactory to Agent.

(s) Approved Subordinated Debt Documents. Administrative Agent shall have received (i) copies of all definitive documentation governing the Earn Out Obligations and Seller Financing Indebtedness payable by any Credit Party that will remain outstanding after the Closing Date, which shall be in form, substance and amount satisfactory to Administrative Agent and (ii) copies of amendments to or restatements of all existing subordination agreements entered into by the obligees thereunder, which subordination agreements shall be in form and substance acceptable to Administrative Agent.

(t) Minimum Liquidity. On the Closing Date and immediately after giving effect to the consummation of the Transactions occurring on the Closing Date, the Credit Parties shall have Consolidated Liquidity of at least [***].

(u) Maximum Senior Leverage Ratio. On the Closing Date and immediately after giving effect to the consummation of the Transactions occurring on the Closing Date, the Senior Leverage Ratio shall not be greater than 2.50:1.00.

(v) Maximum Total Leverage Ratio. On the Closing Date and immediately after giving effect to the consummation of the Transactions occurring on the Closing Date, the Total Leverage Ratio shall not be greater than 3.00:1.00.

(w) No Material Adverse Change. Since September 30, 2019, there shall have occurred no (a) material adverse change in or effect on: (i) the business, condition (financial or otherwise), assets, liabilities (actual or contingent), operations, management, performance, or properties of the Credit Parties, taken as a whole, (ii) the ability of any Credit Party to fully and timely perform its obligations under the Credit Documents, (iii) the ability of Agent to enforce the Credit Documents or (b) disruption, adverse change or condition in the financial, lending, banking or capital markets generally.

(x) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be satisfactory in form and substance to Administrative Agent, and such counsel, and Administrative Agent and such counsel shall have received all such counterpart or certified copies of such documents as Administrative Agent may reasonably request.

(y) Letter of Direction. Administrative Agent shall have received a duly executed letter of direction from the Company Representative addressed to Administrative Agent, on behalf of itself and Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date substantially in the form of **Exhibit B** hereto, together with a funds flow, in form and substance satisfactory to Administrative Agent.

(z) "KYC" Documentation.

(i) At least ten days prior to the Closing Date, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(ii) At least five Business Days prior to the Closing Date, any Credit Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Credit Party.

Each Agent and each Lender, by delivering its signature page to this Agreement and, in the case of the Lenders, funding a Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

3.2. Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with **Section 10.5**, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice;

(ii) After making the Credit Extensions requested on such Credit Date, (x) the Total Utilization of Revolving Commitments shall not exceed the Revolving Commitments then in effect, (y) in the case of Multi-Draw Term Loans, sufficient Multi-Draw Term Loan Commitments remain for such requested Loan, and (z) Availability would be $0 or greater;

(iii) As of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof;

(iv) As of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(v) The Chief Financial Officer of the Companies shall have delivered an Officer's Certificate representing and warranting and otherwise demonstrating and calculating to the satisfaction of Administrative Agent that, as of such Credit Date, the Companies reasonably expect, after giving effect to the proposed borrowing and based upon good faith determinations and projections consistent with the Financial Plan, to be in compliance with all operating and financial covenants set forth in this Agreement as of the last day of the current Fiscal Quarter, (1) the Total Leverage Ratio determined as of such date after giving effect to the contemplated Credit Extension shall not exceed the maximum Total Leverage Ratio permitted as of the last day of the immediately preceding Fiscal Quarter pursuant to **Section 6.8(c)**, (2) the Senior Leverage Ratio determined as of such date after giving effect to the contemplated Credit Extension shall not exceed the Leverage Incurrence Multiple in effect at such time, (3) after making the Credit Extension requested on such Credit Date, Availability would be $0 or greater and (4) after giving effect to such Credit Extension and any permitted use of proceeds therefor on such Credit Date, the aggregate Cash and Cash Equivalents of PubCo and its Subsidiaries will not exceed $10,000,000; and

(vi) With respect to any Credit Extension, the use of proceeds of which is intended to finance an Acquisition, Administrative Agent shall have received evidence that such Acquisition is a Permitted Acquisition and all acquisition documentation shall be in form and substance satisfactory to Administrative Agent in its reasonable discretion.

Any Agent or Requisite Lenders shall be entitled, but not obligated to, request and receive, prior to the making of any Credit Extension, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of such Agent or such Requisite Lenders such request is warranted under the circumstances.

(b) Notices. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, the Company Representative may give Administrative Agent telephonic notice by the required time of any proposed borrowing or conversion/continuation, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that telephonic notice is given. In the event of a discrepancy between the telephonic notice and the written notice, the written notice shall govern. In the case of any Notice that is irrevocable once given, if the Company Representative provide telephonic notice in lieu of such Notice in writing, such telephone notice shall also be irrevocable once given. Neither Administrative Agent, nor any Lender shall incur any liability to the Companies in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Companies or the Company Representative or for otherwise acting in good faith.

(c) Each request for a borrowing of a Loan hereunder shall constitute a representation and warranty by the Company Representative as of the applicable Credit Date that the conditions contained in **Section 3.2(a)** have been satisfied.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Agent and Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct (it being understood and agreed that the representations and warranties made on the Closing Date are deemed to be made concurrently with the consummation of the Transactions occurring on the Closing Date):

4.1. Organization; Requisite Power and Authority; Qualification. Each Credit Party and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified on **Schedule 4.1**, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. Capital Stock and Ownership. The Capital Stock of each of Credit Party and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on **Schedule 4.2** or disclosed in the Registration Statement, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which any Credit Party or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of any Credit Party or any of its Subsidiaries outstanding that upon conversion or exchange would require, the issuance by any Credit Party or any of its Subsidiaries of any additional Capital Stock of any Credit Party or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of any Credit Party or any of its Subsidiaries. **Schedule 4.2** correctly sets forth the ownership interest of PubCo and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date after giving effect to the Transactions occurring on the Closing Date.

4.3. Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4. No Conflict. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the Transactions contemplated by the Credit Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to any Credit Party or any of its Subsidiaries, any of the Organizational Documents of any Credit Party or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government binding on any Credit Party or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contractual Obligation of any Credit Party or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of any Credit Party or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of any Credit Party or any of its Subsidiaries, except for such approvals or consents that have been obtained on or before the Closing Date and have been disclosed in writing to Lenders.

4.5. Governmental Consents. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the Transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6. Binding Obligation. Each Credit Document required to be delivered hereunder has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7. Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, no Credit Party or any of its Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and that in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party and any of its Subsidiaries, taken as a whole.

4.8. Projections . On and as of the Closing Date, the projections of PubCo and its Subsidiaries for the period of Fiscal Year 2020 through and including Fiscal Year 2024, including monthly projections for each month during the Fiscal Year in which the Closing Date takes place, (the "**Projections**") are based on good faith estimates and assumptions made by the management of PubCo and its Subsidiaries; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material; provided, further, as of the Closing Date, management of PubCo and its Subsidiaries believed that the Projections were reasonable and attainable.

4.9. No Material Adverse Change. Since September 30, 2019, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10. No Restricted Junior Payments. Since September 30, 2019, no Credit Party nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to **Section 6.5**.

4.11. Adverse Proceedings. There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither PubCo nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12. Payment of Taxes . All income and other material non-income Tax returns and reports of any Credit Party or its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes due and payable and all assessments, fees and other governmental charges upon any Credit Party and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable (other than any Taxes (i) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of any Credit Party and/or its applicable Subsidiary, as the case may be or (ii) that do not exceed $250,000 in the aggregate). There is no proposed tax assessment against any Credit Party or any of its Subsidiaries that is not being actively contested by any Credit Party or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13. Properties.

(a) Title. Each Credit Party and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in **Section 4.7** and in the most recent financial statements delivered pursuant to **Section 5.1**, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under **Section 6.9**. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, **Schedule 4.13(b)** contains a true, accurate and complete list of (i) all Real Estate Assets, including an indication as to whether each such Real Estate Asset constitutes a Material Real Estate Asset within the meaning of clause (a) or (b) of the definition thereof, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in **clause (ii)** of the immediately preceding sentence is in full force and effect and the Credit Parties do not have Knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

(c) Intellectual Property.

(i) Part (i) of **Schedule 4.13(c)** is a complete and accurate list of all the Credit Parties' Registered Intellectual Property. All currently due maintenance fees, renewal fees, or similar fees for Registered Intellectual Property have been paid and all necessary documents and certificates in connection with Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining Registered Intellectual Property. All material items of Intellectual Property, whether or not listed on **Schedule 4.13(c)**, used in the operation of the business of any Credit Party as presently conducted shall continue in full effect, on identical terms and conditions immediately following the consummation of the Transactions contemplated by this Agreement as are in effect immediately prior to such consummation. The Intellectual Property used or held for use in and material to the conduct of business of each of the Credit Parties is valid, subsisting and enforceable.

(ii) Except as set forth in Part (ii) of **Schedule 4.13(c)**, (A) there are no pending suits, actions, claims, proceedings or investigations alleging that any Credit Party is infringing, misappropriating, diluting or otherwise violating any Intellectual Property of any Person or that seek to limit or challenge the validity, enforceability, ownership or use of the Intellectual Property owned by the Credit Parties, (B) no Credit Party has received any claim or correspondence from any Person alleging that any Credit Party is infringing, misappropriating, diluting or otherwise violating any Intellectual Property of any Person or that seek to limit or challenge the validity, enforceability, ownership or use of the Intellectual Property owned by any Credit Party and used in the business of any Credit Party, and (C) to the Knowledge of the Credit Parties, no Credit Party nor the business of any Credit Party infringes, misappropriates, dilutes or otherwise violates the Intellectual Property of any Person.

4.14. Environmental Matters. No Credit Party nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Credit Party nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of the Credit Party's and its Subsidiaries' Knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against any Credit Party or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Credit Party nor any of its Subsidiaries nor, to any Credit Party's Knowledge, any predecessor of any Credit Party or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of any Credit Party's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent, except, in each case, where such generation, transportation, treatment, storage, or disposal could not reasonably be expected to result in a Material Adverse Effect. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to any Credit Party or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity that individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15. No Defaults. No Credit Party nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.16. Material Contracts. **Schedule 4.16** contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and, together with any updates provided pursuant to **Section 5.1(l)**, (a) all such Material Contracts are in full force and effect, (b) no defaults currently exist thereunder (other than as described on **Schedule 4.16** or in such updates) and (c) each Material Contract that has not been amended, waived, or otherwise modified except as permitted under this Agreement.

4.17. Governmental Regulation. No Credit Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation that may limit its ability to incur Indebtedness or that may otherwise render all or any portion of the Obligations unenforceable. No Credit Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. Federal Reserve Regulations; Exchange Act.

(a) No Credit Party nor any of its Subsidiaries 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.

(b) No portion of the proceeds of any Credit Extension has or will be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

4.19. Employee Matters. No Credit Party nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any Credit Party or any of its Subsidiaries, or to the best Knowledge of the Credit Parties, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Credit Party or any of its Subsidiaries or to the best Knowledge of the Credit Parties, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any Credit Party or any of its Subsidiaries, and (c) to the best Knowledge of the Credit Parties, no union representation question existing with respect to the employees of any Credit Party or any of its Subsidiaries and, to the best Knowledge of the Credit Parties, no union organization activity that is taking place, except (with respect to any matter specified in **clause (a)**, **(b)** or **(c)** above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect. No Credit Party has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("**WARN**") or any similar federal or state law that remains unpaid or unsatisfied and could reasonably be expected to result in a Material Adverse Effect or is in excess of $100,000, individually, or $250,000, in the aggregate for all such liabilities.

4.20. Employee Benefit Plans. Each Credit Party, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter that would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any Credit Party, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws and except as described on **Schedule 4.20**, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by any Credit Party, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of any Credit Party, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Each Credit Party, each of its Subsidiaries and each of their ERISA Affiliates have complied in all material respects with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21. Certain Fees. No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by this Agreement, except as payable to Agents and Lenders and except in connection with the Specified IPO Transactions as set forth in the Registration Statement or otherwise disclosed to Administrative Agent on or prior to the date hereof.

4.22. Solvency. Credit Parties, taken as a whole, are and, upon the incurrence of any Credit Extension by any Credit Party on any date on which this representation and warranty is made, will be, Solvent.

4.23. Compliance with Statutes, etc.

(a) Each Credit Party and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property, including compliance with all applicable (i) Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of any Credit Party or any of its Subsidiaries (it being understood, in the case of any statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities that are specifically referred to in any other provision of this Agreement, the Credit Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision) and (ii) Consumer Finance Laws, in each case under this clause (a) except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Each Credit Party and its Subsidiaries is in compliance in all material respects with all applicable federal and state privacy and data protection laws concerning Customer Information. Each Credit Party and its Subsidiaries have implemented and maintain administrative, physical and technical safeguards to protect Customer Information that complies in all material respects with (i) the Credit Parties' own respective rules, policies, and procedures, (ii) all applicable laws whose subject matter is the privacy or protection of Customer Information, (iii) the Payment Card Industry Data Security Standard (PCI DSS) and (iv) contracts into which any Credit Party has entered or by which it is otherwise bound.

4.24. Disclosure.

(a) No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of any Credit Party or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party or any of its Subsidiaries, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by any Credit Party or any of its Subsidiaries to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or that should upon the reasonable exercise of diligence be known) to any Credit Party or any of its Subsidiaries (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.25. Sanctions; Anti-Corruption and Anti-Bribery Laws; Anti-Terrorism and Anti-Money Laundering Laws; Etc.

(a) No Credit Party, any of its Subsidiaries, or any of their respective Directors, officers or, to the Knowledge of any Credit Party, employees, agents, advisors or Affiliates is a Sanctioned Person. Each Credit Party and its Subsidiaries and their respective Directors, officers and, to the Knowledge of any Credit Party, employees, agents, advisors and Affiliates is in compliance with and has not violated (i) Sanctions, (ii) Anti-Corruption and Anti-Bribery Laws, and (iii) Anti-Terrorism and Anti-Money Laundering Laws. No part of the proceeds of any Credit Extension has or will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Sanctioned Person or in any Sanctioned Country, (B) 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 and Anti-Bribery Laws, or (C) otherwise in any manner that would result in a violation of Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, or Anti-Corruption and Anti-Bribery Laws by any Person.

(b) Each Credit Party and its respective Subsidiaries have established and currently maintain policies, procedures and controls that are designed (and otherwise comply with applicable law) to ensure that each Credit Party, its respective Subsidiaries, and each Controlled Entity, and each of their respective Directors, officers, employees and agents, is and will continue to be in compliance (in the case of employees and agents, in all material respects) with all applicable current and future Sanctions, Anti-Terrorism and Anti-Money Laundering Laws, and Anti-Corruption and Anti-Bribery Laws.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until Payment in Full of all Obligations, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this **Section 5**.

5.1. Financial Statements and Other Reports. Unless otherwise provided below, the Company Representative will deliver to Administrative Agent and Lenders:

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of each month (including months that began prior to the Closing Date for which financial statements were not previously delivered commencing with the month ending December 31, 2019), the consolidated and consolidating balance sheet of PubCo and its Subsidiaries as at the end of such month and the related consolidated and consolidating statements of income of PubCo and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a schedule of reconciliations for any reclassifications with respect to prior months or periods (and, in connection therewith, copies of any restated financial statements for any impacted month or period) a Financial Officer Certification and a Narrative Report with respect thereto, and any other operating reports prepared by management for such period;

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year, the consolidated and consolidating balance sheets of PubCo and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of PubCo and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year, (i) the consolidated balance sheets of PubCo and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of PubCo and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national standing selected by PubCo, and reasonably satisfactory to Administrative Agent (which report and accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of PubCo and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that their audit examination has included a review of the terms of the Credit Documents, (2) whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof, and (3) that nothing has come to their attention that causes them to believe that the information contained in any Compliance Certificate is not correct or that the matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof (such report shall also include (x) a detailed summary of any audit adjustments; (y) a reconciliation of any audit adjustments or reclassifications to the previously provided monthly or quarterly financials; and (z) restated monthly or quarterly financials for any impacted periods);

(d) Compliance Certificate. Together with each delivery of financial statements of PubCo and its Subsidiaries pursuant to **Sections 5.1(b)** and **5.1(c)**, a duly executed and completed Compliance Certificate. Documents required to be delivered pursuant to **Sections 5.1(a)**, **(b)** or **(c)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically by email notice to the recipient clearly indicating the relevant sections of this Agreement requiring reporting thereof and including electronic copies or links accessible by Administrative Agent and each Lender and, if so delivered, shall be deemed to have been delivered on the date on which both such notice has been provided and such documents are posted on any Company's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that Company Representative shall notify Administrative Agent and each Lender (by electronic mail) of the posting of any such documents and provide to Administrative Agent or any Lender by electronic mail electronic versions (i.e., soft copies) of such documents upon request. Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above.

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements or otherwise as a result of the non-GAAP treatment of "operating" and "capital" leases required under **Section 1.2**, the consolidated financial statements of PubCo and its Subsidiaries delivered pursuant to **Sections 5.1(b)** or **5.1(c)** will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in or departure from accounting principles and policies been made, then, together with each delivery of such financial statements after such change or departure and continuing with each subsequent delivery until such reconciliations are no longer necessary or appropriate in connection with financial calculations hereunder, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(f) Notice of Default. Promptly and in any event within three Business Days after any officer of any Credit Party obtaining Knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Credit Party with respect thereto; (ii) that any Person has given any notice to PubCo or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in **Section 8.1(b)**; or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Credit Parties have taken, are taking and propose to take with respect thereto;

(g) Notice of Adverse Proceedings. Promptly and in any event within three Business Days after any officer of any Credit Party obtaining Knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by the Company Representative to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either **clause (i)** or **(ii)** if adversely determined, could be reasonably expected to result in a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Credit Parties to enable Lenders and their counsel to evaluate such matters;

(h) ERISA and Employment Matters. (i) Promptly and in any event within three Business Days after becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; (ii) promptly and in any event within five Business Days after the same is available to any Credit Party, copies of (A) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (B) all notices received by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (C) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent or any Lender shall reasonably request; and (iii) promptly and in any event within five Business Days after any Credit Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Credit Party;

(i) Financial Plan. As soon as practicable and in any event no later than thirty days prior to the beginning of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Loans (a "**Financial Plan**"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of PubCo and its Subsidiaries for each such Fiscal Year, (ii) forecasted consolidated statements of income and cash flows of PubCo and its Subsidiaries for each month of each such Fiscal Year, (iii) forecasts demonstrating projected compliance with the requirements of **Section 6.8** through the final maturity date of the Loans, and (iv) forecasts demonstrating adequate liquidity through the final maturity date of the Loans, together, in each case, with an explanation of the assumptions on which such forecasts are based, all in form and substance reasonably satisfactory to Agents;

(j) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, one or more certificates reasonably requested by Administrative Agent from the Credit Parties' insurance broker(s) together with accompanying endorsements, in each case in form and substance satisfactory to Administrative Agent, and a report outlining all material insurance coverage maintained as of the date of such report by PubCo and its Subsidiaries and all material insurance coverage planned to be maintained by PubCo and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) Notice of Change in Board of Directors. With reasonable promptness and in any event within ten Business Days after such change, written notice of any change in the Board of Directors of any Credit Party;

(l) Notice Regarding Material Contracts. Promptly, and in any event within ten Business Days (i) after any Material Contract of PubCo or any of its Subsidiaries is terminated or cancelled, expires and is not renewed or is amended in a manner that is materially adverse to PubCo or such Subsidiary, as the case may be, or (ii) any new Material Contract, the termination of which would reasonably be likely to result in a Material Adverse Effect, is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Administrative Agent (to the extent such delivery is permitted by the terms of any such Material Contract; provided, no such prohibition on delivery shall be effective if it were bargained for by PubCo or its applicable Subsidiary with the intent of avoiding compliance with this **Section 5.1(l)**), and an explanation of any actions being taken with respect thereto;

(m) Environmental Reports and Audits. As soon as practicable and in any event within ten Business Days following receipt thereof, copies of all environmental audits, reports, and notices with respect to environmental matters at any Facility or that relate to any environmental liabilities of PubCo or its Subsidiaries that, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(n) Information Regarding Collateral. The Company Representative will furnish to Collateral Agent prior written notice of any change (i) in any Credit Party's legal name, (ii) in any Credit Party's identity or corporate structure, (iii) in any Credit Party's jurisdiction of organization or formation, or (iv) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. The Credit Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. The Credit Parties shall also promptly notify Collateral Agent if any material portion of the Collateral is lost, stolen, damaged or destroyed;

(o) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to **Section 5.1(c)**, the Company Representative shall deliver to Collateral Agent a certificate of an Authorized Officer confirming that there has been no change in such information since the date of the Collateral Questionnaire delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this **Section 5.1(o)** and/or identifying such changes;

(p) Aging Reports. Together with each delivery of financial statements of the Credit Parties pursuant to **Section 5.1(a)**, (i) a summary of the accounts receivable aging report of each Credit Party as of the end of such period, and (ii) a summary of accounts payable aging report of each Credit Party as of the end of such period;

(q) Boat Manufacturer Contracts. Together with each delivery of financial statements of the Credit Parties pursuant to **Section 5.1(a)**, an updated list of all boat manufacturer contracts then in effect.

(r) Tax Returns. As soon as practicable and in any event within fifteen days following the filing thereof, copies of each federal income tax return filed by or on behalf of any Credit Party;

(s) KYC Documentation.

(i) As soon as practicable and in any event within ten Business Days following Administrative Agent's or any Lender's request therefor after the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act; and

(ii) As soon as practicable and in any event within five Business Days following Administrative Agent's or any Lender's request therefor after the Closing Date in connection with any Permitted Acquisition or change in ownership of any Credit Party, any Credit Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Credit Party; and

(t) Other Information. (i) Promptly and in any event within ten Business Days of their becoming available, copies of (A) all financial statements, reports, notices and proxy statements sent or made available generally by PubCo to its Security holders acting in such capacity or by any Subsidiary of PubCo to its Security holders acting in such capacity, (B) all regular and periodic reports and all registration statements and prospectuses, if any, filed by PubCo or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any Governmental Authority, (C) all press releases and other statements made available generally by PubCo or any of its Subsidiaries to the public concerning material developments in the business of PubCo or any of its Subsidiaries; (ii) promptly after any request, such other information and data with respect to PubCo or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender; and (iii) to the extent practical, together with any delivery of financial information required under this **Section 5.1**, the Credit Parties shall deliver to Administrative Agent an Excel spreadsheet containing such financial information.

5.2. Existence. Except as otherwise permitted under **Section 6.9**, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses (including Intellectual Property licenses) and permits material to its business; provided, no Credit Party (other than the Companies with respect to their existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3. Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than PubCo or any of its Subsidiaries).

5.4. Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of PubCo and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5. Insurance. The Credit Parties shall maintain or cause to be maintained, with financially sound and reputable insurers, (a) business interruption insurance reasonably satisfactory to Administrative Agent, and (b) such casualty insurance, public liability insurance, third-party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of PubCo and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, the Credit Parties shall maintain or cause to be maintained (i) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (ii) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) in the case of each liability insurance policy, name Collateral Agent, for the benefit of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of Secured Parties as the lender loss payee thereunder, and (iii) in each case, provide for at least thirty days' (or 10 days' in the case of cancellation for nonpayment of premium) prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6. Books and Records; Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true, and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

5.7. Lenders Meetings. The Credit Parties will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at the Credit Parties' corporate offices (or telephonically, via video conference, or at such other location as may be agreed to by the Company Representative and Administrative Agent or, if agreed to by Administrative Agent in its sole discretion, via a conference call or other teleconference) at such time as may be agreed to by the Company Representative and Administrative Agent.

5.8. Compliance with Laws.

(a) Each Credit Party will comply in all material respects, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply in all material respects, with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws) and all Consumer Finance Laws, noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (it being understood, in the case of any laws, rules, regulations, and orders specifically referred to any other provision of this Agreement, the Credit Parties shall also be required to represent and/or comply with, as applicable, the express terms of such provision), and (ii) all Sanctions, Anti-Corruption and Anti-Bribery Laws, and Anti-Terrorism and Anti-Money Laundering Laws in accordance with **Section 4.25(a)**. Each Credit Party shall, and shall cause each of its Subsidiaries to, maintain the policies and procedures described in **Section 4.25(b)**.

(b) Each Credit Party will comply in all material respects, and shall cause each of its Subsidiaries, to comply in all material respects with all applicable federal and state privacy and data protection laws concerning Customer Information. Credit Parties have implemented and shall maintain administrative, physical and technical safeguards to protect Customer Information that complies with (i) the Credit Parties' own respective rules, policies, and procedures, (ii) all applicable laws whose subject matter is the privacy or protection of Customer Information, (iii) the Payment Card Industry Data Security Standard (PCI DSS) and (iv) contracts into which any Credit Party has entered or by which it is otherwise bound.

5.9. Environmental.

(a) Environmental Disclosure. The Credit Parties will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of PubCo or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (B) any remedial action taken by the Credit Parties or any other Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (C) any Credit Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could reasonably be expected to cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by PubCo or any of its Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported to any Governmental Authority, and (C) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether PubCo or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of Capital Stock, assets, or property by PubCo or any of its Subsidiaries that could reasonably be expected to (1) expose PubCo or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (2) affect the ability of PubCo or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by PubCo or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject PubCo or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this **Section 5.9(a)**.

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10. Additional Guarantors. In the event that any Person becomes a Subsidiary of any Credit Party, such Credit Party shall, within thirty days (or such longer period as is extended by Collateral Agent in its sole discretion) of such Person becoming a Subsidiary, (a) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in connection therewith, including such documents, instruments, agreements, and certificates as are similar to those described in **Sections 3.1(b)**, **3.1(h)**, **3.1(i)**, **3.1(j)**, **3.1(k)**, and **3.1(l)** and, with respect to any Material Real Estate Assets of such Subsidiary, **Section 5.11**. In addition, such Credit Party shall deliver, or cause such Subsidiary to deliver, as applicable, all such documents, instruments, agreements, and certificates as are reasonably requested by Collateral Agent in order to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, in 100% of the Capital Stock of such Subsidiary under the Pledge and Security Agreement (including, as applicable, original certificates evidencing such Capital Stock and related powers or instruments of transfer executed in blank, as applicable). With respect to each such Subsidiary, the Company Representative shall send to Administrative Agent, within thirty days of such Person becoming a Subsidiary (or at such later time as is approved by Collateral Agent in its sole discretion), written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of a Credit Party, and (ii) all of the data required to be set forth on **Schedules 4.1** and **4.2** with respect to all Subsidiaries of each Credit Party; provided, such written notice shall be deemed to supplement **Schedules 4.1** and **4.2** for all purposes hereof automatically upon such Person becoming a Subsidiary.

5.11. Additional Locations and Material Real Estate Assets.

(a) Fee-Owned Real Estate Assets. In the event that any Credit Party acquires a fee-owned Material Real Estate Asset or a fee-owned Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party shall promptly notify Collateral Agent thereof, and on the same date as acquiring such fee-owned Material Real Estate Asset, or within thirty days after any Real Estate Asset owned on the Closing Date becomes a fee-owned Material Real Estate Asset (or at such later time as is approved by Collateral Agent in its sole discretion), shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgaged Real Estate Documents with respect to each such fee-owned Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such fee-owned Material Real Estate Asset.

(b) Leasehold Real Estate Assets. In the event that any Credit Party acquires a Leasehold Property that is a Material Real Estate Asset after the Closing Date or a Leasehold Property becomes a Material Real Estate Asset after the Closing Date, then such Credit Party, contemporaneously with leasing such Material Real Estate Asset, or within thirty days (or at such later time as is approved by Collateral Agent in its sole discretion) after any leased Real Estate Asset becomes (including as a result of any rent increase or any lease extension, renewal, or restatement) a Material Real Estate Asset (or at such later time as is approved by Collateral Agent in its sole discretion), shall take commercially reasonable efforts to cause to be executed and delivered all Leasehold Property Documents and Mortgaged Real Estate Documents with respect to each such Leasehold Property that Collateral Agent shall reasonably request; provided that (i) the requirements in the immediately preceding sentence shall be deemed satisfied with respect to any Material Real Estate Asset leased from a non-Affiliate lessor to the extent that Company Representative has delivered evidence reasonably satisfactory to Collateral Agent that the Credit Parties have used commercially reasonable efforts to satisfy such requirements and are unable to satisfy clauses (a) and (b) of the definition of Leasehold Property Documents, and (ii) the requirement to satisfy clause (d) of the definition of Leasehold Property Documents shall be deemed satisfied to the extent that Company Representative has delivered evidence reasonably satisfactory to Collateral Agent that the Credit Parties have used commercially reasonable efforts to and are unable to satisfy such requirement . Without limiting the foregoing, upon any Credit Party acquiring any new Leasehold Property at which any dealership is operated or entering, restating, renewing or extending the lease for any existing Leasehold Property at which any dealership is operated, such Credit Party shall deliver to Collateral Agent a report of trailing twelve month Dealership Level Revenue for such dealership.

(c) Appraisals. In addition to the foregoing, the Companies shall, at the request of Collateral Agent, deliver, from time to time, to Collateral Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Mortgage.

5.12. Intellectual Property. In the event that any Credit Party acquires or develops any Registered Intellectual Property following the Closing Date, then such Credit Party, promptly after acquiring such Registered Intellectual Property, shall take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments and agreements that Collateral Agent shall reasonably request in writing to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording requirements with any governmental or other equivalent institution, a perfected First Priority Lien in such Registered Intellectual Property.

5.13. Further Assurances . At any time or from time to time upon the request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents or to perfect, achieve better perfection of, or renew the rights of Collateral Agent for the benefit of Secured Parties with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by PubCo or any Subsidiary that may be deemed to be part of the Collateral). In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by a First Priority Lien on the Collateral (and not the Floorplan Collateral), including all of the outstanding Capital Stock of the Companies and their Subsidiaries.

5.14. Miscellaneous Covenants. Unless otherwise consented to by Agents and Requisite Lenders:

(a) Separateness. PubCo will and will cause each of its Subsidiaries to: (i) maintain entity records and books of account separate from those of any other entity that is an Affiliate of such entity; (ii) not commingle its funds or assets with those of any other entity that is an Affiliate of such entity (unless such Affiliate is a Credit Party); and (iii) provide that its Board of Directors will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of other entities.

(b) Communication with Accountants. Each Credit Party executing this Agreement authorizes Administrative Agent to communicate directly with such Credit Party's independent certified public accountants and authorizes and shall instruct those accountants to communicate (including the delivery of audit drafts and letters to management) with Administrative Agent and each Lender information relating to any Credit Party or any of its Subsidiaries with respect to the business, results of operations and financial condition of any Credit Party or any of its Subsidiaries; provided, however, that Administrative Agent or the applicable Lender, as the case may be, shall provide the Company Representative with notice at least two Business Days prior to first initiating any such communication.

(c) Activities of Management. Each member of the senior executive management team of each Credit Party shall devote all or substantially all of his or her professional working time, attention, and energies to the management of the businesses of the Credit Parties; provided that, Philip Austin Singleton, Jr. may engage in other activities consistent with past practice prior to the Closing Date.

5.15. Post-Closing Matters. Each Credit Party shall, and shall cause each of its Subsidiaries to, as applicable, satisfy the requirements set forth on **Schedule 5.15** on or before the respective date specified for each such requirement or such later date as is agreed to by Administrative Agent in its sole discretion.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until Payment in Full of all Obligations, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this **Section 6**.

6.1. Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of PubCo (incurred in connection with any Permitted Acquisition or otherwise consented to by Administrative Agent and Requisite Lenders) or of any Guarantor Subsidiary, in each case owing to a Company or to any other Guarantor Subsidiary, or of a Company owing to any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be evidenced by the Intercompany Note and Subordination, (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the Payment in Full of all Obligations pursuant to the terms of the Intercompany Note and Subordination, and (iii) any payment by PubCo or any such Guarantor Subsidiary under any guaranty of the Obligations shall result in a pro rata reduction of the amount of any Indebtedness owed by such Guarantor Subsidiary to a Company or to any of its Subsidiaries for whose benefit such payment is made;

(c) Indebtedness incurred by PubCo (in connection with a Permitted Acquisition), Holdings or any of its Subsidiaries arising from agreements providing for customary indemnification or from customary guaranties or letters of credit, surety bonds or performance bonds securing the performance of the Companies or any such Subsidiary pursuant to such agreements in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of Holdings or any of its Subsidiaries;

(d) Indebtedness that may be deemed to exist pursuant to any performance, surety, appeal or similar bonds or statutory obligations incurred in the ordinary course of business, and guarantee obligations in respect of any such Indebtedness;

(e) Indebtedness in respect of netting services, overdraft protections and other services provided in connection with Deposit Accounts in the ordinary course of business;

(f) Indebtedness constituting accounts payable incurred in the ordinary course of business and not more than 60 days past due (excluding, for the avoidance of doubt, any inventory floorplan financing and excluding any accounts payable being disputed in good faith);

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Subsidiaries;

(h) guaranties by any Company of Indebtedness of a Guarantor Subsidiary or guaranties by a Subsidiary of any Company of Indebtedness of such Company or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this **Section 6.1**; provided, that if the Indebtedness that is being guaranteed is unsecured and/or subordinate to the Obligations (in payment or Lien priority), then such guaranties shall also be unsecured and/or subordinated to the Obligations to the same extent as such guaranteed Indebtedness;

(i) Indebtedness described on **Schedule 6.1**, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions thereof, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding **clause (i)** or **(ii)** above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) Indebtedness in an aggregate amount not to exceed $5,000,000 (inclusive of any Indebtedness of similar types described on **Schedule 6.1**) at any time outstanding consisting of (x) Capital Lease Obligations and (y) other purchase money Indebtedness (including any Indebtedness acquired in connection with a Permitted Acquisition); provided, in the case of **clause (x)**, that any such Indebtedness shall be secured only by the asset subject to such Capital Lease, and, in the case of **clause (y)**, that any such Indebtedness shall (1) be secured only by the asset acquired in connection with the incurrence of such Indebtedness and (2) constitute not less than 50% of the aggregate consideration paid with respect to such asset;

(k) Indebtedness constituting Approved Subordinated Debt so long as (i) such Indebtedness is subject to subordination terms in form and substance satisfactory to Administrative Agent and Requisite Lenders and/or is structurally subordinated to the liabilities of the Companies in a manner satisfactory to Administrative Agent and Requisite Lenders and (ii) the aggregate outstanding principal amount of all such Indebtedness, at the time any such Indebtedness is incurred, does not exceed the Approved Subordinated Debt Cap after giving effect to such incurrence;

(l) Indebtedness constituting an Approved Floorplan Financing so long as (i) such Indebtedness is subject to the Intercreditor Agreement and (ii) the aggregate outstanding principal amount of all such Indebtedness does not exceed $500,000,000 at any time, unless otherwise consented to by Administrative Agent and Requisite Lenders;

(m) Indebtedness consisting of obligations under the TCF Agreement so long as the aggregate outstanding principal amount of all such Indebtedness does not exceed $1,000,000 at any time outstanding;

(n) Indebtedness incurred by any Credit Party for purposes of financing the premiums for insurance policies purchased by and for the benefit of any Credit Parties in the ordinary course of business; provided that such Indebtedness is on customary terms and is either unsecured or secured solely by Liens permitted by **Section 6.2(p)**; and

(o) to the extent constituting Indebtedness, obligations in respect of Permitted TRA Payments, Deferred TRA Obligations, and other obligations pursuant to the Tax Receivable Agreement as in effect on the Closing Date.

6.2. Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of such Credit Party or any of its Subsidiaries, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or any income, profits, or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits, or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for Taxes if obligations with respect to such Taxes are not yet due or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP so long as the aggregate amount of such Taxes does not exceed $250,000 at any time outstanding;

(c) statutory Liens of landlords, banks (and rights of set off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case that do not and will not interfere in any material respect with the ordinary conduct of the business of Holdings or any of its Subsidiaries and that, in the aggregate for any parcel of real property subject thereto, do not materially detract from the value of such parcel;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any customary cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by Holdings or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of any Company or Subsidiary;

(l) Liens described on **Schedule 6.2** or on a title report delivered pursuant to **Section 3.1(h)**, **Section 5.11** or **Section 5.15**;

(m) Liens securing Capital Leases and purchase money Indebtedness permitted pursuant to **Section 6.1(j)**; provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness or subject to such Capital Lease, as the case may be;

(n) Liens on the Floorplan Collateral securing the Approved Floorplan Financing so long as such Liens are subject to the Intercreditor Agreement and do not attach to any Collateral;

(o) Liens securing Indebtedness permitted under **Section 6.1(m)**, so long as such Liens only encumber inventory manufactured by BRP Inc. or one of its Subsidiaries that is financed pursuant to the TCF Agreement and do not attach to any Collateral; and

(p) customary Liens securing Permitted Premium Financing, provided that such Liens attach solely to the insurance policies associated with such Permitted Premium Financing and the proceeds of such insurance policies.

Notwithstanding anything in this **Section 6.2** to the contrary, in no event shall any obligations of any Credit Party under any Hedge Agreement be secured by any Lien.

6.3. Equitable Lien. If any Credit Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Permitted Liens, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4. No Further Negative Pledges . Except with respect to (a) specific property encumbered to secure payment of particular permitted Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (c) restrictions on liens on the assets of the Companies pursuant to the Approved Floorplan Financing Documents, no Credit Party shall enter into or permit any of its Subsidiaries to enter into any agreement prohibiting, or triggering any requirement for equitable and ratable sharing of Liens or any similar obligations upon, the creation or assumption of any Lien upon any Credit Party's properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

6.5. Restricted Junior Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) Any Subsidiary of the Companies may declare and pay dividends or make other distributions to any Credit Party that owns Capital Stock in such Subsidiary;

(b) The following Restricted Junior Payments shall be permitted:

(i) payments made by OWAO to Holdings (and by Holdings to PubCo) in an aggregate amount not to exceed $2,000,000 in any trailing twelve-month period, to the extent necessary to permit Holdings and the PubCo Holdings Group to pay general administrative costs and expenses;

(ii) for so long as Holdings remains a partnership or disregarded entity for U.S. federal income tax purposes, payments made by OWAO to Holdings (and by Holdings to its equity holders) to the extent necessary for Permitted Tax Distributions;

(iii) for so long as Holdings remains a partnership or disregarded entity for U.S. federal income tax purposes, Permitted TRA Payments by Holdings (and by OWAO to Holdings for such purposes):

(A) if the Senior Leverage Ratio determined on a pro forma basis before and after giving effect to such payment does not exceed 2.00:1.00, Holdings may make Permitted TRA Payments in an aggregate amount not to exceed $5,000,000 in the trailing twelve (12) month period;

(B) if the Senior Leverage Ratio determined on a pro forma basis before and after giving effect to such payment does not exceed 1.50:1.00, Holdings may make Permitted TRA Payments in an aggregate amount not to exceed $10,000,000 in the trailing twelve (12) month period; and

(C) if the Senior Leverage Ratio determined on a pro forma basis before and after giving effect to such payment does not exceed 1.00:1.00, Holding may make Permitted TRA Payments in an unlimited amount in the trailing twelve (12) month period; and

(iv) subject to any applicable subordination terms therefor, scheduled payments, or payments made by OWAO to Holdings in order to permit Holdings to make scheduled payments, of accrued interest and principal (or similar payments or distributions) in respect of any Approved Subordinated Debt, provided, with respect to each such payment in respect of the Approved Subordinated Debt, the Chief Financial Officer of Holdings shall have delivered an Officer's Certificate representing and warranting and otherwise demonstrating and calculating to the satisfaction of Administrative Agent that, as of the date of such payment, (A) Consolidated Liquidity is at least $3,000,000 after giving effect to such payment, and (B) on a pro forma basis before and after giving effect to such payment (as if such payment was made during the applicable test period), the Companies are in compliance as of such date with the financial covenants set forth in **Section 6.8** for the Fiscal Quarter most recently ended on a pro forma basis assuming that the applicable covenant levels set forth therein with respect to the maximum Senior Leverage Ratio and maximum Total Leverage Ratio permitted thereunder are 0.25 times more restrictive;

in each case under this **Section 6.5(b)**, so long as the amount of any such Restricted Junior Payment is applied for such purpose and, except in the case of clause (b)(i), no Default or Event of Default shall have occurred and be continuing or shall be caused thereby;

(c) PubCo may issue Capital Stock (other than Disqualified Capital Stock) pursuant to incentive compensation plans in favor of employees so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby;

(d) PubCo or, with the consent of Administrative Agent and Requisite Lenders, Holdings may issue Capital Stock in connection with a Permitted Acquisition so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby;

(e) To the extent constituting Restricted Junior Payments, (i) the Credit Parties may consummate the Specified IPO Transactions on the Closing Date and (ii) OWAO may make to Holdings (and Holdings may make to its equity holders (determined as of the date of the Qualified IPO)) Pre-IPO Related Tax Distributions in accordance with Section 2.1(b) of the Master Reorganization Agreement; and

(f) To the extent constituting Restricted Junior Payments, the Credit Parties may consummate Permitted Exchanges so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby.

Notwithstanding anything in this **Section 6.5** to the contrary, no amount shall be permitted to be distributed by any Credit Party to pay, or otherwise in connection with, any Tax resulting from the cancellation or discharge of Indebtedness.

6.6. Restrictions on Subsidiary Distributions. Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Companies to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by the Companies or any other Subsidiary of the Companies, (b) repay or prepay any Indebtedness owed by such Subsidiary to any Company or any other Subsidiary of any Company, (c) make loans or advances to any Company or any other Subsidiary of any Company, or (d) transfer any of its property or assets to any Company or any other Subsidiary of any Company other than restrictions (i) in agreements evidencing purchase money Indebtedness or Capital Leases permitted by **Section 6.1(j)** that impose restrictions on the property so acquired or subject to such Capital Lease, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement, and (iv) contained in the Approved Floorplan Financing Documents.

6.7. Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment (including if made as an Acquisition) in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned by any Credit Party as of the Closing Date (after giving effect to the Specified IPO Transactions) in any Subsidiary and equity Investments made after the Closing Date (i) by the PubCo Holdings Group in Holdings, (ii) by Holdings in OWAO, (iii) by any Company in any other Company and (iv) by any Company in any Wholly-Owned Guarantor Subsidiaries of such Company;

(c) Investments (i) in any Securities voluntarily accepted (or received in connection with Debtor Relief Law applicable to a debtor) in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries;

(d) intercompany loans to the extent permitted under **Section 6.1(b)**;

(e) Investments in any Company or any of its Guarantor Subsidiaries for purposes of making Consolidated Capital Expenditures in respect of fixed assets directly owned by any Company or any of its Guarantor Subsidiaries;

(f) Investments made in connection with Permitted Acquisitions permitted pursuant to **Section 6.9**;

(g) Investments made in connection with Permitted Exchanges to the extent permitted under **Section 6.5(f)**;

(h) Investments described on **Schedule 6.7**;

(i) to the extent constituting Investments, the Credit Parties may consummate the Specified IPO Transactions; and

(j) other Investments (other than Investments of the types listed in **Section 6.7(a) – (i)**) in an aggregate amount not to exceed $500,000 at any time.

Notwithstanding anything in this **Section 6.7** to the contrary, (A) in no event shall any Credit Party make any Investment that results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of **Section 6.5** and (B) in no event shall any Credit Party make any Investments in any Joint Venture or any Person that is not a Credit Party, or does not become a Credit Party in accordance with **Section 5.10** in connection with such Investment (including any such Investments consisting of otherwise permitted intercompany loans or Permitted Acquisitions), exceeding $250,000 at any time outstanding during the term of this Agreement or if any Default or Event of Default has occurred and is continuing at the time such Investment is made.

6.8. Financial Covenants.

(a) Fixed Charge Coverage Ratio. The Credit Parties shall not permit the Fixed Charge Coverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2020, to be less than the correlative ratio indicated:

Fiscal Quarter Ending	Fixed Charge Coverage Ratio
March 31, 2020 and thereafter	1.50:1.00

(b) Senior Leverage Ratio. The Credit Parties shall not permit the Senior Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2020, to exceed the correlative ratio indicated:

Fiscal Quarter Ending	Senior Leverage Ratio
March 31, 2020	2.50:1.00
June 30, 2020	2.50:1.00
September 30, 2020	2.50:1.00
December 31, 2020	2.50:1.00
March 31, 2021	2.50:1.00
June 30, 2021	2.50:1.00
September 30, 2021	2.50:1.00
December 31, 2021	2.25:1.00
March 31, 2022	2.25:1.00
June 30, 2022	2.00:1.00
September 30, 2022	2.00:1.00
December 31, 2022	1.75:1.00
March 31, 2023	1.75:1.00
June 30, 2023 and thereafter	1.50:1.00

(c) Total Leverage Ratio. The Credit Parties shall not permit the Total Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2020, to exceed the correlative ratio indicated:

Fiscal Quarter Ending	Total Leverage Ratio
March 31, 2020	3.00:1.00
June 30, 2020	3.00:1.00
September 30, 2020	3.00:1.00
December 31, 2020	3.00:1.00
March 31, 2021	3.00:1.00
June 30, 2021	3.00:1.00
September 30, 2021	3.00:1.00
December 31, 2021	2.75:1.00
March 31, 2022	2.75:1.00
June 30, 2022	2.50:1.00
September 30, 2022	2.50:1.00
December 31, 2022	2.25:1.00
March 31, 2023	2.25:1.00
June 30, 2023 and thereafter	2.00:1.00

(d) Minimum Consolidated Liquidity. The Credit Parties shall not permit Consolidated Liquidity to be less than $1,000,000 at any time.

6.9. Fundamental Changes; Disposition of Assets; Acquisitions. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation or any plan of division, or liquidate, wind up or dissolve or divide itself (or suffer any liquidation, dissolution or division), or Dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased (as lessee), or licensed (as licensee), or make any Acquisition, except:

(a) any Subsidiary of Holdings (other than the Companies) may be merged with or into any Company or any Wholly-Owned Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to any Company or any Guarantor Subsidiary; provided, in the case of such a merger involving a Company, such Company shall be the continuing or surviving Person, and in the case of any other such merger, a Wholly-Owned Guarantor Subsidiary shall be the continuing or surviving Person;

(b) any Company (other than OWAO) may be merged with or into any other Company;

(c) sales or other dispositions of assets that do not constitute Asset Sales;

(d) Asset Sales, the proceeds of which (i) are less than $250,000 with respect to any single Asset Sale or series of related Asset Sales, and (ii) when aggregated with the proceeds of all other Asset Sales made within the trailing twelve-month period, are less than $500,000; provided (A) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the Board of Directors of PubCo), (B) no less than 100% thereof shall be paid in Cash, and (C) the Net Asset Sale Proceeds thereof shall be applied as required by **Section 2.13(a)**;

(e) disposals of obsolete or worn out property;

(f) Permitted Acquisitions; and

(g) Investments made in accordance with **Section 6.7**.

6.10. Disposal of Subsidiary Interests. Except for (a) in connection with the Specified IPO Transactions and (b) any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of **Section 6.9**, no Credit Party shall, nor shall it permit any of its Subsidiaries to, (i) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except (A) to qualify Directors if required by applicable law, (B) the Capital Stock of any Subsidiary of PubCo that is formed or acquired in connection with a Permitted Acquisition may be transferred to Holdings and by Holdings to a Subsidiary that is a Credit Party, and (C) the Capital Stock of any Subsidiary of Holdings that is formed or acquired in connection with a Permitted Acquisition may be transferred by Holdings to a Subsidiary that is a Credit Party; or (ii) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Credit Party (subject to the restrictions on such disposition otherwise imposed hereunder), to qualify Directors if required by applicable law, or by Holdings in connection with a Permitted Acquisition.

6.11. Sales and Lease Backs. Except for the existing leaseback arrangements described on **Schedule 6.11**, no Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, that such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Subsidiaries), except pursuant to a sublease, or (b) intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease.

6.12. Transactions with Shareholders and Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate; provided, however, that the Credit Parties and their Subsidiaries may enter into or permit to exist any such transaction if both (a) Administrative Agent has consented thereto in writing prior to the consummation thereof and (b) the terms of such transaction are not less favorable to any Credit Party or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further, provided, that the foregoing restrictions shall not apply to (i) any transaction between the Companies and any Wholly-Owned Guarantor Subsidiary or any of them; (ii) reasonable and customary fees paid to members of the Board of Directors of any Credit Party or any of its Subsidiaries; (iii) reasonable and customary compensation arrangements for officers and other employees of any Credit Party or any of its Subsidiaries entered into in the ordinary course of business; (iv) the Specified IPO Transactions; (v) transactions described on **Schedule 6.12**; and (vi) Restricted Junior Payments to the extent permitted under **Section 6.5**. The Credit Parties shall disclose in writing each transaction with any Affiliate involving an amount in excess of $250,000 (other than the sale and service of boats at cost to officers, directors or employees) to Administrative Agent promptly after entering into such transaction.

6.13. Conduct of Business; Foreign Subsidiaries . From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in (i) any business other than (A) lines of business engaged in by other Credit Parties and the businesses engaged in by such Credit Party on the Closing Date, and lines of business reasonably related or incidental thereto, and (B) such other lines of business as may be consented to by Administrative Agent and Requisite Lenders, or (ii) any business or activities that conflict with **Section 4.25(a)**. No Credit Party shall, nor shall any Credit Party permit any of its Subsidiaries to, form, create, incorporate, or acquire any Foreign Subsidiary. For avoidance of doubt, a change in boat lines carried by a Credit Party shall not constitute a violation of this provision, nor shall adding or eliminating used boat sales or maintenance services by any Credit Party constitute a violation of this provision.

6.14. Permitted Activities of PubCo Holdings Group and Holdings.

(a) Except for the Specified IPO Transactions occurring on the Closing Date and the transactions described on part (a) of **Schedule 6.14**, Holdings shall not: (i) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under this Agreement, the other Credit Documents, the Approved Subordinated Debt Documents, the Tax Receivable Agreement and the Approved Floorplan Financing; (ii) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents to which it is a party or permitted pursuant to **Section 6.2**; (iii) engage in any business or activity or own any assets other than (A) directly or indirectly holding 100% of the Capital Stock of OWAO and any Subsidiary created or acquired in connection with a Permitted Acquisition; (B) performing its obligations and activities incidental thereto under the Credit Documents, and to the extent not inconsistent therewith, the Approved Subordinated Debt Documents; (C) making Restricted Junior Payments (including Permitted Tax Distributions, Permitted TRA Payments and Permitted Exchanges) and Investments (including Permitted Acquisitions) to the extent permitted by this Agreement; and (D) maintaining its existence and books and records, complying with applicable laws (including in connection with the payment of taxes, securities laws and rules and regulations of any applicable securities exchange) and other general administrative matters related to the foregoing; (iv) consolidate with or merge with or into, or convey or Dispose all or substantially all its assets to, any Person except contributions or transfers to its Wholly-Owned Guarantor Subsidiaries in connection with a Permitted Acquisition; (v) Dispose of any Capital Stock of any of its Subsidiaries (except as permitted by Section 6.9); (vi) create or acquire any direct Subsidiary or make or own any Investment in any Person other than OWAO except in connection with a Permitted Acquisition; provided that such Subsidiary created or acquired in connection with such Permitted Acquisition shall have no material assets, liabilities, or obligations other than (x) Capital Stock in Holdings and (y) any liabilities in respect of intercompany Indebtedness to any other Credit Party to the extent permitted hereunder; or (vii) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons; and

(b) Except for the Specified IPO Transactions occurring on the Closing Date and the transactions described on part (b) of **Schedule 6.14**, each member of the PubCo Holdings Group shall not: (i) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under this Agreement, the other Credit Documents, the Approved Subordinated Debt Documents, the Tax Receivable Agreement and the Approved Floorplan Financing; (ii) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents to which it is a party or permitted pursuant to **Section 6.2**; (iii) engage in any business or activity or own any assets other than (A) directly or indirectly holding Capital Stock of Holdings and any Subsidiary created or acquired in connection with a Permitted Acquisition; (B) performing its obligations and activities incidental thereto under the Credit Documents, and to the extent not inconsistent therewith, the Approved Subordinated Debt Documents; (C) making Restricted Junior Payments (including Permitted Tax Distributions, Permitted TRA Payments and Permitted Exchanges) and Investments (including Permitted Acquisitions) to the extent permitted by this Agreement; and (D) maintaining its existence and books and records, complying with applicable laws (including in connection with the payment of taxes, securities laws and rules and regulations of any applicable securities exchange) and other general administrative matters related to the foregoing; (iv) consolidate with or merge with or into, or convey or Dispose all or substantially all its assets to, any Person except for (x) contributions or transfers to a Wholly-Owned Guarantor Subsidiary of Holdings (and interim contributions or transfers to Holdings) in connection with a Permitted Acquisition or (y) mergers involving a member of the PubCo Holdings Group consummated in connection with a Permitted Acquisition; (v) Dispose of any Capital Stock of any of its Subsidiaries (except as permitted by Section 6.9); (vi) create or acquire any direct Subsidiary or make or own any Investment in any Person other than Holdings except in connection with a Permitted Acquisition; provided that such Subsidiary created or acquired in connection with such Permitted Acquisition shall have no material assets, liabilities, or obligations other than (x) Capital Stock in Holdings and (y) any liabilities in respect of intercompany Indebtedness to any other Credit Party to the extent permitted hereunder; or (vii) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

6.15. Amendments or Waivers with Respect to Floorplan Financings. No Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Approved Floorplan Financing or the TCF Agreement in any manner that would: (a) increase the outstanding principal amount thereof if the aggregate outstanding principal for all Approved Floorplan Financings or for all Indebtedness under the TCF Agreement, after giving effect to such increase, would exceed the respective amounts permitted under **Section 6.1(l)** and **Section 6.1(m)**, (b) increase the amount or shorten the timing of curtailments thereunder, (c) increase the rate of interest thereunder (except for default interest following any default or event of default thereunder), (d) result in a Default or Event of Default under any Credit Document, or (e) modify any covenants, defaults or events of default thereunder to make them materially more restrictive on the Companies or any other Credit Party.

6.16. Amendments or Waivers with Respect to Certain Indebtedness. Except for the Specified IPO Transactions occurring on the Closing Date and otherwise to the extent expressly permitted under the terms of the corresponding Subordination Agreement, no Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness (including any Approved Subordinated Debt), Earn Out Obligations, or the Seller Financing Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Indebtedness, increase the principal amount thereof, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders thereof (or a trustee or other representative on their behalf) that would be adverse to any Credit Party or the Lenders.

6.17. Fiscal Year; Accounting Policies. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from September 30 or, except with Administrative Agent's consent, make any change in its accounting policies that is not required under GAAP.

6.18. Amendments to Organizational Agreements and Material Contracts. No Credit Party shall (a) amend or permit any amendments to any Credit Party's Organizational Documents if such amendment would be adverse to Administrative Agent or Lenders; or (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract if such amendment, termination or waiver would be adverse to Administrative Agent or the Lenders; provided that any Material Contract described in **clause (iii)** of the definition thereof may be terminated if it is promptly replaced with a similar contract or arrangement reasonably determined by the Companies to be as beneficial to Holdings and its Subsidiaries as such terminated Material Contract.

6.19. Prepayments of Certain Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness of any Credit Party or any of its Subsidiaries prior to its scheduled maturity, other than (a) the Approved Floorplan Financing, Indebtedness under the TCF Agreement and the Obligations, and (b) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with **Section 6.9**.

6.20. Certain Consumer Matters. Without limiting the representations, warranties, covenants and agreements set forth herein or in the other Credit Documents, PubCo and its Subsidiaries covenant and agree not to (and to cause their Subsidiaries not to):

(a) broker, solicit, arrange, or make any loans or other financing transactions for the purchaser of consumer goods and related products and services, including entering into installment sales agreements or other similar arrangements with such purchasers until such time that Credit Parties have obtained the consent of Administrative Agent in writing;

(b) advertise, publish, solicit or otherwise engage potential consumers, except in a manner in compliance in all material respects with all applicable laws and best industry practice (including, if applicable, any such advertising relating to assisting consumers with obtaining financing on the best or most favorable terms available); or

(c) engage in any other business practice that fails to comply in all material respects with all applicable laws or best industry practice.

6.21. Use of Proceeds. No Credit Party shall use the proceeds of any Multi-Draw Term Loans, Revolving Loans or New Multi-Draw Term Loans except as set forth in **Section 2.4**.

SECTION 7. GUARANTY

7.1. Guaranty of the Obligations. Subject to the provisions of **Section 7.2** and any limitations set forth in the definition of the term Guarantor, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of Beneficiaries the due and punctual Payment in Full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

7.2. Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this **Section 7.2**, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this **Section 7.2**), minus (B) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this **Section 7.2**. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this **Section 7.2** shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this **Section 7.2**.

7.3. Payment by Guarantors . Subject to **Section 7.2**, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right that any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest that, but for any Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4. Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than Payment in Full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between any Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of the Companies and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Companies, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against any Company or any of such other guarantors and whether or not any Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Credit Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or Knowledge of any of them: (i) any failure or omission to assert or enforce, or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to depart from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of PubCo or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral that secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims that any Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, that may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5. Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against any Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Company or any other Guarantor from any cause other than Payment in Full of all Obligations; (c) any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Company and notices of any of the matters referred to in **Section 7.4** and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties, or that may conflict with the terms hereof.

7.6. Guarantors' Rights of Subrogation, Contribution, etc . Until the Guaranteed Obligations shall have been Paid in Full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any other Credit Party with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any other Credit Party, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been Paid in Full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against any Credit Party, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been Paid in Full, such amount shall be held in trust for Administrative Agent for the benefit of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. Subordination of Other Obligations. Any Indebtedness of the Companies or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any Distribution collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent for the benefit of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof. For purposes of this **Section 7.7**, "**Distribution**" means, with respect to any Indebtedness subordinated pursuant to this **Section 7.7**, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such Indebtedness, (b) any redemption of or purchase or other acquisition of such Indebtedness from the Obligee Guarantor by any other Person, and (c) the granting of any lien or security interest to or for the benefit of the Obligee Guarantor or any other Person in or upon any property of any Person to secure such Indebtedness. In the event any provision of this **Section 7.7** is inconsistent with the subordination terms set forth in the Intercompany Note and Subordination, the terms of the Intercompany Note and Subordination shall govern and control.

7.8. Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been Paid in Full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9. Authority of Guarantors or the Companies. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or any Company or the officers, Directors or any agents acting or purporting to act on behalf of any of them.

7.10. Financial Condition of the Companies. Any Credit Extension may be made to the Companies or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of any Company at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of any Company. Each Guarantor has adequate means to obtain information from the Companies on a continuing basis concerning the financial condition of the Companies and their ability to perform their obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Companies and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Companies now known or hereafter known by any Beneficiary.

7.11. Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against any Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of any Company or any other Guarantor or by any defense that any Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any case or proceeding referred to in **clause (a)** above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations that are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order that may relieve any Credit Party of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by any Credit Party, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments that are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12. Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale (provided that Administrative Agent and Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of the Company Representative certifying that such transaction is permitted pursuant to the Credit Documents, execute and deliver any documentation reasonably requested by the Company Representative in writing to further evidence or reflect any such release, all at the expense of the Companies).

7.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by any other Credit Party hereunder to honor all of such Credit Party's obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this **Section 7.13** for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.13, or otherwise under this Guaranty, as it relates to such Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this **Section 7.13** shall remain in full force and effect until the Guaranteed Obligations shall have been Paid in Full. Each Qualified ECP Guarantor intends that this **Section 7.13** constitute, and this **Section 7.13** 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 8. EVENTS OF DEFAULT

8.1. Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by any Company to pay (i) the principal of and premium, if any, on any Loan whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (iii) when due any interest on any Loan or any fee or any other amount due hereunder and, in the case of this clause (iii) only, such failure shall continue unremedied for a period of three Business Days; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in **Section 8.1(a)** and accounts payable incurred in the ordinary course of business that are not more than 60 days past due) in an individual principal amount of $250,000 or more or with an aggregate principal amount of $1,000,000 or more, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by any Credit Party or any of its Subsidiaries with respect to any other material term of (A) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in **clause (i)** above, or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or other redemption) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; (iii) any event of default occurs and is continuing under the TCF Agreement or any Approved Floorplan Financing Documents; or (iv) breach or default by any Credit Party in the performance or observance of any material obligation or condition under any Material Contract beyond any applicable cure period; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in **Section 2.4**, **Section 5.1**, **Section 5.2**, **Section 5.3**, **Section 5.4**, **Section 5.5**, **Section 5.6**, **Section 5.7**, **Section 5.8**, **Section 5.9**, **Section 5.10**, **Section 5.11**, **Section 5.14**, **Section 5.15**, or **Section 6**; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false or misleading in any material respect as of the date made or deemed made; provided that such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other paragraph of this **Section 8.1** or consisting of a condition or status that is expressly required to exist or be satisfied at a specific time, and such term has not been fully and permanently performed or complied with within thirty days after the earlier of (i) an officer of such Credit Party obtaining Knowledge of such default, or (ii) receipt by the Company Representative of written notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Credit Party or any of its Subsidiaries in an involuntary case under any Debtor Relief Law, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Credit Party or any of its Subsidiaries under any Debtor Relief Law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Credit Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Credit Party or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Credit Party or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Any Credit Party or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Credit Party or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) any Credit Party or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors of any Credit Party or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in **Section 8.1(f)**; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $250,000 or (ii) in the aggregate at any time an amount in excess of $1,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against any Credit Party or any of its Subsidiaries, or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party or any of its Subsidiaries decreeing the dissolution or split up of such Credit Party or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events that individually or in the aggregate results in or might reasonably be expected to result in liability of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $1,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the Payment in Full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Payment in Full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any material part of the Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party or shall contest the validity of or perfection of any Lien in any Collateral granted or purported to be granted pursuant to the Collateral Documents; or

(m) Subordinated Indebtedness. Any series, class or type of Subordinated Indebtedness permitted hereunder or the guarantees thereof shall cease, for any reason, to be validly subordinated to the Obligations of the Credit Parties hereunder, as provided in the corresponding Subordination Agreement or the subordination terms of such Subordinated Indebtedness, if applicable, or as a result of any structural change thereto, or any Credit Party, or the holders of 25% or more of such series, class or type of such Subordinated Indebtedness shall so assert.

(n) Sales of Material Brands. (i) Any Credit Party ceases to sell any Material Brand in any of the markets where such Material Brand is permitted to be sold by such Credit Party as of the Closing Date (whether due to a termination, cancellation, non-renewal, breach or default under the contract therefor or any other event); or (ii) any dealership of the Credit Parties ceasing to sell any boat brand that represents greater than 30% of such dealership’s revenue as of the Closing Date (or as of the subsequent date on which such dealership is acquired by the Credit Parties).

THEN, (A) upon the occurrence of any Event of Default described in **Section 8.1(f)** or **8.1(g)**, automatically, and (B) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to the Company Representative by Administrative Agent, (1) the Commitments, if any, of each Lender having such Commitments shall immediately terminate; (2) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (x) the unpaid principal amount of and accrued interest on the Loans, and (y) all other Obligations; and (3) Administrative Agent shall cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents.

SECTION 9. AGENTS

9.1. Appointment of Agents. GSSLG is hereby appointed Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent hereunder and under the other Credit Documents and each Lender hereby authorizes GSSLG, in such capacity, to act as Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. Except as provided in **Sections 9.7** and **9.8**, the provisions of this **Section 9** are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for PubCo or any of its Subsidiaries. Each of Agent (other than Administrative Agent and Collateral Agent), without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, neither GSSLG, in its capacity as Syndication Agent, nor GSSLG, in its capacity as Documentation Agent, shall have any obligations but shall be entitled to all benefits of this **Section 9**. Each Agent (other than Administrative Agent and Collateral Agent), may resign from such role at any time, with immediate effect, by giving prior written notice thereof to Administrative Agent and the Company Representative. It is understood and agreed that the use of the term “agent” herein or, in any other Credit Documents (or any other similar term) with reference to Administrative Agent or Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.2. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. In the event that any obligations are permitted to be incurred and subordinated in right of payment to the Obligations hereunder and/or are permitted to be secured by Liens on all or a portion of the Collateral, each Lender authorizes Administrative Agent and Collateral Agent, as applicable, to enter into intercreditor agreements, subordination agreements and amendments to the Collateral Documents to reflect such arrangements on terms that are acceptable to Administrative Agent and Collateral Agent, in their respective sole discretion, as applicable. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in Section 3 or elsewhere herein (other than confirm receipt of items expressly required to be delivered to such Agent) or to inspect the properties, books or records of PubCo or any of its Subsidiaries or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, Directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent (i) under or in connection with any of the Credit Documents, or (ii) with the consent or at the request of the Requisite Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement), in each case except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. No Agent shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose or be liable for the failure to disclose, any information relating to the Companies or any of its Affiliates that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or, any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability, may be in violation of the automatic stay under any Debtor Relief Law, or may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for PubCo and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or, any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or, under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Such appointing Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any Affiliates of any Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by an Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the applicable Agent and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Notice of Default or Event of Default. No Agent shall be deemed to have Knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to such Agent by a Credit Party or a Lender. In the event that Administrative Agent shall receive such a notice, Administrative Agent will endeavor to give notice thereof to the Lenders; provided, that failure to give such notice shall not result in any liability on the part of Administrative Agent.

9.4. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with PubCo or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Companies for services in connection herewith and otherwise without having to account for the same to Lenders. The Lenders acknowledge that pursuant to such activities, the Agents or their Affiliates may receive information regarding any Credit Party or any Affiliate of any Credit Party (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that the Agents and their Affiliates shall be under no obligation to provide such information to them.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of PubCo and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of PubCo and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or, an Assignment Agreement or a Joinder Agreement and funding its Multi-Draw Term Loan, Revolving Loans and/or the New Multi-Draw Term Loans on the Closing Date or other applicable Credit Date, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date or as of such other applicable Credit Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls (A) any trade obligations or Indebtedness of any Credit Party or any of their respective Subsidiaries or Affiliates (other than the Obligations and obligations owing in respect of the Tax Receivable Agreement to Tax Receivable Holders) or (B) any Capital Stock of any Credit Party or any of their respective Subsidiaries or Affiliates (other than certain New Holdings Common Units and any Capital Stock received from PubCo in connection therewith) and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase (A) any trade obligations or Indebtedness of any Credit Party described in clause (c)(i)(A) above or (B) Capital Stock described in clause (c)(i)(B) above (other than as contemplated by the terms of the New Holdings Common Units), in each case without the prior written consent of Administrative Agent.

(d) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and the Lead Arranger and their respective Affiliates that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments *and*, this Agreement, and the conditions for exemptive relief thereunder have been satisfied in connection therewith;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14),(B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and, this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and, this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best Knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and, this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

(e) In addition, unless the immediately preceding **clause (d)(i)** is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in the immediately preceding **clause (d)(iv)**, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents, the Lead Arranger and their respective Affiliates that none of the Agents, the Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent (each, an "**Indemnitee Agent Party**"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided, further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent and Collateral Agent.

(a) Administrative Agent may resign at any time by giving thirty days' prior written notice thereof to Lenders and the Company Representative. Administrative Agent shall have the right to appoint a financial institution to act as successor Administrative Agent hereunder in such notice, subject to the reasonable satisfaction of the Company Representative and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) thirty days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by the Company Representative and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the resigning Administrative Agent, then the Requisite Lenders shall have the right, upon five Business Days' notice to the Company Representative, to appoint a successor Administrative Agent and Collateral Agent. If neither the Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, then the Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent automatically upon the effectiveness of such resignation; provided that, until a successor Administrative Agent is so appointed by the Requisite Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent and the resigning Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such resigning Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation of GSSLG or its successor as Administrative Agent pursuant to this **Section 9.7** shall also constitute the resignation of GSSLG or its successor as Collateral Agent. After any resigning Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this **Section 9** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this **Section 9.7** shall, automatically upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(b) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to Lenders and the Grantors. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of the Company Representative and the Requisite Lenders and Collateral Agent's resignation shall become effective on the earliest of (i) thirty days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by the Company Representative and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Collateral Agent has not already been appointed by the resigning Administrative Agent, then Requisite Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Collateral Agent for the benefit of the Lenders under any of the Credit Documents shall continue to be held by the resigning Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Collateral Agent under this Agreement and the Collateral Documents, and the resigning or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such resigning or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any resigning or removed Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was Collateral Agent hereunder.

(c) Notwithstanding anything herein to the contrary, Administrative Agent and Collateral Agent may assign their rights and duties as Administrative Agent and Collateral Agent hereunder to an Affiliate of GSSLG without the prior written consent of, or prior written notice to, the Companies or the Lenders; provided, that the Company Representative and the Lenders may deem and treat such assigning Administrative Agent and Collateral Agent as Administrative Agent and Collateral Agent for all purposes hereof, unless and until such assigning Administrative Agent or Collateral Agent, as the case may be, provides written notice to the Company Representative and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents.

9.8. Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents; provided, that neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure, or any other obligation whatsoever to any holder of Obligations. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented. Upon request by Administrative Agent at any time, the Lenders will confirm in writing Administrative Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.8. Upon the reasonable request of the Company Representative, Administrative Agent and/or Collateral Agent may, after receipt of a written certificate of a Chief Financial Officer of the Company Representative certifying that such transaction is permitted pursuant to the Credit Documents, execute and deliver any such release documentation reasonably requested by the Company Representative in connection with such permitted releases as described above, all at the expense of the Companies.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, the Companies, Administrative Agent, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the other Credit Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of Secured Parties in accordance with the terms hereof and, thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent for the benefit of Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii), or otherwise of the Bankruptcy Code), Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) Release of Collateral and Guarantees, Termination of Credit Documents. Notwithstanding anything to the contrary contained herein or, any other Credit Document, when all Obligations have been Paid in Full, upon request of the Company Representative, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Credit Document, whether or not on the date of such release there may be outstanding Obligations. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Companies or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Companies or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(d) No Duty. Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(e) Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a Secured Party with possession or control has priority over the security interest of another Secured Party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the other Secured Parties, except as otherwise expressly provided in this Agreement. Should Administrative Agent or any Lender obtain possession or control of any such Collateral, Administrative Agent or such Lender shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent's instructions. Each Credit Party by its execution and delivery of this Agreement hereby consents to the foregoing.

9.9. Withholding Taxes. To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without duplication of the provisions of **Section 2.18(g)**, if the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Credit Party, Administrative Agent (irrespective of whether Administrative Agent shall have made any demand on the Companies) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due the Lenders and Administrative Agent under **Sections 2.9**, **10.2** and **10.3** allowed in such judicial proceeding); and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Sections 2.9**, **10.2** and **10.3**. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under **Sections 2.9**, **10.2** and **10.3** out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing contained in this **Section 9.10** shall be deemed to authorize 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 Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 10. MISCELLANEOUS

10.1. Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Syndication Agent, Collateral Agent, Administrative Agent or Documentation Agent, shall be sent to such Person's mailing address as set forth on **Appendix B** or in the other relevant Credit Document, and in the case of any Lender, the mailing address as indicated on **Appendix B** or otherwise indicated to Administrative Agent and the Company Representative in writing. Each notice hereunder shall be in writing and may be personally served or sent by facsimile (excluding any notices to any Agent in its capacity as such) or U.S. mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the U.S. mail with postage prepaid and properly addressed; provided, no notice to any Agent in its capacity as such shall be effective until received by such Agent; provided, further, any such notice or other communication shall, at the request of an Agent, be provided to any sub-agent appointed pursuant to **Section 9.3(c)** as designated by such Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent, Lenders and any Credit Party hereunder may be delivered or furnished by other electronic communication (including e mail and Internet or intranet websites, including Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the "**Platform**")) pursuant to procedures approved by Administrative Agent in its sole discretion, provided that, notwithstanding the foregoing, in no event will notices by electronic communication be effective to any Agent, any Lender pursuant to **Section 2** if any such Person has notified Administrative Agent that it is incapable of receiving notices under such **Section 2** by electronic communication. Any Agent may, in its sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. In the case of any notices by electronic communication permitted in accordance with this Agreement, unless Administrative Agent otherwise prescribes, (A) any notices and other communications permitted to be sent to an e-mail address shall be delivered during normal business hours and deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment, but excluding any automatic reply to such e-mail), except that, if such notice or other communication is not sent prior to noon, local time at the location of the recipient, then such notice or communication shall be deemed not to have been received until the opening of business on the next Business Day for the recipient, at the earliest, and (B) notices or communications permitted to be posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (A)** of notification that such notice or communication is available and clearly identifying an accessible website address therefor.

(ii) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, Directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent Affiliates have any liability to any of the Credit Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Credit Party's or Administrative Agent's transmission of communications through the Platform. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform.

(iv) Each Credit Party, each Lender, and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) All uses of the Platform shall be governed by and subject to, in addition to this **Section 10.1**, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform. All information available on the Platform shall remain subject to **Section 10.17**.

(vi) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

10.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, the Credit Parties agree to pay promptly (a) all Administrative Agent's actual and reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Credit Documents, and any consents, amendments, waivers or other modifications thereto; (b) all the Agents' costs of furnishing all opinions by counsel for the Companies and the other Credit Parties; (c) all the reasonable fees, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents, and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Company Representative; (d) all the actual costs and reasonable expenses of creating, perfecting, recording, maintaining, and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) any Agent's actual costs and reasonable fees, expenses, and disbursements of any auditors, accountants, consultants or appraisers' (limited to reimbursement for a single audit, field exam, and appraisal conducted at Administrative Agent's option so long as no Event of Default is continuing and any additional appraisals required under applicable law); (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions contemplated by the Credit Documents, and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all actual out-of-pocket (documented in summary form) costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent, and Lenders in enforcing or preparing for enforcement of any Obligations of or in collecting or preparing to collect any payments due from any Credit Party hereunder or, under the other Credit Documents by reason of such Default or Event of Default (including in connection with any actual or prospective sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any actual or prospective refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to or in contemplation of any insolvency or bankruptcy cases or proceedings, including the engagement of a restructuring advisor or consultant satisfactory to Administrative Agent in its sole discretion in consultation with Company Representative.

10.3. Indemnity and Related Reimbursement.

(a) In the event that an Indemnitee becomes involved in any capacity in any action, proceeding or investigation brought by or against any Person relating to or arising out of any Indemnified Liabilities and whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees that on demand it will reimburse such Indemnitee for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith.

(b) In addition to the payment of expenses pursuant to **Section 10.2**, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Indemnitee, from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided, no Credit Party shall have any obligation to any Indemnitee under this **Section 10.3(b)** with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise directly from the gross negligence, material breach or willful misconduct of such Indemnitee, in each case as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this **Section 10.3** may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. This **Section 10.3(b)** shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, etc. arising from any non-Tax claim.

(c) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against Lenders, Agents and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Credit Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(d) Each Credit Party also agrees that no Indemnitee will have any liability to any Credit Party or any person asserting claims on behalf of or in right of any Credit Party or any other Person in connection with or as a result of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan, or the use of the proceeds thereof, or any act or omission or event occurring in connection therewith, in each case, except in the case of any Credit Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Credit Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence, material breach or willful misconduct of such Lender or Agent in performing its funding obligations under this Agreement; provided, however, that in no event will any such Lender, or Agent have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's, or Agent's, or their respective Affiliates', Directors', employees', attorneys', agents' or sub-agents' activities arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referenced to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith. No other party hereto shall be liable for the obligations of any Defaulting Lender in failing to make any Loans or other extension of credit hereunder.

10.4. Set Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender, and their respective Affiliates are each hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed and such consent not to be required upon an Event of Default under **Sections 8.1(f)** or **(g)**), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other obligations or Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the Obligations of any Credit Party to such Lender, the participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set off, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of **Sections 2.15** and **2.20** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of set off) that such Lender or their respective Affiliates may otherwise have.

10.5. Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to the additional requirements of **Sections 10.5(b)** and **10.5(c)**, no amendment, modification, termination or waiver of any provision of the Credit Documents (excluding the Fee Letter), or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Requisite Lenders; provided that Administrative Agent may, with the consent of the Company Representative (and without any requirement for consent from any other Person), amend, modify, or supplement this Agreement or any other Credit Document to cure any obvious typographical error, incorrect cross-reference, defect in form, inconsistency, omission or ambiguity (in each case, as concluded by Administrative Agent in its sole discretion), so long as Lenders have received at least five Business Days' prior written notice thereof and Administrative Agent has not received, within five Business Days after delivery of such notice, a written notice from Requisite Lenders stating that the Requisite Lenders object to such amendment.

(b) Affected Lenders' Consent. Subject to **Section 10.5(d)**, without the written consent of each Lender that would be directly and adversely affected thereby, no amendment, modification, termination, waiver or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or any promissory note issued pursuant to **Section 2.5**;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to **Section 2.8**) or any fee or premium payable under this Agreement; provided, that (A) only the consent of the Requisite Lenders shall be necessary to amend the Default Rate in **Section 2.8**, to waive any prospective obligation of the Companies to pay interest at the Default Rate, or to restore any right of the Companies to convert or continue Loans as LIBO Rate Loans that was revoked at the direction of Requisite Lenders or automatically pursuant to any provision of this Agreement, and (B) only the consent of Administrative Agent shall be necessary to revoke any election by Administrative Agent to impose interest at the Default Rate or to revoke any right of the Companies to convert or continue Loans as LIBO Rate Loans;

(iv) waive or extend the time for payment of any such interest, fees, or premiums;

(v) reduce or forgive the principal amount of any Loan;

(vi) amend, modify, terminate or waive any provision of this **Section 10.5(b)** or **Section 10.5(d)** or any other provision of this Agreement that expressly provides that the consent of all Lenders or any specific Lenders is required;

(vii) amend the definition of "Requisite Lenders", "Pro Rata Share" or "Voting Power Determinants"; provided, with the consent of Administrative Agent and the Requisite Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of "Requisite Lenders", "Pro Rata Share" or "Voting Power Determinants" on substantially the same basis as the Multi-Draw Term Loan Commitments, the Multi-Draw Term Loans, the Revolving Commitments and the Revolving Loans are included on the Closing Date;

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except (A) as expressly provided in the Credit Documents on the Closing Date, (B) in connection with a "credit bid" undertaken by Collateral Agent with the consent or at the direction of Requisite Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other provision of the Bankruptcy Code or any other Debtor Relief Law, or (C) in connection with any other sale or disposition of assets in connection with an enforcement action with respect to the Collateral that is permitted pursuant to the Credit Documents and consented to or directed by Requisite Lenders; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document, except as expressly provided in any Credit Document.

(c) Other Consents. Subject to **Section 10.5(d)**, no amendment, modification, termination or waiver of any provision of the Credit Documents (excluding the Fee Letter), or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend the definition of "Requisite Class Lenders" without the consent of Requisite Class Lenders of each directly and adversely affected Class; provided, with the consent of Administrative Agent and Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of such "Requisite Class Lenders" on substantially the same basis as the Multi-Draw Term Loan Commitments, the Multi-Draw Term Loans, the Revolving Commitments and the Revolving Loans are included on the Closing Date;

(iii) amend, modify, terminate or waive any provision of **Section 3.2(a)** with regard to any Credit Extension consisting of a Revolving Loan or a Multi-Draw Term Loan without the consent of Requisite Class Lenders of such Class of Loans;

(iv) alter the required application of any repayments or prepayments as between Classes pursuant to **Section 2.15** without the consent of Requisite Class Lenders of each Class that is being allocated a lesser repayment or prepayment as a result thereof; provided, Administrative Agent and Requisite Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment that is still required to be made is not altered;

(v) amend, modify, or waive any provision of this Agreement or the Pledge and Security Agreement so as to alter the ratable treatment of Obligations arising under the Credit Documents, "Obligations", or "Secured Obligations" (as such term or any similar term is defined in any relevant Collateral Document) in each case in a manner adverse to any Lender with Obligations then outstanding without the written consent of any such Lender; or

(vi) amend, modify, terminate or waive any provision of **Section 9** as the same directly or indirectly applies to any Agent, or any other provision hereof as the same directly or indirectly applies to the rights or obligations of any Agent, in each case in any manner adverse to such Agent without the consent of such Agent.

(d) Defaulting Lender Consent. Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, modification, termination, waiver or consent hereunder (and any amendment, modification, termination, waiver or consent) that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loan may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, modification, termination, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

(e) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this **Section 10.5** shall be binding upon each Lender at the time outstanding, each future Lender, each Credit Party, and each future Credit Party.

(f) Lender Consent Not Required. Notwithstanding anything to the contrary in this **Section 10.5**, any amendment, modification, termination, consent or waiver of any provision of the Fee Letter, or any consent to any departure by any Credit Party therefrom, in each case, shall not require the consent of any Person that is not a party thereto.

(g) Compensation for Amendments. Notwithstanding anything to the contrary in any Credit Document, unless otherwise agreed to by Administrative Agent in its sole discretion no Credit Party may, nor may it permit any of its Subsidiaries to, directly or indirectly (including by being complicit in or otherwise facilitating any such action by any of their respective Affiliates, Management Investors, or Subsidiaries or any direct or indirect holders or beneficial owners of any such Person's Capital Stock) pay or otherwise transfer any consideration, whether by way of interest, fee, or otherwise, to or for the benefit of any current or prospective Lender or any of its Affiliates (other than any customary fees paid to Administrative Agent or any of its Affiliates as consideration for arranging, structuring, or providing other services in connection therewith and customary upfront fees to be received by any new lender providing new loans or new commitments) for or as an inducement to any action or inaction by such Lender or any of its Affiliates, including any consent, waiver, approval, disapproval, or withholding of any of the foregoing in connection with any required or requested approval, amendment, waiver, consent, or other modification of or under any Credit Document or any provision thereof unless such consideration is first offered to all then existing Lenders in accordance with their respective Pro Rata Shares and is paid to any such Lenders that act in accordance with such offer.

(h) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue, or rollover 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 Company Representative, Administrative Agent and such Lender.

10.6. Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and, to the extent expressly contemplated hereby, Indemnitee Agent Parties, Affiliates of each of the Agents and Lenders, and any other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. The Companies, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans (including principal and stated interest) listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following Administrative Agent's acceptance of a fully executed an Assignment Agreement, together with the forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in **Section 10.6(e)**. Each assignment shall be recorded in the Register promptly following acceptance by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to the Company Representative and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "Assignment Effective Date". Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. It is intended that the Register be maintained such that the Loans are in "registered form" for the purposes of the Internal Revenue Code.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignment shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of **clause (i)(a)** or **clause (ii)(a)** of the definition of the term "Eligible Assignee" upon the giving of notice to Administrative Agent; and

(ii) to any Person otherwise constituting an Eligible Assignee with the consent of Administrative Agent (not to be unreasonably withheld, delayed, or conditioned); provided, each such assignment pursuant to this **Section 10.6(c)** shall be in an aggregate amount of not less than (A) $1,000,000 (or such lesser amount as may be agreed to by the Company Representative and Administrative Agent or as shall constitute the aggregate amount of the Revolving Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Commitments and Revolving Loans and (B) $1,000,000 (or such lesser amount (x) as may be agreed to by the Company Representative and Administrative Agent, (y) as shall constitute the aggregate amount of the Multi-Draw Term Loans or Multi-Draw Term Loan Commitments of a particular Class of the assigning Lender or (z) as is assigned by an assigning Lender to an Affiliate or Related Fund of such Lender) with respect to the assignment of Multi-Draw Term Loans.

(d) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to U.S. federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to **Section 2.18(c)**, together with payment by the applicable assigning Lender to Administrative Agent of a registration and processing fee of $3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman or any Affiliate thereof or (z) in the case of an assignee that is already a Lender or is an Affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company Representative and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to the Company Representative and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and/or Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); (iv) it will not provide any information obtained by it in its capacity as a Lender to any Credit Party or any of its Affiliates; and (v) neither such Lender nor any of its Affiliates owns or controls any trade obligations or Indebtedness of any Credit Party (other than the Obligations and obligations owing to Tax Receivable Holders in respect of the Tax Receivable Agreement) or any Capital Stock of any Credit Party (other than the New Holdings Common Units and any Capital Stock received from PubCo in connection therewith).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date: (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights that survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any remaining Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any promissory note pursuant to **Section 2.5** the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable promissory notes to Administrative Agent for cancellation, and thereupon the Companies shall issue and deliver new promissory notes in accordance with **Section 2.5** if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new or remaining Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(h) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than PubCo, any of its Subsidiaries or any of its Affiliates or any Natural Person) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this **Section 10.6(h)** shall, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of the Companies, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's participation interest with respect to any Loan or Commitment (each, a "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, Section 1.163-5 of the proposed United States Treasury Regulations or any applicable temporary, final or other successor regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to any Loan or Commitment for all purposes under this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) Unless otherwise agreed to by Administrative Agent, the holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan, any promissory note evidencing a Loan in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement, or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) The Companies agree that each participant shall be entitled to the benefits of **Sections 2.16(d)**, **2.17**, and **2.18** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **paragraph (c)** of this Section, and each participant agrees to be subject to the provisions of **Section 2.19** and **Section 2.21** as if it were a Lender and acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under **Sections 2.17** or **2.18** than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after such participant acquired the participation or unless the sale of the participation to such participant is made with the Company Representative's prior written consent (not to be unreasonably withheld, delayed, or conditioned), and (y) a participant shall not be entitled to the benefits of **Section 2.18** unless such participant agrees, for the benefit of the Companies, to comply with **Section 2.18** as though it were a Lender; (it being understood that any documentation required under **Section 2.18(c)** and **(d)** shall be delivered to the participating Lender). To the extent permitted by law, each participant also shall be entitled to the benefits of **Section 10.4** as though such participant were a Lender, provided such participant agrees to be subject to **Section 2.15** as though it were a Lender.

(i) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this **Section 10.6**, any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Loans, the other Obligations owed by or to such Lender, and its promissory notes issued pursuant to **Section 2.6**, if any, to secure obligations of such Lender including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as between the Companies and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided, further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in **Sections 2.16(d)**, **2.17**, **2.18**, **10.2**, **10.3**, **10.4**, and **10.10** and the agreements of Lenders set forth in **Sections 2.15**, **9.3(b)** and **9.6** shall survive the Payment in Full of the Obligations.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Marshalling; Payments Set Aside . None of any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, for the benefit of Lenders), or any Agent or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. Severability . In case any provision in or obligation hereunder or under any Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby (it being understood that the invalidity, illegality or unenforceability of a particular provision in a particular jurisdiction shall not in and of itself affect the validity, legality or enforceability of such provision in any other jurisdiction). The parties hereto shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions the economic effect of which comes as close as reasonably possible to that of the invalid, illegal or unenforceable provisions.

10.12. Obligations Several; Actions in Concert. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any promissory note issued pursuant to **Section 2.5** or otherwise with respect to the Obligations without first obtaining the prior written consent of Administrative Agent or Requisite Lenders (as applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement or any other Credit Document with respect to the Obligations shall be taken in concert and at the direction or with the consent of Administrative Agent or Requisite Lenders (as applicable).

10.13. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

10.15. CONSENT TO JURISDICTION. SUBJECT TO **CLAUSE (V)** OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE U.S. SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO **CLAUSE (V)** BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH **SECTION 10.1**; (IV) AGREES THAT SERVICE AS PROVIDED IN **CLAUSE (C)** ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT AGENTS, AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

10.16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Agent and each Lender shall hold all non-public information regarding PubCo and its Subsidiaries and their businesses identified as such by PubCo or the Company Representative and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's or such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by each Credit Party that, in any event, Administrative Agent may disclose any such information to the Lenders and other Agents, and any Agent or Lender may make (i) disclosures of such information to Affiliates of such Lender or such Agent and to their respective officers, Directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts, or agents on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this **Section 10.17**), (ii) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Credit Party and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this **Section 10.17** or other substantially similar confidentiality restrictions), (iii) disclosure on a confidential basis to any rating agency when required by it, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform the Company Representative promptly thereof to the extent not prohibited by law), (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority (including the NAIC) purporting to have jurisdiction over such Person or any of its Affiliates, (viii) disclosure to any Lenders' financing sources; provided that prior to any disclosure such financing source is informed of the confidential nature of the information, (ix) disclosure to rating agencies and (x) disclosures with the consent of the relevant Credit Party. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and all of their respective Directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Credit Parties) (collectively, "**Trade Announcements**"). No Lender or Credit Party shall (a) issue any Trade Announcement, (b) use or reference in advertising, publicity, or otherwise the name of Goldman, any Lender or any of their respective Affiliates, partners, or employees, or (c) represent that any product or any service provided has been approved or endorsed by Goldman, any Lender, or any of their respective Affiliates, except (i) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (ii) with the prior approval of Administrative Agent.

10.18. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Obligations hereunder are Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Companies shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Companies to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration that constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Companies. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19. Effectiveness; Counterparts. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Company Representative and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

10.20. Entire Agreement. This Agreement, together with the other Credit Documents (including any such other Credit Document entered into prior to the date hereof), reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, made prior to the date hereof.

10.21. Intercreditor Agreement. The Liens granted to Collateral Agent on behalf of the Secured Parties pursuant to any Credit Document and the exercise of any right or remedy by Collateral Agent or the Secured Parties thereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement with respect to such Liens, the terms of the Intercreditor Agreement shall govern.

10.22. PATRIOT Act. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Credit Party in accordance with the PATRIOT Act.

10.23. Electronic Execution of Assignments and Credit Documents . The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement or any other Credit Document shall in each case be deemed to include electronic signatures, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided, that Administrative Agent or Collateral Agent may request, and upon any such request the Credit Parties shall be obligated to provide, manually executed “wet ink” signatures to any Credit Document.

10.24. No Fiduciary Duty. Each Agent, Lender, and their Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Credit Parties, their equity holders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its equity holders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its equity holders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

10.25. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit 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 Credit 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 that 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 Credit 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.

10.26. Amendment and Restatement. It is the intention of the Credit Parties, Administrative Agent, and the Lenders, and such parties hereby agree, from and after the Closing Date, that (a) this Agreement amends, restates, supersedes and replaces the Prior Credit Agreement in its entirety; provided that each of the "Loans" (as such term is defined in the Prior Credit Agreement) outstanding under the Prior Credit Agreement on the Closing Date shall, for purposes of this Agreement, be included as Loans hereunder, (b) such amendment and restatement shall operate to renew, amend and modify certain of the rights and obligations of the parties under the Prior Credit Agreement as provided herein, but shall not act as a novation thereof or a novation of any loans or other obligations outstanding thereunder, all of which loans and other obligations shall be deemed to be loans and obligations outstanding under the corresponding facilities described in this Agreement without any further action by any Person, except that Administrative Agent may make such transfers of funds as are necessary in order that the outstanding balance of such loans, together with any Loans funded on the Closing Date, reflect the respective Loans of the Lenders hereunder, and (c) the Liens securing the any outstanding obligations or loans under the Prior Credit Agreement shall not be extinguished, but are hereby ratified, affirmed and confirmed and shall be carried forward and shall secure the Obligations as renewed, amended, restated, and modified hereby and by any Credit Documents delivered pursuant hereto. Unless specifically amended or restated hereby or by any other Credit Document, each of the "Credit Documents" under and as defined in the Prior Credit Agreement and the Exhibits and the Schedules thereto shall continue in full force and effect and, from and after the Closing Date, and any and all references to the Prior Credit Agreement contained therein shall be deemed to refer to this Agreement. Each Lender hereunder that is a Lender under the Prior Credit Agreement and the Credit Parties hereby consent to the amendments to, and amendments and restatements of, the "Credit Documents" under and as defined in the Prior Credit Agreement in the form of the Credit Documents, as applicable.

10.27. Exiting Lender Consents. Subject to the receipt of funds necessary to pay in full all principal, interest, fees and other charges owed under the Prior Credit Agreement to OWM BIP Investor, LLC (the "**Exiting Lender**"), the Exiting Lender hereby consents to this Agreement as required under Section 10.5 of the Prior Credit Agreement. Each of the parties hereto hereby agrees and confirms that after receipt by the Exiting Lender of funds necessary to pay in full all principal, interest, fees and other charges owed to it under the Prior Credit Agreement and giving effect to **Section 2.1** and **Section 2.2** of this Agreement, the Exiting Lender shall cease to have a Commitment hereunder, its commitments to lend and all of its obligations under the Prior Credit Agreement shall be terminated and the Exiting Lender shall cease to be a Lender for all purposes under the Credit Documents.

10.28. Acknowledgment Regarding Any Supported QFCs. To the extent that the Credit Documents provide support, through a guarantee or otherwise, for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**", and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a covered entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support to the receipt of funds necessary to pay in full all principal, interest, fees and other charges owed under.

[*Remainder of Page Intentionally Blank*]

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

COMPANIES:

SINGLETON ASSETS & OPERATIONS, LLC
LEGENDARY ASSETS & OPERATIONS, LLC
SOUTH FLORIDA ASSETS & OPERATIONS, LLC
BOSUN'S ASSETS & OPERATIONS, LLC
SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC
MIDWEST ASSETS & OPERATIONS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Manager

ONEWATER ASSETS & OPERATIONS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: CEO

HOLDINGS:

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: CEO

PUBCO:

ONEWATER MARINE INC.

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: CEO

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P., as
Administrative Agent, Collateral Agent and a Lender

By: /s/ David D. Miller
Name: David D. Miller
Title: Authorized Signatory

[Signature Page to Amended and Restated Credit and Guaranty Agreement – OneWater]

The Exiting Lender is executing this Agreement as of the date and year first written above for the sole purpose of **Section 10.27** hereof.

OWM BIP INVESTOR, LLC,
the Exiting Lender

By: /s/ John Troiano
Name: John Troiano
Title: Manager

[Signature Page to Amended and Restated Credit and Guaranty Agreement – OneWater]

APPENDIX A-1

TO CREDIT AND GUARANTY AGREEMENT

Revolving Commitments

Lender	Revolving Commitment	Pro Rata Share
Goldman Sachs Specialty Lending Group, L.P.	$ 10,000,000.00	100%
Total	**$ 10,000,000.00**	**100%**

APPENDIX A-2

TO CREDIT AND GUARANTY AGREEMENT

Multi-Draw Term Loan Commitments as of the Closing Date

Lender	Total Multi-Draw Term Loan Commitments	Pro Rata Share
Goldman Sachs Specialty Lending Group, L.P.	$ 100,000,000.00	100%
Total	$ 100,000,000.00	100%

APPENDIX B

TO CREDIT AND GUARANTY AGREEMENT

Notice Addresses

ONE WATER ASSETS & OPERATIONS, LLC
SINGLETON ASSETS & OPERATIONS, LLC
LEGENDARY ASSETS & OPERATIONS, LLC
SOUTH FLORIDA ASSETS & OPERATIONS, LLC
ONE WATER MARINE HOLDINGS, LLC
MIDWEST ASSETS & OPERATIONS, LLC
SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC
BOSUN'S ASSETS & OPERATIONS, LLC
ONE WATER MARINE INC.

6275 Lanier Islands Parkway
Buford, Georgia 30518
Attention: Philip Austin Singleton, Jr., CEO
Telecopier:

GOLDMAN SACHS SPECIALTY LENDING GROUP, L.P.,

as Administrative Agent, Collateral Agent, and a Lender, to its Principal Office set forth below

Goldman Sachs Specialty Lending Group, L.P.
2001 Ross Avenue
Suite 2800
Dallas, Texas 75201
Attention: One Water Marine Holdings, Account Manager
Email:

Exhibit 10.4
Execution Version

SPECIFIC TERMS IN THIS EXHIBIT HAVE BEEN REDACTED BECAUSE SUCH TERMS ARE BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED. THESE REDACTED TERMS HAVE BEEN MARKED IN THIS EXHIBIT WITH THREE ASTERISKS [***].

SIXTH AMENDED AND RESTATED INVENTORY FINANCING AGREEMENT

This Sixth Amended and Restated Inventory Financing Agreement (as from time to time amended, restated, amended and restated, supplemented or otherwise modified, and together with any Transaction Statements, as hereinafter defined, this "***Agreement***"), dated as of February 11, 2020 (the "***Closing Date***"), is among the persons listed in the section of this Agreement entitled "List of Dealers" (each, individually, a "***Dealer***" and collectively, the "***Dealers***"), Wells Fargo Commercial Distribution Finance, LLC (in its individual capacity, "***CDF***") as Agent (CDF, in such capacity as agent, is herein referred to as "***Agent***") for the several financial institutions that may from time to time become party to this Agreement (collectively, the "***Lenders***" and individually each a "***Lender***") and for itself as a Lender, and such Lenders.

RECITALS

(a) Dealers, Agent and Lenders entered into that certain Fifth Amended and Restated Inventory Financing Agreement, dated as of November 26, 2019, as modified and amended from time to time, along with all addendums thereto, all Transaction Statements, as defined therein, and all program letters, and all other documents, instruments and agreements of every type or nature issued under, in connection with, or pursuant to such Fifth Amended and Restated Inventory Financing Agreement (collectively the "***Existing IFA***").

(b) Dealers have informed Agent and Lenders that substantially concurrently with the effectiveness of this Agreement, Holdings is restructuring the corporate structure of Holdings and its Subsidiaries pursuant to which PubCo (as defined below) will be Holdings' parent and proceed with the sale or the listing for trading of common stock of PubCo on a bona fide nationally recognized securities exchange (such initial public offering of PubCo is herein referred to as the "***IPO***").

(c) In connection with the IPO and the Specified IPO Transactions (as defined below), Dealers, Agent and Lenders desire to enter into this Agreement to amend and restate the Existing IFA and to set forth the terms and conditions of CDF's financing of certain inventory.

NOW, THEREFORE, the parties agree to amend and restate the Existing IFA as follows:

1. Definitions.

"***AAA***" shall have the meaning set forth in Section 27(b) hereof.

"***Advance Date***" shall have the meaning set forth in Section 2(b) hereof.

"***Affiliate***" means any Person that: (a) directly or indirectly controls, is controlled by or is under common control any other Person, (b) directly or indirectly owns 10% or more of any other Person, (c) is a director, partner, manager, or officer of any other Person or an affiliate of any other Person, or (d) any natural person related to any such Person or an affiliate of such Person. Notwithstanding anything in this definition to the contrary, neither GSSLG nor any of its affiliates shall be considered an "Affiliate" of any Dealer, PubCo, Holdings, or any other Guarantor.

"***Agent Companies***" shall have the meaning set forth in Section 27(a) hereof.

"***Agent Report***" shall have the meaning assigned to it in Section 21(e)(iii).

"***Aggregate Allocations***" means the aggregate amount of all Lenders' Allocations from time to time.

"***Aggregate Excess Funding Amount***" of a Non-Funding Lender shall be the aggregate amount of all unpaid obligations owing by such Lender to Agent and other Lenders under the Loan Documents, including such Lender's Ratable Share of Loans.

"***Allocation***" means, with respect to each Lender, the amount set forth opposite such Lender's name on Schedule 1, under the heading "Allocation", as such amount by be reduced or increased from time to time in accordance with this Agreement.

"***Anti-Terrorism Laws***" shall mean any applicable law relating to terrorism, trade sanctions programs and embargoes, money laundering, corruption or bribery, and any regulation, or order promulgated, issued or enforced pursuant to such laws by an applicable governmental authority, all as amended, supplemented or replaced from time to time.

"***Approval***" means Agent's indication to a Vendor that the Lenders will provide financing to Dealers with respect to a particular Invoice or Invoices.

"***Approval Date***" shall have the meaning set forth in Section 2(b) hereof.

"***Assignment***" means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 20 (with the consent of any party whose consent is required by Section 20), accepted by Agent.

"***Automatic Default***" shall have the meaning set forth in Section 13 hereof.

"***Business Day***" shall have the meaning set forth in Section 10(a) hereof.

"***Capital Expenditures***" means all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of PubCo including expenditures in respect of capital leases and capitalized software, but excluding expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (a) from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored or (b) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced.

"***Capital Lease***" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (a) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (b) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended as payments of principal and interest on a loan for Federal income tax purposes).

"Capital Securities" means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued or acquired after the date of this Agreement, including common shares, preferred shares, membership interests in a limited liability company, limited or general partnership interests in a partnership, interests in a trust, interests in other unincorporated organizations or any other equivalent of such ownership interest.

"***Change in Control***" shall mean each occurrence of any of the following:

(a) The PubCo Holdings Group shall cease to beneficially own and control, directly or indirectly, at least the percentage on a fully diluted basis of economic and voting interests in Holdings it owns and controls as of the Closing Date (after giving effect to the Specified IPO Transactions), as such percentage may be reduced in connection with a Permitted Acquisition, or shall cease to have power to elect a majority of the members of the Board of Directors of Holdings;

(b) a majority of the board of directors of PubCo shall cease to constitute Continuing Directors;

(c) Holdings shall cease to beneficially own and control, directly or indirectly, 100% of the common membership interests in OWAO;

(d) OWAO shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic and voting interest in the Capital Securities of each Dealer;

(e) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act of 1934, as amended (i) shall have acquired current beneficial ownership of 35% or more, on a fully diluted basis, of the voting and/or economic interest in the Capital Securities of PubCo, or (ii) shall have obtain the current power (whether or not exercised) to elect a majority of the members of the board of directors of PubCo; or

(f) Philip A. Singleton shall cease to be involved in the day to day operations and management of the business of the Dealers, and successors reasonably acceptable to Agent are not appointed on terms reasonably acceptable to Agent within 60 days of such cessation of involvement.

"***Change in Law***" shall mean the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty, or in the administration, interpretation, implementation or application thereof by any governmental authority, or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) of any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"***Charges***" shall have the meaning set forth in Section 11(a) hereof.

"***Closing Date***" shall have the meaning set forth in the Preamble hereof.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"***Collateral***" shall have the meaning set forth in Section 5(c) hereof.

"***Collections***" mean all monies that Agent receives from a Dealer or other sources (other than Lenders) on account of the Obligations.

"***Computation Period***" means any Quarterly Computation Period or Monthly Computation Period, as applicable.

"***Consolidated Net Income***" means, with respect to the Dealers for any period, the consolidated net income (or loss) of PubCo for such period, excluding (i) any gains or losses from dispositions of assets, (ii) any extraordinary gains or losses, (iii) any gains or losses from discontinued operations, (iv) the income of any Person (other than a direct or indirect Subsidiary of PubCo) in which PubCo or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by PubCo or such Subsidiary in the form of dividends or similar distributions, (v) the undistributed earnings of any direct or indirect Subsidiary of PubCo to the extent that the declaration of payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation, governing document or law applicable to such Subsidiary, and (vi) the income or loss of any direct or indirect Subsidiary of PubCo which is not a Dealer or Guarantor.

"***Continuing Directors***" means the directors (or equivalent governing body) of PubCo on the Closing Date (after giving effect to the Specified IPO Transactions) and each other director (or equivalent) of PubCo, if, in each case, such other Person's nomination for election to the board of directors (or equivalent governing body) of PubCo is approved by at least 51% of the then Continuing Directors before giving effect to such approval.

"***Credit Facility Agent***" means GSSLG in its capacity as "Administrative Agent" and "Collateral Agent" under the Credit Facility Agreement, together with its successors and assigns in such capacity.

"***Credit Facility Agreement***" means that certain Amended and Restated Credit and Guaranty Agreement dated as of the Closing Date, between Credit Facility Agent, Holdings, PubCo, Parent, Dealers, and the lenders party thereto, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the Intercreditor Agreement.

"***Credit Facility Collateral***" shall have the meaning set forth in Section 5(d) hereof.

"***Daily Interest***" means, with respect to a Lender, for each calendar day of each calendar month, the product of: (A) the outstanding principal amount of Outstandings that are actually funded by Lender pursuant to this Agreement, multiplied by (B) the applicable interest rate set forth in Section 2(b)(iii) of this Agreement.

"***Daily Rate***" shall have the meaning set forth in Section 11(a) hereof.

"***Dealer Affiliate***" means any Affiliate of a Dealer.

"***Dealer Representative***" shall have the meaning set forth in Section 28(b) hereof.

"*Default*" shall have the meaning set forth in Section 13 hereof.

"*Default Rate*" shall have the meaning set forth in Section 11(a) hereof.

"***Deferred TRA Obligations***" means, at any time of determination, the amount of past-due obligations to pay accrued Permitted TRA Payments for which payment is deferred as contemplated in Section 4.3(b) of the Tax Receivable Agreement.

"***Disputes***" shall have the meaning set forth in Section 27(a) hereof.

"***EBITDA***" means, for any period, Consolidated Net Income for such period plus:

(a) to the extent added or deducted in determining such Consolidated Net Income, Interest Expense, Income Tax Expense, depreciation and amortization, in each case for such period less any non-recurring income or expenses, including, without limitation, any non-cash income or expenses related to transaction costs incurred for the (i) initial public offerings attempted in calendar year 2019 and (ii) the IPO, and (iii) corporate restructurings and modifications to the Loan Documents and Credit Facility Agreement related to the transactions described in the foregoing clauses (a)(i) and (a)(ii) , in each case, as approved by Agent in its sole discretion, and

(b) (i) for the Quarterly Computation Period ending on December 31, 2019, an amount equal to $229,000; and

(ii) for all Quarterly Computation Periods thereafter, an amount equal to $0.

"***Eligible Collateral***" shall have the meaning set forth in Section 3(a) hereof.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended from time to time

"***ERISA Affiliate***" shall mean any trade or business (whether or not incorporated) under common control with any Dealer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code) or Section 4001 of ERISA.

"***ERISA Event***" shall mean (a) any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived, with respect to a pension plan; (b) a withdrawal by any Dealer or any ERISA Affiliate from a pension plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Dealer or any ERISA Affiliate from a multi-employer plan or notification that a multi-employer plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a pension plan or multi-employer plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any pension plan or multi-employer plan; or (f) the imposition of any liability under Title IV of ERISA, other than for Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Dealer or any ERISA Affiliate.

"***FAA***" shall have the meaning set forth in Section 27(a) hereof.

"***Fees and Terms***" shall have the meaning set forth in Section 12(b) hereof.

"***Fixed Charge Coverage Ratio***" means, for any Computation Period, the ratio of (a) the total for such period of EBITDA minus the sum of (i) Income Tax Expense and distributions made to allow holders of equity (including holders of any warrants) to pay income taxes based on the earnings of the Person making such distributions, including, without limitation, Permitted Tax Distributions, plus (ii) all unfinanced Capital Expenditures plus (iii) Permitted TRA Payments, to (b) the sum for such period of (i) cash Interest Expense plus, (ii) required payments of principal with respect to Indebtedness consisting of borrowed money or pursuant to a writing evidencing a monetary obligation, plus (iii) preferred dividends paid in cash, plus (iv) management fees paid in cash, plus (v) payments made in respect of any subordinated debt not otherwise included in (b)(i), (b)(ii), b(iii), or b(iv) above.

"***Free Floor Period***" shall have the meaning set forth in Section 11(a) hereof.

"***Funded Debt to EBITDA Ratio***" means, for any Computation Period, a ratio of:

(a) the total for such period of

(i) Total Funded Debt as of the last day of such Computation Period, minus

(ii) the lesser of (1) Subordinated Acquisition Indebtedness existing as of the last day of such Computation Period, or (2) $9,000,000.00, to

(b) EBITDA for such Computation Period.

"***GAAP***" means generally accepted accounting principles.

"***GS***" means Goldman Sachs & Co. LLC and its successors and assigns.

"***GSSLG***" means Goldman Sachs Specialty Lending Group, L.P., a Delaware limited partnership.

"***Guarantor***" shall have the meaning set forth in Section 13 hereof.

"***Holdings***" means One Water Marine Holdings, LLC, a Delaware limited liability company.

"***Holdings Company Agreement***" means that certain Fourth Amended & Restated Limited Liability Company Agreement of Holdings dated effective as of the Closing Date and as amended, restated, amended and restated, supplemented or otherwise modified from time to time with the prior written consent of Agent in its sole discretion.

"***Income Tax Expense***" means income taxes paid or payable in cash by PubCo and any of its Subsidiaries.

"***Indebtedness***" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding (i) trade accounts payable in the ordinary course of business and compensation or bonus arrangements with persons who are employees or independent contractors of a person, (ii) any obligation under this Agreement or any other inventory financing agreement among Dealers and CDF, and (iii) any obligation under the TCF Agreement), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person; provided that if such Person has not assumed or otherwise become liable for such indebtedness, such indebtedness shall be measured at the fair market value of such property securing such indebtedness at the time of determination, (f) all obligations, contingent or otherwise, with respect to the face amount of all letters of credit (whether or not drawn), bankers' acceptances and similar obligations issued for the account of such Person, (g) all hedging obligations of such Person, (h) all contingent liabilities of such Person, (i) all debt of any partnership of which such Person is a general partner, (j) all non-compete payment obligations, earn-outs and similar obligations and (k) any Capital Securities or other equity instrument, whether or not mandatorily redeemable, that under GAAP is characterized as debt, whether pursuant to financial accounting standards board issuance No. 150 or otherwise.

"***IPO***" has the meaning set forth in the Recitals hereto.

"***Intellectual Property***" shall mean any intellectual property (including, without limitation, all copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, trade secrets and trade secret licenses).

"***Intercreditor Agreement***" shall mean that certain Second Amended and Restated Intercreditor Agreement among Agent and Credit Facility Agent dated as of the Closing Date, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

"***Interest Expense***" means for any period the consolidated interest expense of PubCo for such period (including all imputed interest on Capital Leases).

"***Intervening Default***" shall have the meaning set forth in Section 2(b) hereof.

"***Inventory***" means all of Dealers' presently owned and hereafter acquired goods which are held for sale or lease.

"***Invoice***" means any invoice issued by a Vendor related to an Approval.

"***Law***" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any governmental authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"***Lender Affiliate***" means the Affiliate of a Lender.

"***Lender Credit***" shall have the meaning set forth in Section 4(a) hereof.

"***Lender Rate***" means the "Dealer Rate" as set forth in the applicable Program Terms Letter, less any applicable Performance Rebate as set forth therein.

"***LIBOR***" shall have the meaning of "One month Libor" or "Three Month Libor," as applicable, set forth in Section 11 hereof.

"***Liens***" shall have the meaning set forth in Section 7(a) hereof.

"***LMI Priority Distribution Payment***" means the LMI Priority Distribution under (and as defined in) the Third Amended and Restated Limited Liability Company Agreement of Holdings dated March 1, 2017, as amended.

"***Loan***" means an extension of credit to or on behalf of one or more Dealers by Agent and Lenders under and pursuant to this Agreement.

"***Loan Document***" means this Agreement, any Program Terms Letter or Transaction Statement entered into pursuant to this Agreement, and all documents delivered to Agent and/or any Lender in connection with any of the foregoing.

"***Master Reorganization Agreement***" means that certain Master Reorganization Agreement dated on or about the Closing Date by and among PubCo, Holdings, Parent, and the other parties thereto, as in effect as of the Closing Date and as amended, restated, amended and restated, supplemented or otherwise modified from time to time with the prior written consent of Agent in its sole discretion.

"***Monthly Computation Period***" means each period of twelve consecutive months ending on the last day of a month.

"***Monthly Interest***" means, with respect to each Lender, for each calendar month, the sum of the Daily Interest for each calendar day of such calendar month.

"***Net Cash Flow After Taxes***" means EBITDA minus Income Tax Expense and distributions made to allow holders of equity (including holders of any warrants) to pay income taxes based on the earnings of the Person making such distributions.

"***Non-Funding Lender***" means any Lender that has (a) failed to fund any payments required to be made by it under the Loan Documents within two (2) Business Days after any such payment is due (excluding expense and similar reimbursements that are subject to good faith disputes), (b) given written notice (and Agent has not received a revocation in writing), to Agent, any Lender, or Dealer, or has otherwise publicly announced (and Agent has not received notice of a public retraction) that such Lender believes it will fail to fund payments required to be funded by it under the Loan Documents or (c) (or any Person that directly or indirectly controls such Lender has), (i) become subject to a voluntary or involuntary case under the Federal Bankruptcy Reform Act of 1978, or any similar bankruptcy laws, (ii) a custodian, conservator, receiver or similar official appointed for it or any substantial part of such Person's assets, or (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any governmental authority having regulatory authority over such Person or its assets to be, insolvent or bankrupt, and for this clause (iii), Agent has determined that such Lender is reasonably likely to fail to fund any payments required to be made by it under the Loan Documents.

"***Obligations***" shall have the meaning set forth in Section 5(e) hereof.

"***Open Approval***" means any Approval for which CDF has not financed an Invoice for the inventory subject thereto.

"***Other Lenders***" shall have the meaning set forth in Section 2(d) hereof.

"***Outstandings***" means, at any time, an amount equal to the aggregate unpaid amount of all Invoices which have been financed by Agent on behalf of Dealers.

"***PAS***" shall have the meaning set forth in Section 10(a) hereof.

"***Parent***" means One Water Assets & Operations, LLC, a Delaware limited liability company, which owns as of the Closing Date 100% of the Capital Securities of each other Dealer and each of its Subsidiaries.

"***Parent Company Agreement***" means that certain Second Amended and Restated Limited Liability Company Agreement of Parent dated as of the Closing Date.

"***Performance Rebate***" shall have the meaning set forth in the applicable Program Terms Letter.

"***Permitted Acquisition***" means an acquisition by a Dealer or any of its Subsidiaries of the assets or ownership interest of any other Person which is presented to Agent prior to execution and approved by Agent in its sole discretion.

"***Permitted Deferred TRA Payment***" means a distribution in payment of Deferred TRA Obligations that is made within 3 months after the date a Permitted TRA Payment is due as contemplated by Section 4.3(b) of the Tax Receivables Agreement.

"***Permitted Exchange***" means a transaction in which units of Holdings are exchanged for Class A shares of PubCo as described in the Holdings Company Agreement.

"***Permitted Indebtedness***" means:

(a) any Indebtedness owing under the Credit Facility Agreement in an aggregate principal amount at any time outstanding not to exceed $110,000,000.00; provided, however, this limit shall not include Indebtedness that is payable in kind;

(b) Indebtedness incurred in the ordinary course of business under statutory and appeal bonds;

(c) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Dealers, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(d) Subordinated Acquisition Indebtedness;

(e) Indebtedness evidenced or secured by or incurred under the TCF Agreement not to exceed $500,000 at any time outstanding;

(f) Indebtedness with respect to Capital Leases not to exceed an aggregate amount outstanding at any time of $2,500,000.00; and

(g) Indebtedness arising under the Tax Receivable Agreement.

"***Permitted Locations***" shall have the meaning set forth in Section 6 hereof.

"***Permitted Restricted Payment***" means a Restricted Payment made by Holdings and any of its Subsidiaries:

(a) payments made by Parent to Holdings (and by Holdings to PubCo) in an aggregate amount not to exceed $2,000,000 in any trailing twelve-month period, to the extent necessary to permit Holdings and the PubCo Holdings Group to pay general administrative costs and expenses;

(b) for so long as Holdings remains a partnership or disregarded entity for U.S. federal income tax purposes, payments made by Parent to Holdings (and by Holdings to its equity holders) to the extent necessary for Permitted Tax Distributions;

(c) for so long as Holdings remains a partnership or disregarded entity for U.S. federal income tax purposes, Permitted TRA Payments and Permitted Deferred TRA Payments by Holdings (and by OWAO to Holdings for such purposes);

in each case of a Restricted Payment under clause (a), (b) or (c) of this definition, so long as the amount of any such Restricted Payment is applied for such purpose and, except in the case of clause (e), no Default shall have occurred and be continuing or shall be caused thereby;

(d) in the form of fees and expenses payable under the Credit Facility Agreement and the other "Credit Documents" referred to therein;

(e) in the form of distributions, redemptions or other payments that are made among Holdings and any of its Subsidiaries;

(f) in the form of scheduled principal and interest payments with respect to any subordinated debt as expressly permitted under a subordination agreement in favor of, and in form and content acceptable to, Agent; and

(g) in the form of distributions in order to pay transaction costs incurred for (i) the initial public offerings attempted in calendar year 2019, as approved by Agent in its sole discretion, (ii) the IPO, and (iii) corporate restructurings and modifications to the Loan Documents and Credit Facility Agreement related the transactions referred to in the foregoing clauses (g)(i) and (g)(ii); and

(h) to the extent constituting Restricted Payments, PubCo, Holdings, Parent and their Subsidiaries may consummate the Specified IPO Transactions.

"***Permitted Tax Distributions***" means distributions by Holdings to all members of Holdings on a pro rata basis in an amount that is not in excess of the amount sufficient to result in a distribution to PubCo to enable the PubCo Holdings Group to timely satisfy its U.S. federal, state and local and non-U.S. tax obligations, other than any obligations to remit any withholdings withheld from payments to third parties (determined, for the avoidance of doubt, by taking into account any tax benefits with respect to which any distributions described in the definition of "Permitted TRA Payments" are made).

"***Permitted TRA Payments***" means distributions by Holdings to all members of Holdings on a pro rata basis in an amount that is not in excess of the amount necessary for PubCo to satisfy its payment obligations under the Tax Receivable Agreement, except that "Permitted TRA Payments" shall not include any payment obligations of PubCo pursuant to Article IV of the Tax Receivable Agreement.

"***Person***" means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or governmental authority.

"***Principal***" shall have the meaning set forth in Section 28(b) hereof.

"***Program Terms Letters***" shall have the meaning set forth in Section 4(a) hereof.

"***PubCo***" means OneWater Marine, Inc., a Delaware corporation.

"***PubCo Holdings Group***" means PubCo and each other Subsidiary of PubCo (other than Holdings and its Subsidiaries).

"***Quarterly Computation Period***" means each period of four consecutive fiscal quarters ending on the last day of a fiscal quarter.

"***Ratable Share***" means, with respect to each Lender, the percentage equal, from time to time, to such Lender's Allocation divided by the Aggregate Allocations, as such percentage is set forth opposite such Lender's name on Schedule 1, under the heading "Ratable Share".

"***Registration Statement***" means the Form S-1 Registration Statement File No. 333-232639 filed by PubCo with the Securities Exchange Commission on July 19, 2019, as amended, restated, supplemented or replaced from time to time prior to the Closing Date.

"***Related Persons***" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition precedent to the execution this Agreement) and other consultants and agents of or to such Person or any of its Affiliates.

"***Rental Contracts***" shall have the meaning set forth in Section 3(a) hereof.

"***Rental Units***" shall have the meaning set forth in Section 3(a) hereof.

"***Replacement Lender***" shall have the meaning set forth in Section 2(d) hereto.

"***Reporting Date***" means (a) each Wednesday that this Agreement is in effect or, if such Wednesday is not a Business Day, the next succeeding Business Day, or (b) any other Business Day selected by Agent in its reasonable discretion. Agent and Lenders hereby acknowledge and agree that the Ratable Shares set forth in Schedule 1 attached hereto shall not take effect until the first Wednesday after the Closing Date. Until such Reporting Date, the Ratable Shares of Lenders immediately prior to the date of this Agreement shall continue to be in effect.

"***Required Lenders***" shall mean Lenders whose combined Ratable Share exceeds 50%.

"***Restricted Payment***" means (a) any distribution including, without limitation, dividends, to any holders of any Dealer's or any Guarantor's Capital Securities, (b) any purchase or redemption of any Dealer's or any Guarantor's Capital Securities, (c) any payment of management fees, transaction-based fees or similar fees to any of its Capital Securities holders or any Dealer Affiliate (including, without limitation, any fees under any management agreement), (d) any redemption, prepayment (whether mandatory or optional), defeasance, repurchase or any other payment in respect of any subordinated debt except as expressly permitted under a subordination agreement in favor of, and in form and content acceptable to, Agent, (e) any payment under the Tax Receivable Agreement, or (f) set aside funds for any of the foregoing; provided, that in the case of each of the foregoing clauses, "Restricted Payment" shall not include any of that foregoing that is payable solely in the shares or units of Capital Securities, including, without limitation, for the purposes of subsection (b), above, Permitted Exchanges.

"***Sanctioned Country***" shall mean a country or territory which is itself the subject or target of a comprehensive economic or financial sanctions program maintained by any Sanctions Authority under any Anti-Terrorism Law, including, without limitation, as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria.

"***Sanctioned Person***" shall mean (1) any Person listed in any sanctions list maintained by any Sanctions Authority, (2) any Person operating, organized or resident in a Sanctioned Country, or (3) any Person owned or controlled by any such Person set forth in clauses (1) or (2) above.

"***Sanctions Authority***" shall mean the United States, Canada, the United Nations Security Council, the European Union (and its member states), the United Kingdom and the respective governmental institutions of any of the foregoing, including, without limitation, Her Majesty's Treasury, OFAC, the U.S. Department of State, and any other agency of the United States government or Canadian government.

"***Sale***" shall have the meaning set forth in Section 20(b) hereof.

"***sale out of trust***" or "***SOT***" shall have the meaning set forth in Section 10(b) hereof.

"***SPP***" shall have the meaning set forth in Section 10(a) hereof.

"***SPV***" means any special purpose funding vehicle identified as such in a writing by any Lender to Agent.

"***Specified IPO Transactions***" means each of the transactions consummated in connection with (a) the recapitalization of PubCo, Holdings and certain subsidiaries in connection with the IPO as and to the extent separately described in the Master Reorganization Agreement, (b) the effectiveness of the IPO substantially concurrently with the Closing Date, in each case, as and to the extent separately described in the Registration Statement, and (c) the LMI Priority Distribution Payment.

"***Subordinated Acquisition Indebtedness***" means Indebtedness incurred, created, assumed, or guaranteed by Holdings or any of its Subsidiaries that is junior and subordinate in all respects to the Obligations under this Agreement under and pursuant to an agreement which is satisfactory to Agent in its sole and absolute discretion.

"***Subsidiary***" means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding Capital Securities as have more than 50% of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to all direct and indirect Subsidiaries of Holdings.

"***Tax Receivable Agreement***" means (i) that certain Tax Receivable Agreement dated as of the Closing Date by and among PubCo, the "TRA Holders" (as therein defined) and the other Persons party thereto, as in effect on the Closing Date, and (ii) any other tax receivable agreement approved in writing from time to time by Agent in its sole discretion, in each case as amended, restated, amended and restated, supplemented or otherwise modified from time to time with the prior written consent of Agent in its sole discretion.

"***TCF Agreement***" means that certain Inventory Security Agreement dated as of June 19, 2015, by and between Singleton Assets & Operations, Holdings, and TCF Inventory Finance, Inc.

"***Total Funded Debt***" means all Indebtedness of Holdings and its Subsidiaries, determined on a consolidated basis, excluding (a) contingent obligations in respect of contingent liabilities (except to the extent constituting (i) contingent liabilities in respect of Indebtedness of a Person other than any Dealer, or (ii) contingent liabilities in respect of undrawn letters of credit), (b) hedging obligations, (c) Indebtedness of Holdings to Subsidiaries and Indebtedness of Subsidiaries to Holdings or to other Subsidiaries, and (d) any Deferred TRA Obligations.

"***Transaction Statement***" shall have the meaning set forth in Section 4(a) hereof.

"***UCC***" shall have the meaning set forth in Section 13 hereof.

"***USA&M***" shall have the meaning set forth in Section 27(b) hereof.

"***Vendor Contracts***" shall mean contracts with an original equipment manufacturer that supplies any Dealer; provided that Vendor Contracts specifically excludes Vendor Credits.

"***Vendor Credits***" shall have the meaning set forth in Section 5(f) hereof.

"***Vendors***" shall have the meaning set forth in Section 2 hereof.

2. Extensions of Credit.

(a) Advances. Subject to the terms of this Agreement, the Lenders severally and not jointly may provide Loans in an amount equal to each such Lender's Ratable Share of such Loan to any one or more Dealers from time to time to enable such Dealer or Dealers to purchase inventory from Agent approved vendors ("***Vendors***") and for other purposes. No Loan will be made to the extent such Loan would cause any Lender to have outstanding Loans in a principal amount in excess of such Lender's Allocation nor will any Loan be made which would cause the principal amount of all Loans outstanding to exceed the Aggregate Allocations. (For the avoidance of doubt, neither the Aggregate Allocation nor each Lender's Allocation shall constitute a commitment by the Agent or any Lender to advance the amount of the Aggregate Allocation or such Allocation to the Dealers.) If the aggregate principal amount of Loans outstanding at any time exceeds the Aggregate Allocations, Dealers shall immediately pay such excess to the Agent for the benefit of the Lenders. The decision to advance funds is at the discretion of the Agent. Without limiting the discretionary nature of this credit facility, Agent may, without notice to Dealer, elect not to finance any inventory sold by particular Vendors. All advances and other transactions hereunder are for business purposes and not for personal, family, household or any other consumer purposes.

(b) Payments by the Lenders to Agent; Settlement.

(i) Each Lender shall have the obligation to fund its Ratable Share of a Loan upon issuance by CDF of an Approval. Lenders acknowledge and agree that: (A) CDF typically issues Approvals on a date (each, an "***Approval Date***") prior to the date CDF is required actually to fund the Loan (each, an "***Advance Date***") that is based on such Approval, (B) once an Approval has been issued, and the Vendor receiving such Approval shall have shipped its product based thereon, CDF may deem itself obligated to fund the related Loan on the Advance Date, notwithstanding any Automatic Default or other Default that may arise on or prior to an Approval Date (each, an "***Intervening Default***"), and (C) each Lender shall be obligated to fully fund in cash such Lender's Ratable Share in any Loans which derive from all Approvals issued by CDF in good faith, as well as any Open Approvals based thereon, notwithstanding any Intervening Default.

(ii) On each Reporting Date on or before 2:00 p.m. central time, Agent shall deliver notice to each Lender of the amount of Loans Lender has funded and such Lender's Ratable Share multiplied by Outstandings, and: (A) if the amount of Loans Lender has funded is less than Lender's Ratable Share multiplied by the Outstandings calculated as of such Reporting Date, then Lender shall remit such deficiency to Agent (on behalf of CDF) by 5:00 p.m. central time on the Business Day immediately following such Reporting Date, and (B) if the amount of Loans Lender has funded is more than Lender's Ratable Share multiplied by the Outstandings calculated as of such Reporting Date, then Agent (on behalf of CDF) will remit such excess to such Lender by 5:00 p.m. central time on the Business Day immediately following such Reporting Date. Each payment due to Agent or Lenders will be paid in immediately available funds according to the electronic transfer instructions set forth on Schedule 2 attached hereto, and, if not timely paid in accordance with this Agreement, will bear interest until paid at a rate per annum equal to the Lender Rate. If CDF is acting as Agent, it shall be deemed to have paid its deficiency or received its excess as set forth above on each Reporting Date. Each Lender hereby waives any right it may now or in the future have to set-off its obligation to make any payment to CDF or Agent under this Agreement against any obligation of CDF or Agent to such Lender, whether under this Agreement or any other agreement between CDF and such Lender or Agent and such Lender.

(iii) The amount of Loans each Lender has funded shall bear interest at the Lender Rate, as such rate may change pursuant to the terms of the applicable Program Terms Letter. Interest will be computed on the basis of a 360-day year and assess for the actual number of days elapsed. Provided Lender is not a Non-Funding Lender, then the amount of Monthly Interest, if any, payable to Lender, less any administration fees due to Agent pursuant to any fee letter between Agent and Lender, shall be distributed by Agent to Lender monthly in arrears on the latter of: (A) the fifteenth (15th) day of the applicable month, or if the fifteenth (15th) is not a Business Day, the next succeeding Business Day, or (B) within five (5) Business Days after Agent's receipt thereof from Dealers. To the extent that Lender is entitled to receive interest income in excess of the Monthly Interest, if such additional interest has not previously been distributed to Lender, then Lender shall be entitled to receive an additional payment from Agent equivalent to Lender's Ratable Share of such interest income. Any amounts due to Lender for income in excess of the Monthly Interest shall be reflected and paid with Monthly Interest as set forth above. Lenders acknowledge and agree that the rate of return paid on any Loan is dependent on numerous factors, including discounts and subsidies offered by Vendors. Application of any Collections received by Agent as interest in cash or good collected funds representing payment of interest on the Loans may result in the payment of interest to Lender in excess of the rate set forth in this subsection.

(iv) Lenders acknowledge Dealers may be entitled to receive a Performance Rebate on a calendar year basis pursuant to the terms of the applicable Program Terms Letter. Notwithstanding anything herein to the contrary, if the Performance Rebate is not earned by or otherwise paid to Dealers during any calendar year, each Lender may be entitled to receive an additional payment from Agent equivalent to such Lender's share of such portion of the Performance Rebate not earned by or otherwise paid to Dealers. Any amounts due to Lenders under this Section 2(b)(iv) shall reflected in a notice to be delivered in the manner set forth in Section 2(b)(ii), above, within ninety (90) days following the end of the applicable calendar year.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Dealers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to Dealers or paid to any Vendor or any to other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Dealer or such other Person, without setoff, counterclaim or deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(d) Non-Funding Lenders; Replacement of Lenders.

(i) Non-Funding Lenders.

(1) Responsibility. The failure of any Non-Funding Lender to make any Loan or any payment required by it under any Loan Document on the date specified therefor shall not relieve any other Lender (each such other Lender, an "***Other Lender***") of its obligations to make such Loan or make any other such required payment on such date, and neither Agent nor, other than as expressly set forth herein, any Other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan or make any other required payment under any Loan Document.

(2) Voting Rights. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be, or have its Loans included in the determination of "Required Lenders") for any voting or consent rights under or with respect to any Loan Document, provided that (A) the Allocation of a Non-Funding Lender may not be increased, extended or reinstated, (B) the principal of a Non-Funding Lender's Loans may not be reduced or forgiven, and (C) the interest rate applicable to Obligations owing to a Non-Funding Lender may not be reduced in such a manner that by its terms affects such Non-Funding Lender more adversely than other Lenders, in each case without the consent of such Non-Funding Lender.

(3) Payments to a Non-Funding Lender. Agent shall be authorized to use all payments received by Agent for the benefit of any Non-Funding Lender pursuant to this Agreement to pay in full the Aggregate Excess Funding Amount to the appropriate Lenders. Following such payment in full of the Aggregate Excess Funding Amount, Agent shall be entitled to hold such funds as cash collateral in a non-interest bearing account up to an amount equal to such Non-Funding Lender's unfunded Allocation and to use such amount to pay such Non-Funding Lender's funding obligations hereunder until the Obligations are paid in full in cash and this Agreement terminated. Upon any such unfunded obligations owing by a Non-Funding Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Non-Funding Lender. With respect to such Non-Funding Lender's failure to fund Loans, any amounts applied by Agent to satisfy such funding shortfalls shall be deemed to constitute a Loan and, if necessary to effectuate the foregoing, the proceeds of such Loans shall be applied to pay the unpaid principal of the Loans owing to the other Lenders until such time as the aggregate amount of the Loans are held by the Lenders in accordance with their Ratable Shares. Any amounts owing by a Non-Funding Lender to Agent which are not paid when due shall accrue interest at the interest rate applicable during such period to the Loans. In the event that Agent is holding cash collateral of a Non-Funding Lender that cures pursuant to clause (4) below or ceases to be a Non-Funding Lender pursuant to the definition of Non-Funding Lender, Agent shall return the unused portion of such cash collateral to such Lender.

(4) Cure. A Lender may cure its status as a Non-Funding Lender under clause (a) of the definition of Non-Funding Lender if such Lender (A) fully pays to Agent the Aggregate Excess Funding Amount, plus all interest due thereon and (B) timely funds the next Loan required to be funded by such Lender or makes the next reimbursement required to be made by such Lender. Any such cure shall not relieve any Lender from liability for breaching its contractual obligations hereunder.

(ii) Replacement of Lenders. Within forty-five (45) days after any failure by any Lender other than Agent or an Affiliate of Agent to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto, Dealers may, at their option, notify Agent and such non-consenting Lender of Dealers' intention to obtain, at Dealers' expense, a replacement Lender ("***Replacement Lender***") for such non-consenting Lender, which Replacement Lender shall be reasonably satisfactory to Agent. In the event the Dealers obtain a Replacement Lender within sixty (60) days following notice of its intention to do so, such non-consenting Lender shall sell and assign its Loans and remaining Allocation to such Replacement Lender, at par, provided that the Dealers have reimbursed such non-consenting Lender for its costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment. In the event that a replaced Lender does not execute an Assignment pursuant to Section 20(c) of this Agreement within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section, the Dealers shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Dealers, the Replacement Lender and Agent, shall be effective for purposes of this Section 2(d) and Section 20(c). Upon any such Assignment and payment and compliance with the other provisions of Section 20(c), such replaced Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive.

3. Rental Financing.

(a) From time to time, Agent and Lenders may provide Dealers with financing for Collateral consisting of new marine units (including boats, motors or trailers) (the "***Eligible Collateral***"), which Dealer may rent or lease to Dealer's customers in the ordinary course of its business ("***Rental Units***") for use within the United States. Agent may decide (i) the amount of funds, if any, which Lenders will advance on Rental Units which Dealers may seek to acquire, and (ii) the length of and payments required under any rental contract and/or lease agreement pertaining to such Rental Units that Agent would permit to exist with respect to Rental Units which Agent, on behalf of the Lenders, agrees to provide financing for (all such rental contracts and lease agreements are hereinafter collectively referred to as "***Rental Contracts***"). In addition, Dealers may not undertake to rent or lease any Eligible Collateral without the prior written consent of Agent. Rental Units may only consist of Eligible Collateral which either: (a) was ordered specifically for the purpose of being a Rental Unit, or (b) was converted from stock inventory to rental inventory upon Agent's prior written consent.

(b) Rental Contracts. All Rental Contracts will: (i) be in a form satisfactory to Agent, and (ii) be transferable to Agent on behalf of the Lenders. Each Dealer warrants and represents to Agent and Lenders that all of the Rental Contracts and rental and lease activities will comply with all applicable laws. Dealers agree to indemnify Agent and Lenders against any loss or damage Agent or Lenders suffer, whether direct or indirect, resulting from or in any way arising out of Rental Contracts, or rental and lease activities, which fail to comply with all applicable laws. Dealers will reimburse Agent for any attorneys' fees which Agent incurs in having the Rental Contracts reviewed for compliance with applicable laws. Immediately upon execution of the same, all Rental Contracts will be effectively collaterally assigned to Agent for the benefit of Lenders, and, immediately upon Agent's request, delivered to Agent together with any and all related documents. All Rental Contracts will contain, by way of a stamp or as a part of the preprinted rental contract or lease agreement form, the following legend directly below the customer's signature:

> "FOR VALUE RECEIVED, THIS AGREEMENT AND THE RELATED UNDERLYING RENTAL PROPERTY HAVE BEEN COLLATERALLY ASSIGNED TO WELLS FARGO COMMERCIAL DISTRIBUTION FINANCE, LLC, AS AGENT, AND THERE ARE NO DEFENSES AGAINST THE ASSIGNEE."

Immediately upon Agent's request, each Dealer will report to Agent all of the terms of any Rental Contract executed, the location of the Rental Unit, the date on which such Rental Unit is rented or leased, and the date on which such Rental Unit is to be returned to such Dealer. Each Dealer will also notify Agent, immediately upon Agent's request, of the termination of any Rental Contracts or any changes to such Rental Contracts. Dealers will not assign, sell, pledge, convey or by any other means transfer to any person, other than Agent for the benefit of Lenders, any Rental Contracts or chattel paper, without Agent's prior written consent. Dealers will instruct any person renting or leasing any Rental Unit regarding the proper use and care of such Rental Unit. Dealers will use such forms and agreements as may be reviewed and approved by Agent, if requested. Dealers will not, without Agent's prior written consent, enter into or execute any Rental Contract pursuant to which any Dealer rents or leases any Rental Unit for a period that exceeds seven (7) consecutive days, and will not enter into or execute any Rental Contract which contains an option to purchase or "rent-to-own," such Rental Unit; the purchase of any Collateral must be memorialized in a writing separate and apart from any Rental Contract and must not be subject to or dependent on the terms of any Rental Contract. If any Dealer breaches the terms of the immediately preceding sentence, such Dealer will immediately assign, transfer, and set-over to Agent for the benefit of Lenders, all of Dealer's right, title and interest in and to such Rental Contract, and will also give possession of such Rental Contract to Agent. In addition, in such event, in Agent's sole discretion, Agent may demand immediate payment in full of all indebtedness owed by any Dealer to Agent with respect to the Rental Unit.

4. Financing Terms.

(a) Agent, Lenders and Dealers agree to set forth in this Agreement only the general terms of the financing arrangement among Dealers, Agent and Lenders and certain contractual obligations related to this Agreement, shall be set forth in Program Terms Letters entered into by Dealers, Agent and any one or more Lenders from time to time (the "***Program Terms Letters***"), Transaction Statements (as defined below) or other Loan Documents or other agreements described herein. References to an "inventory financing agreement" in any Loan Document shall be deemed to refer to this Agreement. Agent, Lenders and Dealer hereby acknowledge that certain financial terms depend, in part, on factors which vary from time to time, including without limitation, the availability of Vendor discounts, payment terms or other incentives, Agent's and Lenders' floorplanning volume with Dealers and Vendor and other economic factors. Upon agreeing to finance an item of inventory for any Dealer, Agent, on behalf of the Lenders, will transmit, send or otherwise make available to such Dealer and Lenders a "***Transaction Statement***" which is a record that may be authenticated and which identifies the Collateral financed and/or the advance made and the terms and conditions of repayment of such advance. Dealers agree that a Dealer's failure to notify Agent in writing of any objection to a Transaction Statement within thirty (30) days after a Transaction Statement is transmitted, sent or otherwise made available to such Dealer shall constitute Dealers' (i) acceptance of all terms thereof, (ii) agreement that the Lenders are financing such inventory at Dealers' request, and (iii) agreement that such Transaction Statement will be incorporated herein by reference. If any Dealer objects to the terms of any Transaction Statement, Dealers will pay Agent for the benefit of Lenders for such inventory in accordance with the most recent terms for similar inventory to which Dealers have not objected (or, if there are no prior terms, at the lesser of 16% per annum or at the maximum lawful contract rate of interest permitted under applicable law), subject to termination of this Agreement by Agent, or, if applicable, Lenders, and its rights under the termination provision contained herein. To the extent Vendor program subsidies are applicable to Dealers' financing program (each a "***Lender Credit***"), with respect to any Loan which Lenders make to a Vendor on behalf of a Dealer, Agent may apply against any such amount owed to Vendor any amount Agent (or CDF) for the benefit of Lenders are owed from such Vendor for any such Lender Credit; provided, however, in the event Vendor does not remit any such Lender Credit, Dealers agree to pay the full amount of such Lender Credit. Without the consent of the Lenders, CDF may change any aspect or portion of any Transaction Statement at any time; provided that such change is not inconsistent with the terms and conditions of this Agreement. If any terms set forth in an issued Transaction Statement are revised as a result of entering into this Agreement or any future modification or amendment of the terms of this Agreement (including, without limitation, the change of interest rate from the rate reference in the Existing IFA to the rate reflected in this Agreement), Dealers agree that CDF shall not be required to issue a revised Transaction Statement reflecting such revisions.

(b) Upon receipt by Agent of a request for a Loan under and pursuant to CDF's standard advance request procedures and the issuance of a Transaction Statement by Agent as set forth in Section 4(a) above, each Lender shall follow the funding procedures established by Agent, from time to time, and shall, as and when requested by Agent, advance funds to Agent to fund such Loan in amounts equal to such Lender's Ratable Share of such Loan.

(c) Applicable financial terms, curtailment schedule and maturity for each Rental Unit will be set forth on the applicable Transaction Statement. Unless otherwise provided on such Transaction Statement, if and when permitted under such Dealer's Rental Unit finance program, the principal balance, accrued interest and other charges will be due and payable when such Rental Unit is: (i) sold; (ii) transferred; (iii) rented or leased in a manner contrary to the provisions of this Agreement; (iv) otherwise disposed of; and (v) matured and the principal payment is due to Agent for the benefit of Lenders. Furthermore, if any Rental Unit is sold, stolen, destroyed, damaged, otherwise disposed of, or if payment is required under the terms of Agent's and Lenders' financing program, whichever occurs first, such Dealer will immediately pay Agent, for the benefit of Lenders, the full amount of Dealer's outstanding indebtedness owed to Lenders with respect to such Rental Unit.

(d) Effect of Benchmark Transition Event.

i. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Agent and the Dealers may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all Lenders and the Dealers so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section titled "Effect of Benchmark Transition Event" will occur prior to the applicable Benchmark Transition Start Date.

ii. In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

iii. Standards for Decisions and Determinations. The Agent will promptly notify the Dealers and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or Lenders pursuant to this Section titled "Effect of Benchmark Transition Event," including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section titled "Effect of Benchmark Transition Event."

iv. Upon the Dealers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Dealers may revoke any request for a eurodollar borrowing of, conversion to or continuation of eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Dealers will be deemed to have converted any such request into a request for a Dealer of or conversion to Prime Rate (as referred to in Section 11) Loans. During any Benchmark Unavailability Period, the component of Prime Rate based upon LIBOR, if any, will not be used in any determination of Prime Rate.

v. As used in this Section 4:

a. "***Benchmark Replacement***" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Agent and the Dealers giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

b. "***Benchmark Replacement Adjustment***" means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable interest period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Dealers giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

c. "***Benchmark Replacement Conforming Changes***" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including timing and frequency of determining rates and making payments of interest and other administrative matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement).

d. "***Benchmark Replacement Date***" means the earlier to occur of the following events with respect to LIBOR:

i. in the case of clause (i) or (ii) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

ii. in the case of clause (iii) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

e. "***Benchmark Transition Event***" means the occurrence of one or more of the following events with respect to LIBOR:

i. a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

ii. a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

iii. a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

f. "***Benchmark Transition Start Date***" means (i) in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (ii) in the case of an Early Opt-in Election, the date specified by the Agent or the Required Lenders, as applicable, by notice to the Dealers, the Agent (in the case of such notice by the Required Lenders) and the Lenders.

g. "***Benchmark Unavailability Period***" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (i) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with the Section titled "Effect of Benchmark Transition Event" and (ii) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to the Section titled "Effect of Benchmark Transition Event."

h. "***Early Opt-in Election***" means the occurrence of:

i. (a) a determination by the Agent or (b) a notification by the Required Lenders to the Agent (with a copy to the Dealers) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in this Section titled "Effect of Benchmark Transition Event," are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

ii. (a) the election by the Agent or (b) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Agent of written notice of such election to the Dealers and the Lenders or by the Required Lenders of written notice of such election to the Agent.

i. "***Federal Reserve Bank of New York's Website***" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

j. "***Relevant Governmental Body***" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

k. "***SOFR***" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

l. "***Term SOFR***" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

m. "***Unadjusted Benchmark Replacement***" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

5. Security Interest.

(a) Each Dealer hereby grants to Agent, as collateral agent for the Lenders, a security interest in all of the Collateral other than (i) equipment subject to purchase money security interests and (ii) Credit Facility Collateral as security for all Obligations.

(b) All Rental Units will be titled in accordance with all applicable laws and regulations. Each such certificate of title or other evidence of title shall show the first and only lien holder as "Wells Fargo Commercial Distribution Finance, LLC, as agent," and certain such other information as is required by applicable law or regulation to validly perfect Agent's security interest in such Rental Units.

(c) "***Collateral***" means all of the following personal property of each Dealer, whether such property or Dealer's right, title or interest therein or thereto is now owned or existing or hereafter acquired or arising, and wherever located: all Accounts, Inventory, Equipment, other Goods (excluding Fixtures), General Intangibles (including without limitation, Payment Intangibles but excluding Intellectual Property and Vendor Contracts), Chattel Paper (whether tangible or electronic), Instruments (including without limitation, Promissory Notes), Commercial Tort Claims (excluding Commercial Tort Claims arising solely out of the Credit Facility Collateral), Securities Accounts, Deposit Accounts, Investment Property (other than the equity interests issued by Holdings and its Subsidiaries) and Documents and all Products and Proceeds of the foregoing (including, without limitation, all Accounts, Payment Intangibles, and Chattel Paper ; provided, however, that notwithstanding anything to the contrary in this definition or in any other Loan Document, the Collateral shall not include any of the following: (i) equipment subject to purchase money security interests and (ii) the Credit Facility Collateral. Without limiting the foregoing, the Collateral includes each Dealer's right to all Vendor Credits. Similarly, the Collateral includes, without limitation, all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing Collateral, and all computers, disks, tapes, media and other devices in which such records are stored. For purposes of this Section 5 only, capitalized terms used in this Section 5, which are not otherwise defined, shall have the meanings given to them in Article 9 of the New York Uniform Commercial Code.

(d) "***Credit Facility Collateral***" means (i) all equity interests issued by Holdings and its Subsidiaries, (ii) all of Holdings' and any of its Subsidiaries' real estate interests, whether fee or leasehold, and including all Fixtures, (iii) all of Holdings' and any of its Subsidiaries' Vendor Contracts, (iv) all of Holdings' and any of its Subsidiaries' Intellectual Property, (v) any and all products and Proceeds of the property described in this definition, including Cash Proceeds and insurance proceeds, and (vi) all books and records, electronic or otherwise, which evidence or otherwise relate to any of the foregoing Credit Facility Collateral, and all computers, disks, tapes, media and other devices in which such records are stored; provided, however, that notwithstanding anything to the contrary in this definition or in the Credit Facility Agreement (or any other document relating thereto or securing the obligations referenced therein) the Credit Facility Collateral shall not include any of the Collateral.

(e) "***Obligations***" means all indebtedness and other obligations of any nature whatsoever of each Dealer to Agent and/or Lenders, whether such indebtedness or other obligations arise under this Agreement or any other existing or future agreement between or among Agent and any one or more Dealers and/or any one or more Lenders or otherwise, and whether for principal, interest, fees, Charges, expenses, indemnification obligations or otherwise, and whether such indebtedness or other obligations are existing, future, direct, acquired, contractual, noncontractual, joint and/or several, fixed, contingent or otherwise**.**

(f) "***Vendor Credits***" means all of each Dealer's rights to any price protection payments, rebates, discounts, credits, factory holdbacks, incentive payments and other amounts which at any time are due a Dealer from a Vendor.

6. Representations and Warranties. Each Dealer represents and warrants that at the time of execution of this Agreement and at the time of each approval and each advance hereunder: (a) such Dealer does not conduct business under any trade styles or trade names except as disclosed by such Dealer to Agent in writing and has all the necessary authority to enter into and perform this Agreement and such Dealer will not violate its organizational documents, or any law, regulation or agreement binding upon it, by entering into or performing its obligations under this Agreement; (b) such Dealer will only keep Collateral at locations within the U.S. which have been disclosed to Agent either (i) in writing prior to the execution of this Agreement or (ii) upon thirty (30) days prior written notice, and, in either case, which have been approved by Agent ("***Permitted Locations***") (c) this Agreement correctly sets forth such Dealers' true legal name, the type of its organization (if not an individual), the state in which such Dealer is incorporated or otherwise organized, and such Dealers' organizational identification number, if any; (d) all information supplied by such Dealer to Agent and Lenders, including any financial, credit or accounting statements or application for credit, in connection with this Agreement is true, correct and complete; (e) such Dealer has good title to all Collateral; (f) there are no actions or proceedings pending or threatened against such Dealer which might result in any material adverse change in such Dealers' financial or business condition; (g) such Dealer is duly organized or formed, validly existing and in good standing under the laws of its state of incorporation or organization as set forth in Section 25, and is duly qualified and in good standing or has applied for qualification as a foreign Person authorized to do business in each jurisdiction where, because of the nature of its activities or properties, such qualification is required, except to the extent that the failure to so qualify would not reasonably be expected to have a material adverse effect; (h) such Dealer (i) is not in violation of any law, ordinance, rule, regulation, judgment, decree or order of any federal, state or local governmental body or court if such violation would reasonably be expected to result in a material adverse effect; and (ii) has obtained all required permits, certificates, licenses, approvals and other authorizations from governmental agencies and entities (whether federal, state or local) necessary to carry on its operation if the failure to obtain such permit, certificate, license, approval or other authorization would reasonably be expected to result in a material adverse effect; (i) (i) such Dealer is in compliance, in all material respects, with the USA PATRIOT Act, FCPA (defined below) and all applicable Anti-Terrorism Laws, (ii) (A) such Dealer or any director, officer, or employee of such Dealer, or (B) to the knowledge of any Dealer, any agent or Affiliate that will act in any capacity in connection with or benefit from any facility established hereby of the Dealers is not a Person that is: (x) a Sanctioned Person; or (y) located, organized or resident in a Sanctioned Country, and (iii) no part of the proceeds of the Loans will be used by Holdings or any of its Subsidiaries, including the Dealers, directly or, to the knowledge of Holdings or any of its Subsidiaries, indirectly, (A) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977 ("***FCPA***"), (B) to fund any activities or business of or with any Sanctioned Person or in any Sanctioned Country, or (C) in any manner that would result in a violation of any applicable Anti-Terrorism Law by PubCo or its Subsidiaries; (j) Dealers have provided, or have caused to be provided, to Agent true and correct copies of all material non-confidential instruments, documents and agreements related to the IPO and have not failed to provide, or cause to be provided, any such instruments, documents or agreements; (k) as of the Closing Date, Dealers have paid off and extinguished, or caused to be paid off an extinguished, the Preferred Stock and Purchase Warrants (as those terms are defined in the Existing Agreement); and (l) Dealers have paid off, or caused to be paid off, all Existing Indebtedness (as defined in the Credit Facility Agreement) required by Credit Facility Agent in order to consummate the transactions evidenced by the Credit Facility Agreement and has provided true and correct copies of all documents, instruments, and agreements evidencing such payoffs (and have not failed to provide any such documents, instruments or agreements).

7. Covenants.

(a) Until sold as permitted by this Agreement, each Dealer shall own all of its Collateral free and clear of all liens, security interests, claims and other encumbrances, whether arising by agreement or operation of law (collectively "***Liens***"), other than Liens (i) in favor of Agent and Liens in favor of Credit Facility Agent; provided, however, that all Liens, from time to time, in favor of Credit Facility Agent shall be subject to the Intercreditor Agreement, (ii) Liens for taxes, assessments or other governmental charges that are not due or payable or that are due or payable, but are being diligently contested in good faith by appropriate proceedings, (iii) representing easements, rights of way, restrictions, encroachments, and other minor defects in title, provided that such Liens do not interfere in any material respect with the ordinary conduct of any Dealer's business, and (iv) purported to be Liens evidenced by the filing of precautionary UCC-1 Financing Statements related solely to operating leases of personal property entered into in the ordinary course of business.

(b) Each Dealer will:

(i) keep all Collateral at Permitted Locations and keep all tangible Collateral safe and secure, in good order, repair and operating condition and insured as required herein;

(ii) promptly file all tax returns required by law and promptly pay all taxes, fees, and other governmental charges for which it is liable, including without limitation all governmental charges against the Collateral or this Agreement;

(iii) permit Agent and its designees without notice, to inspect the Collateral during normal business hours and at any other time Agent deems desirable (and such Dealer hereby grants Agent and its designees an irrevocable license to enter such Dealer's business locations during normal business hours without notice to such Dealer to account for and inspect all Collateral and to examine and copy such Dealer's books and records related to the Collateral), and in connection with any inspection, provide Agent and its designees safe and secure access to the Collateral and comply with any request made by Agent or its designees to move the Collateral in order to provide such safe and secure access;

(iv) keep complete and accurate records of its business, including inventory, accounts and sales, and permit Agent and its designees to inspect and copy such records upon request;

(v) furnish Agent and Lenders with such additional information regarding the Collateral and such Dealer's business and financial condition as Agent or any Lender may from time to time reasonably request (including without limitation financial statements and projections more frequently than set forth below);

(vi) immediately notify Agent of any material adverse change in such Dealer's prospects, business, operations or condition (financial or otherwise) or in any Collateral;

(vii) execute (or cause any third party in possession of Collateral to execute) all documents Agent requests to perfect and maintain the security interest in the Collateral granted to Agent, pursuant to Section 21(a)(ii);

(viii) deliver to Agent immediately upon each request by Agent (and Agent may retain) each certificate of title or statement of origin issued for Collateral financed by any one or more Lenders;

(ix) at all times be duly organized, existing, in good standing, qualified and licensed to do business in each jurisdiction in which the nature of its business or property so requires and, when requested, provide Agent with documentation evidencing the same;

(x) notify Agent of the commencement of any material legal proceedings against such Dealer or any Guarantor (as defined below);

(xi) comply with all laws, rules and regulations applicable to such Dealer, including without limitation, the USA PATRIOT ACT and all laws, rules and regulations relating to import or export controls or anti-money laundering, and maintains in effect policies and procedures designed to ensure compliance by PubCo and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all applicable sanctions;

(xii) maintain a system of accounting in accordance with generally accepted accounting principles and account records which contain such information in a format as may be requested by Agent;

(xiii) take all steps reasonably requested by Agent to ensure that Agent's security interest in inventory at all times constitutes a perfected, first priority security interest in inventory and does not become subordinate to the security interests or claims of any Person; and

(xiv) Within thirty (30) days of the date hereof (or such later date as the Agent may agree to in its sole discretion), deliver to Agent deposit account control agreements for all Deposit Accounts at Hancock Bank and Branch Banking & Trust in form and substance acceptable to Agent in its sole discretion.

(c) No Dealer will, without Agent's prior written consent:

(i) use (except for demonstration for sale), rent (except as permitted under Section 3), lease, sell, transfer, consign, license or otherwise dispose of any Collateral except for sales of inventory at retail in the ordinary course of such Dealer's business;

(ii) sell or otherwise transfer Inventory to a Dealer Affiliate;

(iii) engage in any other material transaction not in the ordinary course of such Dealer's business;

(iv) change its business in any material manner or its organizational structure or change its registration to a registered organization other than as specified above;

(v) change its name or conduct business under a trade style or trade name other than those disclosed by such Dealer to Agent in writing, without giving Agent at least thirty (30) days' prior written notice thereof;

(vi) change the state in which it is incorporated or otherwise organized (except upon thirty (30) days' prior written notice to Agent);

(vii) change its chief executive office or office where it keeps its records with respect to accounts or chattel paper;

(viii) finance on a secured basis with any Vendor or any third party the acquisition of Inventory, obtain inventory from third parties by consignment, or otherwise create, incur, assume or suffer to exist any Lien on any of such Dealer's assets other than Liens in favor of Credit Facility Agent which are subject to the Intercreditor Agreement; provided, however, Dealers may:

a. create, incur, assume or suffer to exist any Lien in the form of Capital Leases or securing purchase money Indebtedness solely for equipment, so long as any such Liens shall encumber only the equipment acquired with the proceeds of such Indebtedness or subject to such Capital Lease, as the case may be; and

b. create, incur, assume or suffer to exist any Lien in connection with the TCF Agreement, so long as:

i. any such Liens shall only encumber Inventory manufactured by BRP Inc. or one of its Subsidiaries which is financed pursuant to the TCF Agreement; and

ii. the outstanding balance under the TCF Agreement does not exceed $500,000; and

c. obtain inventory from third parties by consignment or otherwise create, incur, assume or suffer to exist any Lien pursuant to consignment agreements approved in writing by Agent in its sole discretion.

(ix) store inventory financed by Agent with any third party;

(x) merge or consolidate with another Person, including without limitation any merger or consolidation among or involving any other Dealers, or divide itself pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar law or statute;

(xi) acquire the assets or ownership interest of any other Person other than in connection with a Permitted Acquisition;

(xii) [reserved];

(xiii) guarantee or indemnify or otherwise become in any way liable with respect to the obligations of any Person (other than Permitted Indebtedness of Holdings or any of its Subsidiaries), except by endorsement of instruments or items of payment for deposit to the general account of such Dealer or which are transmitted or turned over to Agent for the benefit of Lenders, on account of the Obligations;

(xiv) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of such Dealer's capital stock;

(xv) make any change in such Dealer's capital structure or in any of its business objectives or operations which might in any way adversely affect the ability of such Dealer to repay the Obligations;

(xvi) incur, create, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness;

(xvii) make any Restricted Payment which is not a Permitted Restricted Payment;

(xviii) enter into any transaction that results in a Change in Control;

(xix) move Collateral from stock inventory to rental inventory, other than as permitted under this Agreement;

(xx) move Collateral from rental inventory to stock inventory;

(xxi) rent or lease any Rental Unit contrary to the terms of this Agreement;

(xxii) assign, sell, pledge, convey or by any other means transfer to any Person, other than Agent, any Rental Contracts or Chattel Paper related thereto;

(xxiii) do business as a lessor of Rental Units without also doing business as a seller or reseller of new or used marine units under the same legal entity; or

(xxiv) request any Loan, and no Dealer shall use, and shall ensure that its Subsidiaries and its or their respective directors, officers, and employees shall not use, the proceeds of any Loan, in any manner that would result in the violation of any sanctions applicable to any party hereto.

(d) (i) Notwithstanding the provisions of Section 7(c)(ii) above, a Dealer may sell or otherwise transfer inventory to another Dealer who is a signatory to this Agreement. The parties agree that any such inventory that is sold or otherwise transferred at any time by one Dealer to another shall be and remain Collateral and shall continue to secure the Obligations.

(ii) Notwithstanding anything to the contrary in Section 7(c), the Specified IPO Transactions are permitted.

(e) Financial Covenants. Dealer covenants and agrees that so long as any of the Indebtedness to Lenders remains outstanding or the Agreement remains in effect, even if no Indebtedness to Lenders is outstanding:

(i) Funded Debt to EBITDA Ratio. The Dealers shall not permit the Funded Debt to EBITDA Ratio of PubCo on a consolidated basis for any Quarterly Computation Period to exceed a ratio of 2.00 to 1.00.

(ii) Fixed Charge Coverage Ratio. The Dealers shall not permit the Fixed Charge Coverage Ratio of PubCo on a consolidated basis for any Quarterly Computation Period to be less than a ratio of 1.50 to 1.00.

(f) Changes in GAAP. If as of the date of the Dealers' fiscal year end any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Dealers or the Required Lenders shall so request, Agent, the Lenders and Dealers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders, notwithstanding anything to the contrary set forth in Section 18 hereof); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and (ii) Dealers shall provide to Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the financial statements delivered pursuant to Section 9(a)(i) for the fiscal year ending September 30, 2018 for purposes of determining the Funded Debt to EBITDA Ratio and the Fixed Charge Coverage Ratio (including for purposes of Sections 7(e)(i) and 7(e)(ii)), without giving effect to any change in accounting treatment of "operating" and "capital" leases scheduled to become effective for fiscal years beginning after December 15, 2018 as set forth in the Accounting Standards Update No. 2016-02, Leases (Topic 842), issued by the Financial Accounting Standards Board in February 2016, 0r any similar publication issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect prior to December 15, 2018.

8. Insurance.

(a) All risk of loss, damage to or destruction of Collateral shall at all times be on Dealers. Each Dealer shall keep all of its tangible Collateral insured for full value against all insurable risks under policies delivered to Agent and issued by insurers satisfactory to Agent with loss payable to Agent on behalf of Lenders. Agent is to be provided with any written notice of cancellation or change in such policies within two (2) business days of the issuance of such notice. Agent is authorized, but not required, to act as attorney-in-fact for each Dealer in adjusting and settling any insurance claims under any such policy and in endorsing any checks or drafts drawn by insurers. Each Dealer shall promptly remit to Agent in the form received, with all necessary endorsements, all proceeds of such insurance which such Dealer may receive. Agent, at its election, shall either apply any proceeds of insurance it may receive toward payment of the Obligations or pay such proceeds to such Dealer or any other Dealer.

(b) [Reserved].

(c) In addition to Dealers' obligation to insure the Rental Units, Dealers will keep the Rental Units insured for their full insurable value under an "all risk" property insurance policy which includes rental insurance coverage in the minimum amount of $1,000,000.00, with a company acceptable to Agent, naming Agent as a lender loss-payee and containing standard lender's loss payable and termination provisions. Dealers will maintain liability insurance with an insurance carrier and in an amount satisfactory to Agent. Dealers will provide Agent with written evidence of such insurance coverage and Agent's loss-payee endorsement within thirty (30) days of delivery of any such Rental Unit to Dealers by a manufacturer.

9. Reporting.

(a) Financial Statements. Unless waived by Agent, each Dealer will deliver to Agent and, if such Lender requests, each requesting Lender, in a form satisfactory to Agent and any requesting Lenders: (i) within 20 days after the same are prepared, but in no event later than 120 days after the end of each fiscal year, an audited consolidated balance sheet of PubCo and consolidating balance sheets of Dealers as at the end of such year and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in comparative form the figures for the previous fiscal year, and accompanied by the report of a nationally recognized independent certified public accounting firm reasonably acceptable to Agent, approved by Agent in its sole and absolute discretion, which report shall (A) contain an unqualified opinion, stating that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and (B) not include any explanatory paragraph expressing substantial doubt as to going concern status of Dealers; (ii) within 45 days after the end of each of Dealer's fiscal quarters, including each fourth fiscal quarter, a copy of the unaudited consolidated balance sheet of PubCo and consolidating balance sheets of Dealers, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows for such quarter and for the period beginning with the first day of such fiscal year and ending on the last day of such quarter, together with a comparison with the corresponding period of the previous fiscal year and a comparison with the budget for such period of the current fiscal year, all certified on behalf of the Dealers by an appropriate officer of the Dealers as being complete and correct and fairly presenting, in all material respects, in accordance with GAAP, the financial position and the results of operations of Dealers, subject to normal year-end adjustments and absence of footnote disclosures; (iii) within 30 days after the end of each Dealer's fiscal months, other than fiscal quarter-end, a copy of the unaudited balance sheets and profits and loss statements of PubCo and Dealers; and (iv) as of the day of Dealers' fiscal year-end, Dealers' financial projections for the next fiscal year and income statement and balance sheet for such next fiscal year broken out by fiscal quarter on a consolidated basis. Dealers represent that all financial statements and information which have been or may hereafter be delivered by a Dealer are and will be correct and prepared in accordance with accepted accounting principles consistently applied, and there has been no material adverse change in the financial or business condition of any Dealer since the submission to Agent and each Lender of such financial statements, and Dealers acknowledge Agent's reliance thereon.

(b) Upon Agent's or any Lender's request, Dealers will immediately notify Agent and, if applicable, such Lender, orally and in writing of any and all Rental Contracts, sales, damage or other disposition regarding the Rental Units and all terms and details thereof. Monthly, or at such other intervals as Agent may determine, Dealers will provide Agent with a report, in a form and containing such detailed information as Agent may require, regarding Dealers' outstanding Rental Contracts. In addition, Dealers will report such other information relating to the Rental Contracts and Rental Units as Agent may require.

(c) Each Dealer, on the same date the financial reports required to be delivered pursuant to Section 9(a)(i) are due, will provide a list of all locations where Collateral is or may be kept, including information as to whether the property is owned or leased, any Liens or other encumbrances on such property, and if leased, the name of the lessor, the lease term, and any other information Agent shall request. If any Collateral location is subject to a mortgage, deed of trust, or other Lien in favor of any Person other than Agent, except any Lien permitted by Section 7(a) of this Agreement, Dealers agree to promptly obtain an agreement from such Person, waiving such Person's Lien on the Collateral and providing Agent reasonable access thereto, in form and substance acceptable to Agent and duly executed and delivered by such Person.

(d) Dealers shall deliver to Agent annually on the same date the financial reports required by Section 9(a)(i) are delivered to Agent, organizational charts showing the ownership structure of Dealers and any Guarantor (other than Guarantors who are natural persons), in form and content satisfactory to Agent in its sole discretion. Dealers shall be deemed to represent and warrant that such organizational charts are true and correct in all respects, and such organization shall include all information so that such organizational charts are not misleading.

(e) Dealers shall deliver to Agent at the time of each Permitted Acquisition, and annually on the same date the financial reports required by Section 9(a)(i), a report in form and substance acceptable to Agent documenting peak inventory at each location in order to assess insurance coverage with Agent having sole discretion to determine minimum insurance limits.

(f) Dealers shall deliver to Agent a weekly Inventory borrowing base certificate with supporting information required by Agent in form and substance acceptable to Agent every Thursday by 12:00pm central time, and if such Thursday is not a Business Day, then the immediately succeeding Business Day.

(g) On the same date Dealers deliver the financial statements required by Sections 9(a)(i) and 9(a)(ii), Dealers shall deliver a compliance certificate in form and substance acceptable to Agent in its sole discretion.

(h) Dealers shall deliver to Agent and any requesting Lender "Know Your Customer" documentation, including, without limitation, beneficial ownership certification, as requested by Agent or such Lenders (including upon addition of any new entity to this Agreement or other Loan Documents).

10. Payment Terms.

(a) Each Dealer will immediately pay to Agent for the benefit of Lenders, the principal amount of the Obligations owed by such Dealer on each item of Collateral financed by Lenders on the earliest occurrence of any of the following events: (i) when such Collateral is lost, stolen or damaged; (ii) for Collateral financed under any pay-as-sold ("***PAS***") terms, when such Collateral is sold, transferred, rented, leased, otherwise disposed of, unaccounted for, or its payment term has matured; (iii) for Collateral financed under any scheduled payment program ("***SPP***") terms, in strict accordance with the installment payment schedule; (iv) in strict accordance with any curtailment schedule for such Collateral; and (v) when otherwise required under the terms of this Agreement. The PAS, SPP and curtailment terms are or may be set forth in a Transaction Statement. Agent may apply: (1) payments to reduce finance charges first and then principal, regardless of a Dealer's instructions; and (2) principal payments to the oldest (earliest) invoice for Collateral financed by Lenders, but, in any event, all principal payments, may, in Agent's sole discretion, first be applied to such Collateral which is sold, lost, stolen, damaged, rented, leased, or otherwise disposed of or unaccounted for. Any payment hereunder which would otherwise be due on a day which is not a Business Day, shall be due on the next succeeding Business Day, with such extension of time included in any calculation of applicable finance charges. For purposes of this Agreement, "***Business Day***" means any day the Federal Reserve Bank of Chicago is open for the transaction of business.

(b) If Dealers (i) fail to immediately remit funds to Agent upon the maturity of Dealers' applicable payment terms with respect to such advance or upon the sale, transfer, rental, lease, loss, theft, damage, or other disposition of or inability to account for any inventory financed by Lenders for Debtor (a "***sale out of trust***" or "***SOT***") or (ii) are required to make immediate payment to Agent of any past due obligation discovered during any Collateral review, or at any other time, then Agent's acceptance of any payment with respect to such past due obligation (whether in full or partial satisfaction of such obligation) shall not be construed to have waived or amended the terms of its financing program. Dealers will send all such payments to Agent as directed. The acceptance of payment by Agent described herein shall not constitute a waiver of any rights or remedies available to Agent for any Default of Dealers.

(c) Any Vendor Credit granted to a Dealer for any Collateral will not reduce the Obligations Dealers owe Lenders until Agent has received payment therefor as set as set forth below. Each Dealer will: (i) pay Agent even if any Collateral is defective or fails to conform to any warranties extended by any third party; and (ii) indemnify and hold Agent and each Lender harmless against all claims and defenses asserted by any buyer of any Collateral. Each Dealer waives all rights of setoff such Dealer may have against Agent or any Lender. No Dealer will assert against Agent or any Lender any claim or defense such Dealer may have against any Vendor and any such claims or defenses shall not affect Dealers' liabilities or obligations to Agent and Lenders.

(d) Any Loans which are not used to acquire inventory, as contemplated hereby, shall be paid on demand unless otherwise provided in this Agreement or in any Transaction Statement. In order to adequately secure Dealers' Obligations to Agent, Dealers shall, at Agent's request, immediately pay Agent the amount necessary to reduce the sum of any outstanding advances with respect to inventory received by Dealers to an amount which does not exceed the aggregate invoice price to Dealers of the inventory in Dealers' possession which (i) is financed by any one or more Lenders, and (ii) in which Agent, for the benefit of Lenders has a perfected first priority lien.

(e) All payments due by any Dealer under this Agreement or otherwise shall be made by check made on a United States bank, ACH, EDI or federal wire, in each case drawn on an account established in the name of such Dealer. Payment in any other form may delay processing or be returned to such Dealer, and may cause such Dealer to incur a late payment fee. Agent policy bars payment by cash or cash equivalents and any such payments will be declined; Agent reserves the right to decline other forms of payment, including but not limited to, cashier's checks, money orders, bank drafts, third-party checks and traveler's checks. In the event of any such payment decline, such Dealer's debt will remain outstanding and interest/fees permitted under such Dealer's agreement may accrue until acceptable payment is received. Agent will recognize and credit payments according to its payment recognition policies from time to time in effect, or as otherwise agreed. Information regarding Agent's payment recognition policy is available from Dealers' Agent representative, the Agent website, or will be communicated pursuant to Section 12(b) below.

11. Calculation of Charges.

(a) Dealers shall pay fees, charges and interest (collectively, "***Charges***") with respect to each advance in accordance with the Agreement. Dealer shall pay Agent its customary Charge for any check or other item which is returned unpaid to Agent. Unless otherwise provided in the Agreement, the following additional provisions shall be applicable to Charges: (i) any reference to "Prime Rate," "One month Libor," and/or "Three Month Libor" shall mean, for any calendar month, an interest rate (calculated on a 360-day year basis as set forth herein) equal to the highest "prime rate," "One month Libor," and/or "Three month Libor" rate, respectively, as published in the "Money Rates" column of The Wall Street Journal on the first Business Day of such month; if for any reason such rate is no longer published in The Wall Street Journal, Agent shall select such replacement index as Agent in its sole discretion determines most closely approximates such rate; (ii) all Charges shall be paid by Dealer monthly pursuant to the terms of the billing statement in which such Charges appear; (iii) interest on each advance and principal amount of the Obligations related thereto shall be computed for any period by dividing the interest rate provided in each applicable Transaction Statement by 360 (the quotient of which is herein referred to as the "***Daily Rate***"), and then multiplying the Daily Rate by either (A) the average principal balance outstanding during such period, or (B) the actual principal balance outstanding on each day during such period; (iv) interest on an advance shall begin to accrue on the Start Date, which shall be defined as the earlier of: (A) the invoice date referred to in the Vendor's invoice; or (B) the ship date referred to in the Vendor's invoice; or (C) the date any one or more Lenders make such advance; provided, however, if a Vendor fails to fully pay, by honoring or paying any Lender Credit or otherwise, the interest or other cost of financing such inventory during the period between the Start Date and the end of the Free Floor Period (as defined below), then Dealers shall pay such interest to Agent on behalf of Lenders, on demand as if there were no Free Floor Period with respect to such inventory; (v) for the purpose of computing Charges, any payment will be credited pursuant to Agent's payment recognition policies, as in effect from time to time; (vi) advances or any part thereof not paid when due (and Charges not paid when due, at the option of Agent, shall become part of the principal amount of the Obligations and) shall bear interest at the Default Rate (as defined below); and (vii) all interest rates provided or referenced in Transaction Statements, including all references to base rate, prime rate and additions to base rate or prime rate, are provided and referenced on the basis of a 360-day year. The method of calculating interest provided in this Section 11(a) (i.e., the interest rate calculated based on a year of 360 days, for the actual number of days elapsed) will result in a higher effective rate than the quoted numeric rate provided in the Transaction Statement. For purposes of this Agreement, the following definitions shall apply: "***Default Rate***" shall mean the default rate specified in a Dealer's financing program with any one or more Lenders, if any, or if there is none so specified, at the lesser of 3% per annum above the rate in effect immediately prior to the Default, or the highest lawful contract rate of interest permitted under applicable law; "***Free Floor Period***" shall mean a period equal to the number of days during which a Vendor agrees to assume the cost of financing Collateral purchased by a Dealer by granting Agent a Lender Credit.

(b) Agent and Lenders intend to strictly conform to the usury laws governing this Agreement. Regardless of any provision contained herein, in any Transaction Statement, or in any other document, neither Agent nor any Lender shall ever be deemed to have contracted for, charged or be entitled to receive, collect or apply as interest, any amount in excess of the maximum amount allowed by applicable law. If Agent or any Lender ever receives any amount which, if considered to be interest, would exceed the maximum amount permitted by law, Agent or such Lender will apply such excess amount to the reduction of the unpaid principal balance which any Dealer owes, and then will pay any remaining excess to such Dealer. In determining whether the interest paid or payable exceeds the highest lawful rate, Dealers, Agent and each Lender shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest, (2) exclude voluntary pre-payments and the effect thereof, and (3) spread the total amount of interest throughout the entire term of this Agreement so that the interest rate is uniform throughout such term. Each Dealer agrees to pay an effective rate of interest that is the sum of (i) the interest rate provided in this Agreement, including as provided in each accepted Transaction Statement, as may be amended as provided herein; and (ii) any additional rate of interest resulting from any other charges or fees paid or to be paid by any Dealer or Dealers pursuant to this Agreement and that are determined to be interest or in the nature of interest.

(c) If any Change in Law shall impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of LIBOR hereunder against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in LIBOR); or impose on any Lender or the eurodollar interbank market any other condition affecting this Agreement or any eurodollar loans made by such Lender; and the result of any of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining a eurodollar loan or to reduce the amount received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, from time to time, such Lender may provide Dealers (with a copy thereof to the Agent) with written notice and demand with respect to such increased costs or reduced amounts, and within five (5) Business Days after receipt of such notice and demand, the Dealers shall pay to such Lender such additional amounts as will compensate such Lender for any such increased costs incurred or reduction suffered.

(d) If any Lender shall have determined that any Change in Law regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital (or on the capital of the parent company of such Lender) as a consequence of its obligations hereunder to a level below that which such Lender or such parent company could have achieved but for such Change in Law (taking into consideration such Lender's policies or the policies of such parent company with respect to capital adequacy and liquidity), then, from time to time, such Lender may provide the Dealers (with a copy thereof to the Agent) with written notice and demand with respect to such reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Dealers shall pay to such Lender such additional amounts as will compensate such Lender or such parent company for any such reduction suffered.

12. Billing Statement/Fees; Right to Modify Charges and Other Terms.

(a) Agent will transmit, send or otherwise make available to each Dealer a monthly billing statement identifying all charges due on such Dealer's account with respect to this Agreement. The charges specified on each billing statement will be (i) due and payable in full immediately on receipt, unless otherwise stated in writing in your billing statement, transaction statement or other written document provided by Agent, and (ii) an account stated, unless Agent receives a Dealer's written objection thereto within fifteen (15) days after it is transmitted, sent or otherwise made available to such Dealer. If Agent does not receive, by the 25th day of any given month, payment of all charges accrued to a Dealer's account with any one or more Lenders during the immediately preceding month, Dealers will (to the extent allowed by law) pay Agent a late fee equal to the greater of $5 or 5% of the amount of such charges (payment of such fee does not waive the default caused by the late payment). Agent may adjust the billing statement at any time to conform to applicable law and this Agreement.

(b) Agent may charge one or more fees in connection with the servicing and administration of a Dealer's account for its own account (and for the avoidance of doubt, Lenders other than CDF shall have no interest in any such fees). From time to time, Agent may provide written notice to Dealer of new or changed fees charged by Agent for its own account, interest and/or other finance charges (including without limitation, increases or decreases in the periodic rate or amount of finance charges, the method of computing finance charges and when and how finance charges, and principal payments, are payable), policies, practices and other charges and/or credit terms (collectively, "***Fees and Terms***") payable by, or applicable to, one or more Dealers or relating to one or more Dealer's accounts generally, or in connection with specific services or events, to be effective as of the notice date, or such other future effective date as Agent shall advise, with respect to existing Obligations owing by one or more Dealers to Agent and/or any one or more Lenders and/or to Obligations incurred or arising after such notice or future effective date, as the case may be, all as Agent may elect by so indicating in such notice. Such notice may be delivered by mail, courier or electronically in a separate writing or website posting, or set forth in the Transaction Statement and/or the billing statement. Dealer shall be deemed to have accepted such Fees and Terms by either (i) making any request for financing after the effective date of such notice, or (ii) failing to notify Agent in writing of any objection to a Transaction Statement, billing statement or written notice advising of such Fees and Terms within fifteen (15) days after such notice has been sent to a Dealer. If a Dealer objects to the Fees and Terms, such Fees and Terms shall not be imposed, but Agent may charge or implement the last Fees and Terms to which such Dealer has not objected, and may elect to terminate Dealers' financing program.

(c) Adjustments. Any statement with respect to any Obligations sent or made available (electronically or otherwise) to Dealers by Agent, including without limitation any Transaction Statement, shall be subject to subsequent adjustment by Agent to correct any error or omission therein, but, absent manifest error, shall be presumed accurate evidence of Obligations and information covered thereby unless Agent shall have received written notice from Dealers specifying any error within 30 days after the date of such statement, notwithstanding such notice by Dealers to Agent, Dealers' obligation to make payments to Agent for the benefit of Lenders with respect to any amount contested as erroneous by Dealers shall not be waived or extended unless and until Agent consents in writing to such waiver or extension, provided that any such waiver or extension with respect to amounts which are not erroneous shall be subject to Section 18.

13. Default. The occurrence of one or more of the following events shall constitute a default by Dealers (a "***Default***"):

(a) a Dealer shall fail (i) to pay (A) any Obligations representing principal when due, or (B) any Obligations representing interest or other Charges within one (1) Business Day of the applicable due date therefor, or (ii) any remittance for any Obligations is dishonored when first presented for payment;

(b) any representation made to Agent or any Lender by a Dealer or by any guarantor, surety, issuer of a letter of credit or any person other than a Dealer primarily or secondarily liable with respect to any Obligations (a "***Guarantor***") shall not be true when made or if a Dealer or any Guarantor shall breach any covenant, warranty or agreement in this Agreement to or with Agent and/or any Lender;

(c) a Dealer (including, if a Dealer is a partnership or limited liability company, any partner or member of a Dealer) or any Guarantor shall die, become insolvent or generally fail to pay its debts as they become due or, if a business, shall cease to do business as a going concern;

(d) any letter of credit or other form of collateral provided by a Dealer or a Guarantor to Agent with respect to any Obligations or Collateral shall terminate or not be renewed at least sixty (60) days prior to its stated expiration or maturity;

(e) a Dealer abandons any Collateral;

(f) any Guarantor shall revoke, terminate or limit, or take any action purporting to revoke, terminate or limit, any guaranty or other assurance of payment relating to any Obligations;

(g) a Dealer or any Guarantor shall make an assignment for the benefit of creditors, or commence a proceeding with respect to itself under any bankruptcy, reorganization, arrangement, insolvency, receivership, dissolution or liquidation statute or similar law of any jurisdiction, or any such proceeding shall be commenced against it or any of its property (an "***Automatic Default***");

(h) an attachment, sale or seizure shall be issued or shall be executed against any assets of a Dealer or of any Guarantor;

(i) a Dealer shall lose, or shall be in default of, any franchise, license or right to deal in any Collateral which a Lender finances;

(j) a Dealer, Guarantor or any third party shall file any correction or termination statement with respect to any Uniform Commercial Code (the "***UCC***") filing made by Agent in connection herewith;

(k) a material adverse change shall occur in the business, operations or condition (financial or otherwise) of a Dealer (including, if a Dealer is a partnership or limited liability company, any partner or member of a Dealer) or any Guarantor or with respect to the Collateral;

(l) a Dealer or any Guarantor fails (i) to pay when due any debt (other than a Deferred TRA Obligation) in an individual principal amount in excess of $100,000 or in an aggregate principal amount in excess of $250,000, or (ii) to perform any other obligation owed to any third party, which involves an amount in excess of $100,000 with respect to any individual failure or in excess of $250,000 in the aggregate with respect to all such failures;

(m) a Dealer or any Guarantor defaults under the terms of any other agreement with Agent, any Lender or Lender Affiliate, which default is not cured or waived within the applicable grace period, if any;

(n) if Agent in good faith believes, or receives notice that a Lender in good faith believes, the prospect of payment of any Obligations is impaired or Agent deems itself or Lenders insecure;

(o) a Change in Control shall occur;

(p) a Dealer defaults under the terms of any Program Terms Letter;

(q) a Dealer defaults under the terms of the Credit Facility Agreement or a default or event of default (or similar event) shall occur under the Credit Facility Agreement;

(r) a Dealer or Credit Facility Agent defaults under the Intercreditor Agreement or any material provision thereof terminates or ceases to be effective;

(s) any ERISA Event occurs with respect to a pension plan or multi-employer plan which has resulted or could reasonably be expected to result in liability of any Dealer under Title IV of ERISA or other applicable law to any pension plan, employee benefit plan or multi-employer plan, the Pension Benefit Guaranty Corporation or any other Person in an aggregate amount equal to or in excess of $5,000,000 in any calendar year, or any Dealer or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA or other applicable law under a multi-employer plan in an aggregate amount equal to or in excess of $5,000,000;

(t) any material provision of any Loan Document, at any time after its execution and delivery, for any reason other than as expressly permitted hereunder or thereunder, ceases to be in full force and effect; or any party hereto or any Guarantor contests in any manner the validity or enforceability of any provision of any Loan Document; or

(u) any final judgment is entered against any of Dealers for the payment of $1,000,000.00 or more in excess of insurance, and such judgment shall remain unstayed or unpaid for more than 30 days.

14. Rights and Remedies upon Default.

(a) Upon the occurrence of a Default, Agent, acting on behalf of Lenders pursuant to Section 21(a)(ii), shall have all rights and remedies of a secured party under the UCC as in effect in any applicable jurisdiction and other applicable law and all the rights and remedies set forth in this Agreement. Agent may terminate any obligations it or any Lender has under this Agreement and any outstanding credit approvals immediately and/or declare any and all Obligations immediately due and payable without notice or demand. Each Dealer waives notice of intent to accelerate, and of acceleration of any Obligations. Agent may enter any premises of any one or more of the Dealers, with or without process of law, without force, to search for, take possession of, and remove the Collateral, or any part thereof. If Agent requests each Dealer shall cease disposition of and shall assemble the Collateral and make it available to Agent, at Dealers' expense, at a convenient place or places designated by Agent. Agent may take possession of the Collateral or any part thereof on any one or more of Dealer's premises and cause it to remain there at Dealers' expense, pending sale or other disposition. Each Dealer agrees that the sale of inventory by Agent to a person who is liable to Agent under a guaranty, endorsement, repurchase agreement or the like shall not be deemed to be a transfer subject to UCC §9-618 or any similar provision of any other applicable law, and each Dealer waives any provision of such laws to that effect. Each Dealer agrees that the repurchase of inventory by a Vendor pursuant to a repurchase agreement with Agent shall be a commercially reasonable method of disposition. Dealers shall be jointly and severally liable to Agent for any deficiency resulting from Agent's disposition of any Collateral, including without limitation a repurchase by a Vendor, regardless of any subsequent disposition thereof. No Dealer is a beneficiary of, and has no right to require Agent to enforce, any repurchase agreement. If a Dealer fails to perform any of its obligations under this Agreement, Agent may perform the same in any form or manner Agent in its discretion deems necessary or desirable, and all monies paid by Agent in connection therewith shall be additional Obligations and shall be immediately due and payable without notice together with interest payable on demand at the Default Rate. All of Agent's rights and remedies shall be cumulative. At Agent's request, or without request in the event of an Automatic Default, each Dealer shall pay all Vendor Credits to Agent as soon as the same are received for application to the Obligations. Each Dealer authorizes Agent to collect such amounts directly from Vendors and, upon request of Agent, shall instruct Vendors to pay Agent directly. Each Dealer irrevocably waives any requirement that Agent retain possession and not dispose of any Collateral until after trial or final judgment or appeal thereof. Agent's election to extend or not make a Loan to a Dealer is solely at Agent's discretion and does not depend on the absence or existence of a Default. If a Default is in effect, and without regard to whether Agent has accelerated any Obligations, Agent may, without notice, apply the Default Rate.

(b) All Collections received by Agent after acceleration, a Default (including, without limitation, a Specified Default) or demand for payment of all of the Obligations, in connection with any workout of the Obligations including any forbearance arrangement, or after the initiation by or against any Dealer of a bankruptcy or other insolvency proceeding or other proceedings for collection of the Obligations, whether received pursuant to such demand or as a result of legal proceedings against any Dealer or through payment by or action against any other Person in any way liable for the Obligations, shall be applied, so far as the same will reach, in the following order:

(i) First, to the costs and expenses, including attorneys' fees, incurred solely by Agent in effecting such recovery, in enforcing any right or remedy under the Loan Documents, or in any way related to the Loans, the Outstandings, the Loan Documents, this Agreement, Open Approvals or Collections;

(ii) Second, to accrued interest, ratably in accordance with each Lender's respective Ratable Share of such interest being calculated at the interest rates set forth in Section 2(b)(iii) hereof; and

(iii) Third, to unpaid principal, ratably in accordance with each Lender's Ratable Share, subject to such Lender's obligation to fund Loans made by Agent based upon financed Invoices related to Open Approvals.

15. Power of Attorney. Each Dealer authorizes Agent to: (a) file financing statements and amendments thereto describing Agent as "Secured Party," such Dealer as "Debtor" and indicating the Collateral (including, without limitation, the indication of the Collateral as "all assets"); (b) authenticate, execute or endorse on behalf of such Dealer any instruments, chattel paper, certificates of title, manufacturer statements of origin, builder's certificate, or other notices or records comprising or related to Collateral or evidencing financing under the Agreement or evidencing or maintaining the perfection of the security interest granted hereby, as attorney-in-fact for such Dealer; and (c) supply any omitted information and correct errors in any documents between Agent, such Dealer, and, if applicable Lenders. This power of attorney and the other powers of attorney granted herein are irrevocable and coupled with an interest.

16. Collection and Other Costs.

(a) Dealers shall pay to Agent, for the benefit of Agent and the other Lenders, on demand all expenses, costs and out-of-pocket expenses of every kind (including reasonable attorneys' fees and legal expenses) incurred by Agent or any Lender in connection with (i) the preparation, negotiation, execution, delivery and administration of this Agreement or any of the other Loan Documents and the transactions contemplated hereby and thereby or any amendments, modifications, supplements or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (ii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or otherwise dispose of or realize upon the Collateral (including expenses in connection with establishing, perfecting, maintaining perfection of, protecting, and enforcing its Lien on the Collateral); (iii) collecting any Obligations; (iv) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Agent, any Lender, Dealer, any Guarantor or any other Person) in any way relating to the Collateral, this Agreement or any of the other Loan Documents or Dealers' affairs (including, without limitation, expenses in connection with filing a proof of claim or motion for stay of relief under any receivership, assignment for benefit of creditors, bankruptcy or other insolvency laws or monitoring any such proceeding to the full extent permitted under such laws); or (v) any attempt to enforce any rights of Agent and Lenders against Dealers (or any of them), any Guarantor or any other Person which may be obligated to Agent and Lenders by virtue of this Agreement or any of the other Loan Documents. All fees, expenses, costs and other amounts described in this Section 16(a) shall constitute Obligations, shall be secured by the Collateral and interest shall accrue thereon at the Default Rate.

(b) Each Dealer agrees to indemnify Agent, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Dealers of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of: (i) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans, or (iii) any claim, litigation, investigation or proceeding relating to the transactions set forth herein or any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by PubCo or any of its Subsidiaries, including, without limitation, any Dealer, or Affiliates or creditors or any other Person.

(c) Notwithstanding anything in Section 16(b), above, to the contrary, no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or (B) a material breach of the obligations of such Indemnitee under the Loan Documents, or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Agent or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger, syndication agents, senior managing agent or documentation agents or any other similar role under this Agreement (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under Section 16(b), or (B) claims arising out of any act or omission on the part of PubCo or any of its Subsidiaries.

17. Information.

(a) To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When any Dealer opens an account, Agent will ask for the name(s), address(es), date(s) of birth, and other information that will allow Agent to identify each Dealer, and its owner(s) and Guarantor(s) as applicable. Agent may also ask to see driver's licenses or other identifying documents related to each Dealer, and its owner(s) and Guarantors as applicable. Failure to comply with such requests will constitute a Default under the Agreement.

(b) Each Dealer irrevocably authorizes Agent to investigate and make inquiries of former, current, or future creditors or other persons and credit bureaus regarding or relating to such Dealer (including, to the extent permitted by law, any holders of such Dealer's Capital Securities). Agent and each Lender may provide to any Lender Affiliate or any third parties any financial, credit or other information regarding each Dealer (including, to the extent permitted by law, any holders of such Dealer's Capital Securities) that Agent or such Lender may at any time possess, whether such information was supplied by any Dealer or otherwise obtained by such Agent or Lender. Further, each Dealer irrevocably authorizes and instructs any third parties (including without limitation, any Vendors or customers of Dealers) to provide to Agent any credit, financial or other information regarding a Dealer that such third parties may at any time possess.

18. Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement or any Transaction Statement or Program Terms Letter, and no consent with respect to any departure by any Dealer therefrom, shall be effective unless the same shall be in writing and signed by Agent, Required Lenders (or by Agent with the consent of Required Lenders), and the Dealers, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby (or by Agent with the consent of all the Lenders directly affected thereby), in addition to Agent and Required Lenders (or by Agent with the consent of Required Lenders) and the Dealers, do any of the following:

(i) increase or extend the Allocation of any Lender to make a Loan or otherwise finance any Collateral;

(ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to any one or more Lenders hereunder or under any Transaction Statement;

(iii) reduce the principal of, or the rate of interest specified herein or the amount of interest payable in cash specified herein or in any Transaction Statement, or of any fees or other amounts payable hereunder or under any Transaction Statement;

(iv) change the definition of Required Lenders;

(v) amend any provision providing for consent or other action by all Lenders;

(vi) discharge any Dealer from its respective payment Obligations, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement; or

(vii) change the Ratable Share of any Lender;

it being agreed that all Lenders shall be deemed to be directly affected by an amendment or waiver of the type described in the preceding clauses (iv), (v) (vi), and (vii).

(b) No amendment, waiver or consent shall, unless in writing and signed by Agent, affect the rights or duties of Agent under this Agreement or any Transaction Statement.

(c) No amendment of the Dealer Rate or Performance Rebate set forth in any applicable Program Terms Letter shall be effective unless in writing signed by Agent and consented to by Required Lenders.

(d) Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be, or have its Ratable Share or Allocation included in the determination of "Required Lenders", pursuant to this Section 18) for any voting or consent rights under or with respect to any Loan Document, except that a Non-Funding Lender shall be treated as an "affected Lender" for purposes of Section 18(a) solely with respect to an increase in such Non-Funding Lender's Allocation, a reduction of the principal amount owed to such Non-Funding Lender or, unless such Non-Funding Lender is treated the same as the other Lenders, a reduction in the interest rates applicable to the Loans funded by such Non-Funding Lender. Moreover, for the purposes of determining Required Lenders, the Allocation of any Non-Funding Lenders shall be excluded from the Aggregate Allocations.

(e) Notwithstanding the foregoing, Agent, with the consent of the Dealers, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof. Furthermore, notwithstanding anything to the contrary herein, with the consent of Agent at the request of the Dealers (without the need to obtain any consent of any Lender), any Loan Document may be amended to add terms that are favorable to the Lenders (as reasonably determined by Agent).

19. Termination. Unless sooner terminated as provided in this Agreement or by at least thirty (30) days prior written notice from any Dealer to Agent or from Agent to Dealers, this Agreement shall terminate on September 28, 2021; provided, however, that Agent, acting by itself or at the request of Required Lenders (provided such request from Required Lenders shall not require Agent to act), may terminate the Agreement immediately by notice to any Dealer if any Dealer objects to any terms of any Transaction Statement, billing statement or written notice advising of Fees and Terms. Upon termination of the Agreement, all Obligations shall become immediately due and payable without notice or demand. Upon any termination, Dealers shall remain fully and jointly and severally liable to each Lender for all Obligations owed to such Lender arising prior to or after termination, and each Lender's rights and remedies and security interest, if any, shall continue until all Obligations to such Lender are paid and all obligations of Dealers are performed in full. Except as specifically set forth in this Agreement, no provision of the Agreement shall be construed to obligate any Lender to make any advances. All waivers and indemnifications in Agent and each Lender's favor set forth in this Agreement will survive any termination of this Agreement.

20. Assignments and Participations; Binding Effect.

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Dealers, Agent and the Lenders and when Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of Dealers, Agent and each Lender and, in each case, their respective successors and permitted assigns. Except as expressly provided herein, no Dealer shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign (a "***Sale***") all or a portion of its rights and obligations hereunder (including all or a portion of its Allocation and its rights and obligations with respect to any Loan pursuant to any Loan Document) to (i) any existing Lender, (ii) any Affiliate of any existing Lender or (iii) any other Person (other than [***] or any of its Affiliates; provided, neither Agent nor CDF shall have responsibility to determine whether a Person is an Affiliate of [***], nor any liability for any assignment made to such Person) approved in writing by Agent (such approval not to be unreasonably withheld or delayed); provided, however, that (A) for each Loan pursuant to this Agreement or any Loan Document, the aggregate outstanding principal amount (determined as of the effective date of the applicable assignment) of the Allocation subject to any such Sale shall be in a minimum amount of $1,000,000, unless such Sale is made to an existing Lender or an Affiliate of any existing Lender, is of the assignor's (together with its Affiliates) entire interest in such facility or is made with the prior consent of Agent, (B) such Sales shall be effective only upon the acknowledgement in writing of such Sale by Agent, (C) interest accrued prior to and through the date of any such Sale may not be assigned.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) below) shall execute and deliver to Agent an Assignment via an electronic settlement system designated by Agent (or, if previously agreed with Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Loan Document subject to such Sale, any tax forms required by the assignee to be delivered and payment of an assignment fee in the amount of $3,500 to Agent, unless waived or reduced by Agent; provided, that (i) if a Sale by a Lender is made to an Affiliate of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate of such assignor Lender, and concurrently to one or more Affiliates of such assignee, then only one assignment fee of $3,500 shall be due in connection with such Sale (unless waived or reduced by Agent). Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with Section 20(b)(iii), upon Agent (and Dealers, if applicable) consenting to such Assignment, from and after the effective date specified in such Assignment, Agent shall record or cause the information contained in such Assignment to be recorded in a record of ownership kept by Agent.

(d) Effectiveness. Subject to the recording of an Assignment by Agent in a record of ownership, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under this Agreement and the applicable Transactions Statement have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender and (ii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for the payment in full of the Obligations) and be released from its obligations under this Agreement and the Transaction Statements, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) Participants and SPVs. In addition to the other rights provided in this Section 20, each Lender may, without notice to or consent from Agent or the Dealers, sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement or any Loan Document; provided, however, that, whether as a result of any term of any Loan Document or of such participation, (i) no such participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Lenders towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in Agent's record of ownership, and in no case shall a participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in Section 18(a)(ii) and (iii) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in Section 18(a)(v).

21. Agent

(a) Appointment and Duties.

(i) Each Lender hereby appoints CDF as Agent (together with any successor Agent pursuant to Section 21(i)) as Agent hereunder and authorizes Agent to (A) execute and deliver this Agreement and the any other Loan Documents and accept delivery thereof on its behalf from any Dealer, (B) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (C) exercise such powers as are incidental thereto.

(ii) Without limiting the generality of clause (i) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (A) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with any Loan Documents (including in bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with this Agreement or any other Loan Document is hereby authorized to make such payment to Agent, (B) file and prove claims and file other documents necessary or desirable to allow the claims of the Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (C) act as collateral agent for each Lender for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (D) manage, supervise and otherwise deal with the Collateral, (E) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by this Agreement or the other Loan Documents, (F) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Loan Documents, applicable Law or otherwise and (G) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent, the Lenders for purposes of the perfection of Liens with respect to any deposit account maintained by a Dealer with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(iii) Under this Agreement and the other Loan Documents, Agent (A) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Agent", the terms "agent", "Agent" and "collateral agent" and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (B) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (C) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (A) through (C) above.

(b) Binding Effect. Each Lender, by accepting the benefits of this Agreement and the other Loan Documents, agrees that (i) any action taken by Agent in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of Lenders and (iii) the exercise by Agent or of the powers set forth herein or therein, together with such other powers as are incidental thereto, shall be authorized and binding upon all of the Lenders.

(c) Use of Discretion.

(i) Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Agent is required to exercise as directed in writing by the Lenders; provided, that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Loan Document or applicable Law.

(ii) Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Dealer or Dealer Affiliate that is communicated to or obtained by Agent or any of its Affiliates in any capacity.

(iii) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Lenders or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Lenders; provided, that the foregoing shall not prohibit (A) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents or (B) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Dealer under any bankruptcy or other debtor relief law; and provided further that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then the Lenders shall have the rights otherwise ascribed to Agent under Section 14.

(d) Delegation of Rights and Duties. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Section 21 to the extent provided by Agent.

(e) Reliance and Liability.

(i) Agent may, without incurring any liability hereunder, (A) consult with any of its Related Persons (including advisors to, and accountants and experts engaged by, any Dealer) and (B) rely and act upon any document and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(ii) None of Agent and its Affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and each Dealer hereby waive and shall not assert (and each Dealer shall cause each other Dealer to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Agent:

(A) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent);

(B) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(C) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Dealer or any Related Person of any Dealer in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Dealer, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents;

(D) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Dealer or as to the existence or continuation or possible occurrence or continuation of any Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from any Dealer, any Lender describing such Default clearly labeled “notice of default” (in which case Agent shall promptly give notice of such receipt to all Lenders);

For each of the items set forth in clauses (A) through (D) above, each Lender and each Dealer hereby waives and agrees not to assert (and each Dealer shall cause each other Dealer to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

(iii) Each Lender (A) acknowledges that it has performed and will continue to perform its own diligence and has made and will continue to make its own independent investigation of the operations, financial conditions and affairs of the Lenders and (B) agrees that is shall not rely on any audit or other report provided by Agent or its Related Persons (an "***Agent Report***"). Each Lender further acknowledges that any Agent Report (1) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Agent Report, (2) was prepared by Agent or its Related Persons based upon information provided by the Lenders solely for Agent's own internal use, and (3) may not be complete and may not reflect all information and findings obtained by Agent or its Related Persons regarding the operations and condition of the Lenders. Neither Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (w) any existing or proposed financing, (x) the accuracy or completeness of the information contained in any Agent Report or in any related documentation, (y) the scope or adequacy of Agent's and its Related Persons' due diligence, or the presence or absence of any errors or omissions contained in any Agent Report or in any related documentation, and (z) any work performed by Agent or Agent's Related Persons in connection with or using any Agent Report or any related documentation.

(iv) Neither Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Agent Report. Without limiting the generality of the forgoing, neither Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Agent Report, or the appropriateness of any Agent Report for any Lender's purposes, and shall have no duty or responsibility to correct or update any Agent Report or disclose to any Lender any other information not embodied in any Agent Report, including any supplemental information obtained after the date of any Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Agent or its Related Persons that in any way relates to any Agent Report or arises out of any Lender having access to any Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender's access to any Agent Report or any discussion of its contents.

(f) Agent Individually. Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, any Dealer or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the term "Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender.

(g) Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Agent, any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Dealer and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Dealer or any Affiliate of any Dealer that may come in to the possession of Agent or any of its Related Persons.

(h) Expenses; Indemnities; Withholding.

(i) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Dealer) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and other expenses paid in the name of, or on behalf of, any Dealer) that may be incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document.

(ii) Each Lender further agrees to indemnify Agent and each of its Related Persons (to the extent not reimbursed by any Dealer), severally and ratably, from and against Liabilities (including, to the extent not indemnified by Dealer pursuant to this Agreement or any other Loan Document, taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(iii) To the extent required by any applicable Law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the IRS or any other governmental authority asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender pursuant to this Agreement or any other Loan Document.

(i) Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs Agent to release (or, in the case of clause (B) below, release or subordinate) any Lien held by Agent for the benefit of the Lenders against (A) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Dealer in a transaction permitted by the Loan Documents (including pursuant to a waiver or consent), (B) any property subject to a Lien permitted as a "purchase money security interest" hereunder or under any other Loan Document, and (C) all of the Collateral and all Lenders, upon (1) termination of this Agreement, (2) payment and satisfaction in full of all Loans and all other Obligations under the Loan Documents that Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, (3) deposit of cash collateral with respect to all contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to Agent and each Lender that is, or may be, owed such Obligations (excluding contingent Obligations as to which no claim has been asserted) and (4) to the extent requested by Agent, receipt by Agent and the Lenders of liability releases from the Lenders each in form and substance acceptable to Agent.

22. Notices. Except as required by law or as otherwise provided herein, all notices or other communications to be given under the Agreement or under the UCC shall be in writing served either personally, by overnight courier, or by U.S. mail, addressed, as applicable, to (a) Dealers at their chief executive office at 6275 Lanier Islands Parkway, Buford, Georgia 30518, to the attention of Austin Singleton, or to any office to which Agent sends billing statements, (b) to Agent at 10 S. Wacker Drive, 20th Floor, Chicago, Illinois 60606, to the attention of its Credit Department, (c) to any Lender at the address such Lender shall designate in the Loan Documents, or (d) at such other address designated by such party by notice to the other. Any such communication shall be deemed to have been given upon delivery in the case of personal delivery, one Business Day after deposit with an overnight courier or two (2) calendar days after deposit in the U.S. mail, except that any notice of change of address shall not be effective until actually received.

23. Severability. Except as set forth in Sections 27(e) and 27(k) of this Agreement, if any provision of this Agreement or its application is invalid or unenforceable, the remainder of this Agreement will not be impaired or affected and will remain binding and enforceable.

24. Miscellaneous. Time is of the essence regarding Dealers' performance of its obligations to Agent and Lenders. If Agent is the sole Lender, Agent may accept this Agreement by issuance of an approval to a Vendor for the purchase of inventory by Dealer or by making an advance hereunder. Each Dealer's liability to Agent and Lenders is direct and unconditional and will not be affected by the release or nonperfection of any security interest granted hereunder. Subject to the consent of each Lender, Agent may refrain from or postpone enforcement of this Agreement or any other agreements between Agent and a Dealer without prejudice, and the failure to strictly enforce these agreements will not create a course of dealing which waives, amends or modifies such agreements. Any waiver by Agent of a Default shall only be effective if approved by Lenders pursuant to Section 18(a) and transmitted to a Dealer in a writing signed by Agent. The express terms of this Agreement will not be modified by any course of dealing, usage of trade, or custom of trade which may deviate from the terms hereof. If a Dealer fails to pay any taxes, fees or other obligations which may impair Agent's or any Lender's interest in the Collateral, or fails to keep any Collateral insured, Agent, on behalf of itself and the other Lenders, may, but shall not be required to, pay such amounts. Such paid amounts, other than amounts with regard to insuring the Collateral, will be: (a) additional Obligations which Dealers owe under this Agreement, which are subject to finance charges as provided herein and shall be secured by the Collateral; and (b) due and payable immediately in full. Section titles used herein are for convenience only, and do not define or limit the contents of any section. All words used herein shall be understood and construed to be of such number and gender as the circumstances may require. This Agreement may be validly executed in one or more multiple counterpart signature pages. Notwithstanding anything herein to the contrary, Agent and Lenders may rely on any facsimile copy, electronic data transmission, or electronic data storage of: this Agreement, any Transaction Statement, billing statement, financing statement, authorization to pre-file financing statements, invoice from a Vendor, financial statements or other reports, which will be deemed an original, and the best evidence thereof for all purposes. This Agreement shall be construed without presumption for or against any party who drafted all or any portion of this Agreement. No modification of this Agreement shall bind Agent or Lenders unless in a writing signed by Agent and each Lender (or by Agent with the consent of each Lender) and transmitted to Dealer. Among other symbols, Agent hereby adopts "Wells Fargo Commercial Distribution Finance, LLC," "Wells Fargo Commercial Distribution Finance," "WFCDF," "CDF" or " Agent" as evidence of its intent to authenticate a record in its capacity as Agent.

25. List of Dealers. The following persons are parties to this Agreement as Dealers:

DEALER NAME	TYPE OF ENTITY	JURISDICTION
Legendary Assets & Operations, LLC	**Limited liability company**	**FL**
Singleton Assets & Operations, LLC	**Limited liability company**	**GA**
South Florida Assets & Operations, LLC	**Limited liability company**	**FL**
Midwest Assets & Operations, LLC	**Limited liability company**	**DE**
South Shore Lake Erie Assets & Operations, LLC	**Limited liability company**	**DE**
Bosun's Assets & Operations, LLC	**Limited liability company**	**DE**

26. Limitation of Remedies and Damages. In the event there is any dispute under this Agreement, the aggrieved party shall not be entitled to exemplary or punitive damages so that the aggrieved party's remedy in connection with any action arising under or in any way related to this Agreement shall be limited to a breach of contract action and any damages in connection therewith are limited to actual and direct damages, except that Agent may seek equitable relief in connection with any judicial repossession of, or temporary restraining order with respect to, the Collateral.

27. BINDING ARBITRATION.

THIS SECTION CONTAINS A BINDING ARBITRATION CLAUSE THAT MAY AFFECT HOW YOU RESOLVE DISPUTES.

(a) Arbitrable Claims. This Agreement concerns transactions involving commerce among the several states. The Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended ("***FAA***") shall govern all arbitration(s) and confirmation proceedings hereunder. Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (i) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (ii) any previous or subsequent agreement between Agent and any one or more Lenders and/or any one or more Dealers; (iii) any act committed by Agent or by any parent company, subsidiary or affiliated company of Agent (the "***Agent Companies***"), or by any employee, agent, officer or director of an Agent Company, whether or not arising within the scope and course of employment or other contractual representation of the Agent Companies, provided that such act arises under a relationship, transaction or dealing between Agent and any one or more Lenders and/or any one or more Dealers; and/or (iv) any other relationship, transaction or dealing between or among Agent and any one or more Lenders and/or and any one or more Dealers (collectively the "***Disputes***"), will be subject to and resolved by binding arbitration. The arbitrator(s) shall decide whether the parties have agreed to arbitrate, whether this binding arbitration section covers, the particular Dispute between the parties. Notwithstanding the foregoing, "Disputes" does not include any dispute or controversy about the validity or enforceability of this Binding Arbitration provision or any part thereof (including, without limitation, the Class Action Waiver set forth below and/or this sentence); all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide. For the avoidance of doubt, if there is any conflict or inconsistency between this Binding Arbitration provision and any other arbitration provision in any previous or subsequent agreement between Agent and any one or more Lenders and/or any one or more Dealers (other than a subsequently executed Inventory Financing Agreement), the parties agree this Binding Arbitration provision shall control and supersede any such other arbitration provision. Moreover, the parties agree that either party may pursue individual claims against the other that do not exceed $75,000.00 in the aggregate through litigation as set forth hereafter. Service of arbitration claims, arbitration pleadings and confirmation pleadings or motions shall be effective if made by U.S. mail or overnight delivery to the address for the party described herein. Any change of address for purposes of service must be served by written notification to the other party at the address listed in this Agreement. The parties also agree that service on a party's registered agent in the state where the party is organized is proper and effective service on that party.

(b) Body. All arbitration hereunder will be conducted with either: (i) The American Arbitration Association ("***AAA***") pursuant to its Commercial Arbitration Rules; (ii) United States Arbitration & Mediation ("***USA&M***") pursuant to its Consolidated Arbitration Rules; or (iii) JAMS pursuant to its Streamlined Arbitration Rules & Procedures (exclusive in each case of any rules regarding class action proceedings which are prohibited hereunder). The party first filing an arbitration claim shall designate which arbitration forum and rules are to be applied for all Disputes between the parties. The arbitration rules are currently found at www.adr.org for AAA, at www.usam-midwest.com for USA&M and at jamsadr.com for JAMS. AAA claims may be filed in any AAA office. Claims filed with USA&M shall be filed in its Midwest office located at 720 Olive Street, Suite 2020, St. Louis, Missouri 63101. Claims filed with JAMS shall be filed in its Chicago office located at 71 S. Wacker Drive, Suite 3090, Chicago, Illinois 60606. If neither AAA, USA&M nor JAMS is willing or able to serve as the arbitration administrator, and the parties are unable to agree upon a substitute arbitrator, then the arbitrator will be selected by the court. All arbitrator(s) selected shall be attorneys with at least five (5) years' experience in either secured transactions, bankruptcy or creditor's rights. All arbitrations shall be conducted by one arbitrator except as specifically set forth below or unless all parties agree otherwise. For all individual claims exceeding $2,000,000.00, exclusive of interest, costs and attorney's fees, a party may demand that the arbitration be conducted by a panel of three (3) arbitrators instead of one arbitrator; provided, that the requesting party shall pay all costs and arbitrator compensation associated with the additional two arbitrators. The parties shall select the arbitrator(s) using the procedures set forth in the arbitration rules of the applicable arbitral forum. The arbitrator(s) shall decide if any inconsistency exists between the rules of the applicable arbitral forum and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein shall control and supersede such rules. The arbitrator(s) shall follow the terms of this Agreement and the applicable law, including without limitation, the attorney-client privilege and the attorney work product doctrine.

(c) Hearings. The parties desire to resolve any Disputes that may arise in the most efficient and cost-effective manner. With this desire in mind, each party hereby consents to a documentary hearing for all arbitration claims by submitting the Dispute to the arbitrator(s) by written briefs and affidavits, along with relevant documents. However, arbitration claims will be submitted by way of an oral hearing if any party submits a written request for an oral hearing within forty (40) days after service of the claim and that party remits the appropriate deposit for their assessed share of the increased costs, fees and arbitrator compensation (as decided and billed by the administrator) that result from an oral hearing within ten (10) days of when those fees are due. Each party agrees that failure to timely pay all fees and arbitrator compensation billed to the party requesting the oral hearing will be deemed such party's consent to submitting the Dispute to the arbitrator(s) on documents and such party's waiver of its request for an oral hearing. If a party shall demonstrate through affidavits, financial statements and tax returns produced to the arbitrator and other parties that it does not have the ability to pay the fees and arbitrator compensation, that party may request that the fees and arbitrator compensation be waived and assessed after a decision is rendered. The site of all oral arbitration hearings will be in the Division of the Federal Judicial District in which the designated arbitration association maintains a regional office that is closest to Dealer or in Chicago, Illinois.

(d) Discovery. In an effort to reduce costs for all parties and except as otherwise provided, the use of interrogatories, requests for admission, requests for the production of documents or the taking of depositions shall not be permitted. Instead, the parties agree that in any arbitration proceeding commenced hereunder, they shall engage in a limited exchange of information and documents as follows: (i) no later than sixty (60) days after the filing and service of a claim for arbitration, the parties in contested cases shall exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses; (ii) upon request, a party shall provide a summary of the proposed testimony of any witness within fourteen (14) days of the request; (iii) in cases of extraordinary circumstances and for good cause shown, the arbitrator(s) may allow a party to make a limited request for production of documents; (iv) no later than twenty-one (21) days prior to the oral arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing; (v) in the event a party designates any expert witness(es), the following will apply: (A) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party; (B) the opposing party will be permitted to depose the expert witness(es); (C) the opposing party will be permitted to designate rebuttal expert witness(es); and (D) the arbitration hearing will be continued to the earliest possible date that enables the foregoing limited discovery to be accomplished; (vi) in cases where the amount of the individual Dispute or any individual counterclaim is in excess of $2,000,000.00, exclusive of interest, costs and attorney's fees, the parties agree that the following additional discovery and motion practice shall be permitted: (A) up to three depositions per side with each lasting no more than seven hours; and (B) dispositive motions including, but not limited to, motions for summary judgment; the arbitrator shall be authorized to rule on any dispositive motion filed. The arbitrator shall have the power to resolve any Disputes with regard to the above limited exchange of information and documents.

(e) EXEMPLARY OR PUNITIVE DAMAGES. THE PARTIES HERETO AGREE THAT BY ENTERING INTO THIS AGREEMENT, EACH PARTY WAIVES THEIR RIGHT TO SEEK EXEMPLARY OR PUNITIVE DAMAGES AND FURTHER AGREE THAT THE ARBITRATOR(S) SHALL NOT HAVE THE AUTHORITY TO AWARD EXEMPLARY OR PUNITIVE DAMAGES TO ANY PARTY. IF THIS SPECIFIC PROVISION IS FOUND TO BE INVALID OR UNENFORCEABLE, THEN THE ENTIRETY OF THIS BINDING ARBITRATION SECTION SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING, SUBJECT TO THE RIGHT TO APPEAL THE LIMITATION OR INVALIDATION OF THIS PROVISION.

(f) Confidentiality/Confirmation of Awards. All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator(s) pursuant to the terms of this Agreement may be confirmed as a judgment or order in any state or federal court of competent jurisdiction as set forth hereinbelow and pursuant to the FAA.

(g) Prejudgment and Provisional Remedies. Notwithstanding the foregoing, any party may file, in a court of competent jurisdiction, an action for bankruptcy, receivership, injunction, repossession, replevin, claim and delivery, sequestration, seizure, attachment, foreclosure, and/or any other prejudgment or provisional action or remedy relating to any Collateral or to preserve a party's assets for any current or future debt owed by either party to the other. The purpose of such action or remedy is solely the protection of a party's rights, to maintain the status quo pending the confirmation of any award arising in arbitration or for possession of Collateral and not for the award of money damages. Arbitration shall be the sole action and remedy for a party to recover money damages, except as otherwise provided herein. The filing of any such action or remedy shall not waive any party's right to compel arbitration of any Dispute.

(h) Attorneys' Fees. The arbitrator(s) shall have the authority to award all attorney's fees, interest charges and expenses as set forth in this Agreement, in accordance with applicable law, including, but not limited to, the following events: (i) any party brings any other action for judicial relief with respect to any Dispute, the arbitrator(s) shall have the authority to award all costs and expenses (including attorneys' fees) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration; (ii) any party brings or appeals an action to vacate or modify an arbitration award, the arbitrator(s) shall have the authority to award all costs and expenses(including attorneys' fees) incurred in defending such action; and/or (iii) any party sues the other party or institutes any arbitration claim or counterclaim against the other party, the arbitrator(s) shall have the authority to award all costs and expenses (including attorneys' fees) incurred in the course of defending such action or proceeding.

(i) Limitations. Any arbitration proceeding must be instituted: (i) with respect to any Dispute for the collection of any debt owed by either party to the other, within two (2) years after the date the last payment by or on behalf of the payor was received and applied in respect of such debt by the payee; and (ii) with respect to any other Dispute, within two (2) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute. Notwithstanding the foregoing, this limitations provision will be suspended temporarily as of the date any of the following events occur and will not resume until the date following the date either party is no longer subject to (A) bankruptcy, (B) receivership, (C) any proceeding regarding an assignment for the benefit of creditors, or (D) any legal proceeding, civil or criminal, that prohibits either party from foreclosing any interest it might have in the collateral of the other party.

(j) Survival After Termination. The agreement to arbitrate will survive the termination of this Agreement.

(k) CLASS ACTION WAIVER. THE PARTIES HERETO AGREE THAT BY ENTERING INTO THIS AGREEMENT, EACH PARTY WAIVES ITS RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION AGAINST THE OTHER IN A COURT OR IN ARBITRATION. THE PARTIES FURTHER AGREE THAT EACH MAY BRING DISPUTES AGAINST EACH OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Dealers and Agent agree otherwise, arbitration claims may not be joined or consolidated in the arbitration proceeding. In no event shall the arbitrator have authority to preside over any form of representative or class proceeding or to issue any relief that applies to any person or entity other than Dealers and/or Agent individually. If this Class Action Waiver is found to be invalid or unenforceable in whole or in part, then the entirety of this Binding Arbitration section (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver.

28. Multiple Dealers; Joint and Several Liability.

(a) All Loans and advances by Lenders to any Dealer and all other Obligations of any Dealer shall constitute one general obligation of all of the Dealers. Notwithstanding anything herein to the contrary, the Dealers shall be primarily and jointly and severally liable for all Obligations of any Dealer under this Agreement and any other Loan Document. Notwithstanding the foregoing, if and to the extent a Dealer is deemed to be a guarantor of another Dealer hereunder, such Dealer's liability for any credit extended to or for the benefit of such other Dealer shall be deemed to be a guaranty of payment and performance, and not merely a guaranty of collection. To the fullest extent permitted by law, each Dealer hereby waives promptness, diligence, notice of acceptance, and any other notices of any nature whatsoever with respect to any of the Obligations, and any requirement that Agent protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against any other Dealer, any Guarantor, any other person or any Collateral. Each Dealer agrees that any rights of subrogation, indemnification, reimbursement or any similar rights it may have against any other Dealer with respect to its liability hereunder or otherwise, whether such rights arise under an express or implied contract or by operation of law, shall be subject, junior and subordinate in all respect to all Obligations of such Dealer under this Agreement and any other Loan Document and that the enforcement of such rights shall be stayed until such time as the Dealers shall have indefeasibly paid in full all of the Obligations and neither Agent nor any Lender shall be under any duty to make a Loan to or for the benefit of any Dealer. The liability of each Dealer shall be absolute and unconditional irrespective of (i) any change in the time, manner or place of payment of, or in any other term of, any of the Obligations, or any other amendment or waiver of or any consent to departure from this Agreement or any other agreement between or among Agent, Dealers and, if applicable, Lenders (ii) any exchange, release or non-perfection of any Collateral or any release or amendment or waiver of or consent to departure from any other guaranty or any release of any Guarantor or any other person liable in whole or in part for all or any of the Obligations, (iii) the disallowance or avoidance of all or any portion the claim(s) of Agent or any Lender for repayment of the Obligations of any Guarantor to Agent or any interest of Agent or any Lender in any security for such Obligations, or (iv) any other circumstance which might otherwise constitute a defense available to, or discharge of, a Dealer or a Guarantor or any other surety.

(b) Each Dealer (each, a "***Principal***") hereby appoints each other Dealer (each, a "***Dealer Representative***") as the Principal's agent and attorney-in-fact (i) to take any action, (ii) to execute any document, instrument, agreement, or certificate (including, without limitation, borrowing base certificates and compliance certificates), (iii) to consent or agree to any amendment or other modification of this Agreement and/or any other agreements between or among any one or more of the Dealers, Agent, and/or Lenders and/or any waiver of or departure from any of the terms hereof or thereof, (iv) to perform any Obligation of the Principal, and (v) to give or receive any notice by or to any Dealer hereunder or thereunder; and in each case without regard to whether any such action is done in the name of an Dealer Representative or a Principal and, if done in the name of an Dealer Representative, without regard to whether such Dealer Representative's capacity as agent or attorney-in-fact is so designated. Without limiting the generality of the foregoing, an Dealer Representative may request extensions of credit to or on behalf of any one or more of the Dealers and/or incur any other Obligations for the account of any one or more of the Dealers, and in any such event all of the Dealers shall be fully and jointly and severally bound by and liable for the actions of such Dealer Representative. Lender shall be entitled to rely absolutely and without duty of inquiry or investigation upon any agreement, request, communication or other notice given by an Dealer Representative under this Agreement and/or any other agreements between or among any one or more of the Dealers and Lender (including without limitation, any request by an Dealer Representative to make credit extensions to or on behalf of itself and/or any one or more other Dealers) until three (3) Business Days after Lender shall have received written notice from each Principal of the revocation of this agency and power of attorney, which revocation shall constitute a Default.

29. **Governing Law**. All Disputes will be governed by, and construed in accordance with, the laws of Illinois without regard to the conflict of law rules, except to the extent inconsistent with the provisions of the FAA, which will control and govern all arbitration proceedings hereunder.

30. WAIVER OF RIGHT TO JURY TRIAL. ANY PROCEEDING WITH RESPECT TO ANY DISPUTE THAT IS TRIED IN COURT, INCLUDING ANY DISPUTE TRIED IN COURT AS A RESULT OF ANY PORTION OF THE AGREEMENT TO ARBITRATE BEING FOUND TO BE UNENFORCEABLE, INVALID, OR WAIVED BY THE PARTIES, WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. THE PARTIES HERETO WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING.

31. JURISDICTION AND VENUE. Each party submits to, consents to, and accepts the following courts' personal jurisdiction over the party and the selection of such courts as the exclusive forum for all litigation:

(a) Confirming, Vacating, Modifying or Correcting Awards. All litigation regarding confirming, vacating, modifying or correcting an arbitration award shall be brought exclusively in (i) any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the party against whom such award or order was entered, or (ii) in the United States District Court for the Northern District of Illinois, or (iii) in the Circuit Court of Cook County, Illinois.

(b) Prejudgment and Provisional Remedies. All litigation regarding Prejudgment and Provisional remedies shall be brought exclusively in any court (i) where any Dealer is located, (ii) where the Collateral is located, (iii) the United States District Court for the Northern District of Illinois, or (iv) the Circuit Court of Cook County, Illinois.

(c) All Other Disputes. Any other legal proceeding with respect to any Dispute that is not otherwise subject to arbitration, either because the agreement to arbitrate is found to be unenforceable, is found to be invalid, or is waived by the parties, shall be brought exclusively in the United States District Court for the Northern District of Illinois or the Circuit Court of Cook County, Illinois.

32. INTERCREDITOR AGREEMENT. The Liens granted to Agent on behalf of Lenders pursuant to this Agreement and any other Loan Document and the exercise of any right or remedy by Agent or Lenders hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement with respect to such Liens, the terms of the Intercreditor Agreement shall govern.

33. RESTATEMENT. This Agreement amends and restates the Existing IFA in its entirety and all obligations, of every type or nature, of Dealers or any Dealer under the Existing IFA are ratified and confirmed by Dealers as though all of such obligations arose under this Agreement.

[*Remainder of this page left intentionally blank*]

THIS CONTRACT CONTAINS BINDING ARBITRATION, CLASS ACTION WAIVER, JURY WAIVER, PUNITIVE DAMAGE WAIVER AND OTHER PROVISIONS THAT LIMIT DEALERS' RIGHTS. EACH DEALER HAS READ THE TERMS AND CONDITIONS OF THIS CONTRACT AND KNOWINGLY AND VOLUNTARILY AGREES THERETO.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

DEALERS:

LEGENDARY ASSETS & OPERATIONS, LLC,
SINGLETON ASSETS & OPERATIONS, LLC,
SOUTH FLORIDA ASSETS & OPERATIONS, LLC,
MIDWEST ASSETS & OPERATIONS, LLC,
SOUTH SHORE LAKE ERIE ASSETS & OPERATIONS, LLC, and
BOSUN'S ASSETS & OPERATIONS, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Manager

WELLS FARGO COMMERCIAL DISTRIBUTION FINANCE, LLC
as Agent and Lender

By: /s/ Thomas M. Adamski
Name: Thomas M. Adamski
Title: VP Credit Lender

[Signature Page to 6th A&R IFA]

LENDERS:

UNITED COMMUNITY BANK

By: /s/ David L. Shelnutt
Name: David L. Shelnutt
Title: SVP

STERLING NATIONAL BANK

By: /s/ Thomas Couture
Name: Thomas Couture
Title: First Vice President

HANCOCK BANK

By: /s/ Jennifer Henry
Name: Jennifer Henry
Title: Senior Vice President

RENASANT BANK

By: /s/ Paul K. Walker
Name: Paul K. Walker
Title: SVP

BBVA USA

By: /s/ John Whittenburg
Name: John Whittenburg
Title: SVP

IBERIA BANK

By: /s/ Donald W. Dobbins, Jr.
Name: Donald W. Dobbins, Jr.
Title: SVP

ROCKLAND TRUST COMPANY

By: /s/ Thomas Meehan
Name: Thomas Meehan
Title: Vice President

CENTENNIAL BANK

By: /s/ Howard C. Wessells, III
Name: Howard C. Wessells, III
Title: VP

TRUIST BANK

By: /s/ Michael Dembski
Name: Michael Dembski
Title: Director

SCHEDULE 1

Lender’s Allocations and Ratable Share

SCHEDULE 2

Wire Instructions

ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

The undersigned Guarantors (collectively, the "***Guarantors***", and each a "***Guarantor***") of Dealers' Liabilities (as defined in each Guaranty), pursuant to (i) that certain Seventh Amended and Restated Collateralized Guaranty dated February 11, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "***Holdings Guaranty***"), by One Water Marine Holdings, LLC for the benefit of Wells Fargo Commercial Distribution Finance, LLC ("***Agent***"), (ii) that certain Fifth Amended and Restated Collateralized Guaranty dated February 11, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "***Parent Guaranty***"), by One Water Assets & Operations, LLC for the benefit of Agent, (iii) that certain Third Amended and Restated Guaranty dated June 14, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "***Singleton Guaranty***"), by Phillip Austin Singleton, Jr for the benefit of Agent, (iv) that certain Third Amended and Restated Guaranty dated June 14, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "***Aisquith Guaranty***"), by Anthony Aisquith for the benefit of Agent, and (v) that certain Amended and Restated Collateralized Guaranty dated February 11, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "***Marine Guaranty***," and together with the Holdings Guaranty, Parent Guaranty, Singleton Guaranty, and Aisquith Guaranty, each a "***Guaranty***"), by OneWater Marine Inc. for the benefit of Agent, each hereby ratify and confirm its respective Guaranty and each other Loan Document executed by itself in all respects, consents to the terms and execution of the foregoing Agreement, and acknowledges that Agent may amend, restate, extend, renew or otherwise modify the foregoing Agreement and any indebtedness or agreement of Dealers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of any Guarantor and without impairing the liability of each Guarantor under its Guaranty. Each Guarantor represents to and covenants with Agent and the Lenders that it has no defense, claim, right of recoupment or right of offset against Agent, the Lenders, or both under the respective Guaranty.

[*Remainder of this page left intentionally blank*]

Guarantor:
OneWater Marine Inc.
One Water Marine Holdings, LLC, and
One Water Assets & Operations, LLC

By: /s/ Philip Austin Singleton, Jr.
Name: Philip Austin Singleton, Jr.
Title: Chief Executive Officer

Guarantor:

/s/ Philip Austin Singleton, Jr.
Philip Austin Singleton, Jr., individually

Guarantor:

/s/ Anthony Aisquith
Anthony Aisquith, individually

Exhibit 10.5

ONEWATER MARINE INC.

2020 OMNIBUS INCENTIVE PLAN

1. DEFINITIONS.

Unless otherwise specified or unless the context otherwise requires, the following terms, as used in this OneWater Marine Inc. 2020 Omnibus Incentive Plan, have the following meanings:

(a) **Administrator** means the Board, unless it has delegated power to act on its behalf to the Committee, in which case the term Administrator means the Committee.

(b) **Affiliate** means any corporation, partnership, limited liability company, limited liability partnership, association, trust or other organization that, directly or indirectly, controls, is controlled by, or is under common control with, the Company. For purposes of the preceding sentence, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity or organization, shall mean the possession, directly or indirectly, of the power (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of the controlled entity or organization or (ii) to direct or cause the direction of the management and policies of the controlled entity or organization, whether through the ownership of voting securities, by contract, or otherwise.

(c) **Agreement** means a written or electronic document setting forth the terms of a Stock Right delivered pursuant to the Plan in such form as the Administrator shall approve.

(d) **Board** means the Board of Directors of the Company.

(e) **Cause**, with respect to any Participant (a) has the meaning in such Participant's employment agreement, or (b) if such Participant is not a party to an employment agreement, it means any of the following (i) willfully damaging the property, business, reputation or goodwill of the Company or any Affiliate; (ii) conviction of, or plea of nolo contendere with respect to, a felony; (iii) committing a crime of dishonesty, including theft, dishonesty, fraud or embezzlement; (iv) willfully neglecting the duties to be performed by Participant in connection with his employment or service with the Company or any Affiliate which is not the result of illness or accident; (v) sexually harassing, or discriminating against (based upon a protected classification), any other employee of the Company or any Affiliate or creating a hostile work environment for other employees of the Company or any Affiliate; (vi) failing for any reason to correct, cease or otherwise alter any insubordination, failure to comply with instructions or other act or omission that in the opinion of the Board adversely affects the Company's or any Affiliate's business or operations; or (vii) a breach of any of the material terms of Participant's employment agreement or any noncompetition agreement between the Participant and the Company or any Affiliates. As to the matters listed in clauses (iv), (v), (vi) and (vi), Cause shall exist only if Participant fails to cure (if such action, inaction or circumstance is curable) as promptly as possible (not to exceed 10 days) following Participant's receipt of written notice from the Company or any affiliate describing such matter in reasonable detail; provided, however, that if Participant has previously received written notice for a substantially similar matter that otherwise constitutes Cause, then, even if Participant cured the matter following the prior written notice, Participant shall not have a right to notice and cure a second time for the substantially similar matter.

(f) **Change in Control** means the occurrence of any of the following events:

Ownership. Any "Person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "Beneficial Owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities (excluding for this purpose any such voting securities held by the Company or its Affiliates or by any employee benefit plan of the Company) pursuant to a transaction or a series of related transactions which the Board does not approve; or

Merger/Sale of Assets. (A) A merger or consolidation of the Company whether or not approved by the Board, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or the parent of such corporation) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or parent of such corporation, as the case may be, outstanding immediately after such merger or consolidation; or (B) the sale or disposition by the Company of all or substantially all of the Company's assets in a transaction requiring shareholder approval; or

Change in Board Composition. A change in the composition of the Board, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" shall mean directors who either (A) are directors of the Company as of February 7, 2020, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company).

Provided, that if any payment or benefit payable hereunder upon or following a Change in Control would be required to comply with the limitations of Section 409A(a)(2)(A)(v) of the Code in order to avoid an additional tax under Section 409A of the Code, such payment or benefit shall be made only if such Change in Control constitutes a change in ownership or control of the Company, or a change in ownership of the Company's assets in accordance with Section 409A of the Code.

(g) **Code** means the United States Internal Revenue Code of 1986, as amended, including any successor statute, regulation and guidance thereto.

(h) **Committee** means the committee of the Board to which the Board has delegated power to act under or pursuant to the provisions of the Plan; provided, however, that, unless otherwise determined by the Board, the Committee shall consist solely of two or more Qualified Members.

(i) **Common Stock** means shares of the Company's Class A common stock, par value $0.01 per share.

(j) **Company** means OneWater Marine Inc., a Delaware corporation.

(k) **Consultant** means any natural person who is an advisor or consultant who provides bona fide services to the Company or its Affiliates, provided that such services are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the Company's or its Affiliates' securities.

(l) **Corporate Transaction** means a merger, consolidation, or sale of all or substantially all of the Company's assets or the acquisition of all of the outstanding voting stock of the Company in a single transaction or a series of related transactions by a single entity other than a transaction to merely change the state of incorporation.

(m) **Disability** or **Disabled** means permanent and total disability as defined in Section 22(e)(3) of the Code.

(n) **Disqualifying Disposition** has the meaning given to such term in Section 29 of the Plan.

(o) **Employee** means any employee of the Company or of an Affiliate (including, without limitation, an employee who is also serving as an officer or director of the Company or of an Affiliate), designated by the Administrator to be eligible to be granted one or more Stock Rights under the Plan.

(p) **Exchange Act** means the Exchange Act of 1934, as amended.

(q) **Fair Market Value** of a Share of Common Stock means:

(1) If the Common Stock is listed on a national securities exchange or traded in the over-the-counter market and sales prices are regularly reported for the Common Stock, the closing or, if not applicable, the last price of the Common Stock on the composite tape or other comparable reporting system on the applicable date and if such applicable date is not a trading day, the last market trading day prior to such date;

(2) If the Common Stock is not traded on a national securities exchange but is traded on the over-the-counter market, if sales prices are not regularly reported for the Common Stock for the trading day referred to in clause (1), and if bid and asked prices for the Common Stock are regularly reported, the mean between the bid and the asked price for the Common Stock at the close of trading in the over-the-counter market on the applicable date and if such applicable date is not a trading day, the last market trading day prior to such date; and

If the Common Stock is neither listed on a national securities exchange nor traded in the over-the-counter market, such value as the Administrator, in good faith, shall determine in compliance with applicable laws.

(r) **Incumbent Director** has the meaning given to such term in Section 1(f) of the Plan.

(s) **ISO** means an option intended to qualify as an incentive stock option under Section 422 of the Code.

(t) **Non-Qualified Option** means an option which is not intended to qualify as an ISO.

(u) **Option** means an ISO or Non-Qualified Option granted under the Plan.

(v) **Participant** means an Employee, director or Consultant of the Company or an Affiliate to whom one or more Stock Rights are granted under the Plan. As used herein, "Participant" shall include "Participant's Survivors" where the context requires. A Participant must be an "employee" of the Company or any of its parents or subsidiaries within the meaning of General Instruction A.1(a) to Form S-8 if such individual is granted a Stock Right that may be settled in Shares.

(w) **Performance-Based Award** means a Stock Grant or Stock-Based Award which vests based on the attainment of written Performance Goals as set forth in Section 9 hereof.

(x) **Performance Goals** means performance goals determined by the Administrator in its sole discretion and set forth in an Agreement. The Administrator has the authority to take appropriate action with respect to the Performance Goals (including, without limitation, making adjustments to the Performance Goals or determining the satisfaction of the Performance Goals in connection with a Corporate Transaction) provided that any such action does not otherwise violate the terms of the Plan.

(y) **Plan** means this OneWater Marine Inc. 2020 Omnibus Incentive Plan.

(z) **Qualified Member** means a member of the Board who is (i) a "non-employee director" within the meaning of Rule 16b-3(b)(3), and (ii) "independent" under the listing standards or rules of the securities exchange upon which the Stock is traded, but only to the extent such independence is required in order to take the action at issue pursuant to such standards or rules.

(aa) **Rule 16b-3** means Rule 16b-3, promulgated by the SEC under Section 16 of the Exchange Act.

(bb) **SAR Period** has the meaning given to such term in Section 6(c)(ii) of the Plan.

(cc) **Securities Act** means the Securities Act of 1933, as amended.

(dd) **Shares** means shares of the Common Stock as to which Stock Rights have been or may be granted under the Plan or any shares of capital stock into which the Shares are changed or for which they are exchanged within the provisions of Section 3 of the Plan. The Shares issued under the Plan may be authorized and unissued shares or shares held by the Company in its treasury, or both.

(ee) **Stock-Based Award** means a grant by the Company under the Plan of an equity award or an equity-based award, which is not an Option or a Stock Grant.

(ff) **Stock Grant** means a grant by the Company of Shares under the Plan.

(gg) **Stock Right** means a right to Shares or the value of Shares of the Company granted pursuant to the Plan—an ISO, a Non-Qualified Option, a Stock Grant or a Stock-Based Award.

(hh) **Substitute Award** has the meaning given to such term in Section 25(f) of the Plan.

(ii) **Successor Board** has the meaning given to such term in Section 25(b) of the Plan.

(jj) **Survivor** means a deceased Participant's legal representatives and/or any person or persons who acquired the Participant's rights to a Stock Right by will or by the laws of descent and distribution.

2. PURPOSES OF THE PLAN.

The Plan is intended to encourage ownership of Shares and to provide incentive compensation, including incentive compensation measured by reference to the value of Shares, by Employees and directors of and certain Consultants to the Company and its Affiliates in order to attract and retain such people, to induce them to work for the benefit of the Company or of an Affiliate and to provide additional incentive for them to promote the success of the Company or of an Affiliate. The Plan provides for the granting of ISOs, Non-Qualified Options, Stock Grants and Stock-Based Awards.

3. SHARES SUBJECT TO THE PLAN.

(a) The number of Shares which may be issued from time to time pursuant to this Plan shall be ten percent (10%) of the fully diluted shares of the Company outstanding from time to time, or the equivalent of such number of Shares after the Administrator, in its sole discretion, has interpreted the effect of any stock split, stock dividend, combination, recapitalization or similar transaction in accordance with Section 25 of the Plan.

(b) Other than with respect to Substitute Awards, to the extent that a Stock-Based Award expires or is canceled, forfeited, terminated, settled in cash, or otherwise is settled without issuance to the Participant of the full number of Shares to which the Stock-Based Award related, the unissued Shares will again be available for grant under the Plan. Shares forfeited with respect to Stock Grants and Stock-Based Awards, Shares withheld in payment of the exercise price, or taxes relating to a Stock-Based Award, and Shares equal to the number of Shares surrendered in payment of any exercise price, or taxes relating to a Stock-Based Award, shall be deemed to constitute Shares not issued to the Participant and shall be deemed to again be available for Stock-Based Awards under the Plan; provided, however, that such shares shall not become available for issuance hereunder if the applicable shares are withheld or surrendered following the termination of the Plan.

(c) In connection with a merger or consolidation of an entity with the Company or the acquisition by the Company of property or stock of an entity, the Board may grant a Stock Right in substitution for any options or other stock or stock-based awards granted by such entity or an affiliate thereof. Substitute Awards may be granted on such terms as the Board deems appropriate in the circumstances, notwithstanding any limitations contained in the Plan. Substitute Awards shall not count against the overall share limit set forth in Section 3(a), except as may be required by reason of Section 422 and related provisions of the Code.

(d) Subject to the provisions of Section 25, Adjustments, the maximum number of Shares that may be issued pursuant to the exercise of ISOs is equal to 673,777.

4. ADMINISTRATION OF THE PLAN.

The Administrator of the Plan will be the Board, except to the extent the Board delegates its authority to the Committee, in which case the Committee shall be the Administrator. Subject to the provisions of the Plan, the Administrator is authorized to:

(a) Interpret the provisions of the Plan and all Stock Rights and to make all rules and determinations which it deems necessary or advisable for the administration of the Plan;

(b) Determine which Employees, directors and Consultants shall be granted Stock Rights;

(c) Determine the number of Shares for which a Stock Right or Stock Rights shall be granted, provided however that the maximum amount of cash and Shares subject to a Stock Right (calculated based on grant date fair value for financial reporting purposes) granted in any calendar year to any individual non-employee director shall not exceed $75,000 in the case of an incumbent director or $75,000 in the case of a new director during his or her first year of service;

(d) Specify the terms and conditions upon which a Stock Right or Stock Rights may be granted;

(e) Amend any term or condition of any outstanding Stock Right, provided that such term or condition as amended is not prohibited by the Plan;

(f) Determine and make any adjustments in the Performance Goals included in any Performance-Based Awards in compliance with (d) above; and

(g) Adopt any sub-plans applicable to residents of any specified jurisdiction as it deems necessary or appropriate in order to comply with or take advantage of any tax or other laws applicable to the Company, any Affiliate or to Participants or to otherwise facilitate the administration of the Plan, which sub-plans may include additional restrictions or conditions applicable to Stock Rights or Shares issuable pursuant to a Stock Right; provided, however, that all such interpretations, rules, determinations, terms and conditions shall be made and prescribed in the context of potential tax consequences under Section 409A of the Code and preserving the tax status under Section 422 of the Code of those Options which are designated as ISOs. The interpretation and construction by the Administrator of any provisions of the Plan or of any Stock Right granted under it shall be final, unless otherwise determined by the Board, if the Administrator is the Committee. In addition, if the Administrator is the Committee, the Board may take any action under the Plan that would otherwise be the responsibility of the Committee.

To the extent permitted under applicable law, the Board or the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any portion of its responsibilities and powers to any other person selected by it in accordance with applicable law. The Board or the Committee may revoke any such allocation or delegation at any time. Notwithstanding the foregoing, only the Board or the Committee shall be authorized to grant, modify or otherwise delegate its duties with respect to a Stock Right to any director of the Company or to any “officer” of the Company as defined by Rule 16a-1 under the Exchange Act.

5. ELIGIBILITY FOR PARTICIPATION.

The Administrator will, in its sole discretion, determine the Participants to whom Stock Rights will be granted under the Plan; provided, however, that each Participant must be an Employee, director or Consultant of the Company or of an Affiliate at the time a Stock Right is granted. Notwithstanding the foregoing, the Administrator may authorize the grant of a Stock Right to a person not then an Employee, director or Consultant of the Company or of an Affiliate; provided, however, that the actual grant of such Stock Right shall be conditioned upon such person becoming eligible to become a Participant at or prior to the time of the execution of the Agreement evidencing such Stock Right. ISOs may be granted only to Employees who are deemed to be residents of the United States for tax purposes. Non-Qualified Options, Stock Grants and Stock-Based Awards may be granted to any Employee, director or Consultant of the Company or an Affiliate. The granting of any Stock Right to any individual shall neither entitle that individual to, nor disqualify him or her from, participation in any other grant of Stock Rights or any grant under any other benefit plan established by the Company or any Affiliate for Employees, directors or Consultants.

6. TERMS AND CONDITIONS OF OPTIONS AND SARS.

Each Option shall be set forth in an Option Agreement, duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Administrator may provide that Options be granted subject to such terms and conditions, consistent with the terms and conditions specifically required under this Plan, as the Administrator may deem appropriate including, without limitation, subsequent approval by the shareholders of the Company of this Plan or any amendments thereto. The Option Agreements shall be subject to at least the following terms and conditions:

(a) **Non-Qualified Options:** Each Option intended to be a Non-Qualified Option shall be subject to the terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company, subject to the following minimum standards for any such Non-Qualified Option:

(i) **Exercise Price:** Each Option Agreement shall state the exercise price (per share) of the Shares covered by each Option, which exercise price shall be determined by the Administrator and shall be at least equal to the Fair Market Value per share of the Common Stock on the date of grant of the Option, except as otherwise provided by the Administrator in the case of Substitute Awards or any other revision or change to an Option that would not constitute a modification of the Option for purposes of Sections 422 or 409A of the Code.

(ii) **Number of Shares:** Each Option Agreement shall state the number of Shares to which it pertains.

(iii) **Vesting:** Each Option Agreement shall state the date or dates on which it first is exercisable and the date after which it may no longer be exercised, and may provide that the Option rights accrue or become exercisable in installments over a period of months or years, or upon the occurrence of certain performance conditions or the attainment of stated goals or events, provided, however, that notwithstanding any such date or dates, the Administrator may, in its sole discretion, accelerate the date on which it is first exercisable at any time for any reason.

(iv) **Term of Option:** Each Option shall terminate not more than ten (10) years from the date of the grant or at such earlier time as the Option Agreement may provide, provided, that if the such term would expire at a time when trading in the Shares is prohibited by the Company's insider trading policy (or Company-imposed "blackout period"), then the term shall be automatically extended until the 30th day following the expiration of such prohibition.

(b) **ISOs:** Each Option intended to be an ISO shall be issued only to an Employee who is deemed to be a resident of the United States for tax purposes, and shall be subject to the following terms and conditions, with such additional restrictions or changes as the Administrator determines are appropriate but not in conflict with Section 422 of the Code and relevant regulations and rulings of the Internal Revenue Service:

(i) **Minimum Standards:** The ISO shall meet the minimum standards required of Non-Qualified Options, as described in Section 6(a) above, except clause (i) and (iv) thereunder.

(ii) **Exercise Price:** Immediately before the ISO is granted, if the Participant owns, directly or by reason of the applicable attribution rules in Section 424(d) of the Code and except as otherwise provided by the Administrator in the case of any other revision or change to an Option (including with respect to Substitute Awards) that would not constitute a modification of the Option for purposes of Sections 422 of the Code:

A. Ten percent (10%) **or less** of the total combined voting power of all classes of stock of the Company or an Affiliate, the exercise price per share of the Shares covered by each ISO shall not be less than one hundred percent (100%) of the Fair Market Value per share of the Common Stock on the date of grant of the Option; or

B. More than ten percent (10%) of the total combined voting power of all classes of stock of the Company or an Affiliate, the exercise price per share of the Shares covered by each ISO shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of the Common Stock on the date of grant of the Option.

(iii) **Term of Option:** For Participants who own:

A. Ten percent (10%) **or less** of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than ten (10) years from the date of the grant or at such earlier time as the Option Agreement may provide; or

B. More than ten percent (10%) of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than five (5) years from the date of the grant or at such earlier time as the Option Agreement may provide.

(c) **Stock Appreciation Rights.** Each SAR granted under the Plan shall be evidenced by a SAR Agreement. Each SAR so granted shall be subject to the conditions set forth in this Section 6, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable SAR Agreement. Any Option granted under the Plan may include tandem SARs. The Administrator also may award SARs to Participants independent of any Option.

(i) **Strike price**. Each SAR Agreement shall state the strike price (per share) of the Shares covered by each SAR, which strike price shall be determined by the Administrator and shall be at least equal to the Fair Market Value per share of the Common Stock on the date of grant of the SAR, except as otherwise provided by the Administrator in the case of Substitute Awards. Notwithstanding the foregoing, a SAR granted in tandem with (or in substitution for) an Option previously granted shall have a strike price equal to the exercise price of the corresponding Option.

(ii) **Vesting and Expiration; Termination.** A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable in such manner and on such date or dates or upon such event or events as determined by the Administrator including, without limitation, Performance Goals; provided, however, that notwithstanding any such vesting dates or events, the Administrator may, in its sole discretion, accelerate the vesting of any SAR at any time and for any reason. SARs shall expire upon a date determined by the Administrator, not to exceed ten (10) years from the date of grant (the "SAR Period"); provided, that if the SAR Period would expire at a time when trading in the Shares is prohibited by the Company's insider trading policy (or Company-imposed "blackout period"), then the SAR Period shall be automatically extended until the 30th day following the expiration of such prohibition.

(iii) **Method of Exercise.** SARs which have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Agreement, specifying the number of SARs to be exercised and the date on which such SARs were awarded.

7. TERMS AND CONDITIONS OF STOCK GRANTS.

Each Stock Grant to a Participant shall state the principal terms in an Agreement duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Agreement shall be in a form approved by the Administrator and shall contain terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company, subject to the following minimum standards:

(a) Each Agreement shall state the purchase price per share, if any, of the Shares covered by each Stock Grant, which purchase price shall be determined by the Administrator but shall not be less than the minimum consideration required by the Delaware General Corporation Law, if any, on the date of the grant of the Stock Grant;

(b) Each Agreement shall state the number of Shares to which the Stock Grant pertains;

(c) Each Agreement shall include the terms of any right of the Company to restrict or reacquire the Shares subject to the Stock Grant, including the time period or attainment of Performance Goals or such other performance criteria upon which such rights shall accrue and the purchase price therefore, if any, provided, however, that notwithstanding any such date or dates, the Administrator may, in its sole discretion, accelerate the date on which it first vests at any time for any reason; and

(d) Participants holding Stock Grants will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise at the time the Stock Grant is made. If any such dividends or distributions are paid in Shares, the Shares may, as determined by the Administrator, be subject to the same restrictions on transferability and forfeitability as the Stock Grant with respect to which they were paid.

8. TERMS AND CONDITIONS OF OTHER STOCK-BASED AWARDS AND CASH-BASED AWARDS.

The Administrator shall have the right to grant other Stock-Based Awards based upon the Common Stock and other cash-based awards having such terms and conditions as the Administrator may determine, including, without limitation, the grant of Shares based upon certain conditions, the grant of securities convertible into Shares and the grant of phantom stock awards or stock units, provided, however, that notwithstanding any such date or dates, the Administrator may, in its sole discretion, accelerate the date on which it first vests at any time for any reason. The principal terms of each Stock-Based Award shall be set forth in an Agreement, duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Agreement shall be in a form approved by the Administrator and shall contain terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company. Each Agreement shall include the terms of any right of the Company including the right to terminate the Stock-Based Award without the issuance of Shares, the terms of any vesting conditions, Performance Goals or events upon which Shares shall be issued, provided that dividends (other than stock dividends to be issued pursuant to Section 25 of the Plan) or dividend equivalents may accrue but shall not be paid prior to and may be paid only to the extent that the Shares subject to the Stock-Based Award vest. The principal terms of each cash-based award shall be evidenced in such form as the Administrator may determine from time to time.

Participants holding other Stock-Based Awards will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise at the time the Stock-Based Award is made. If any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Stock-Based Award with respect to which they were paid, unless otherwise determined by the Administrator.

The Company intends that the Plan and any Stock-Based Awards granted hereunder be exempt from the application of Section 409A of the Code or meet the requirements of Sections (2), (3) and (4) of subsection (a) of Section 409A of the Code, to the extent applicable, and be operated in accordance with Section 409A so that any compensation deferred under any Stock-Based Award (and applicable investment earnings) shall not be included in income under Section 409A of the Code. Any ambiguities in the Plan shall be construed to effect the intent as described in this Section 8.

9. PERFORMANCE-BASED AWARDS.

The Administrator shall determine whether, with respect to a performance period, the applicable Performance Goals have been met with respect to a given Participant and, if they have, to so certify and ascertain the amount of the applicable Performance-Based Award. The number of Shares issued in respect of a Performance-Based Award determined by the Administrator for a performance period shall be paid to the Participant at such time as determined by the Administrator in its sole discretion after the end of such performance period. Participants holding other performance-based awards will be entitled to receive all dividends and other distributions paid with respect to such Shares, unless the Administrator provides otherwise at the time the performance-based award is made. Unless otherwise determined by the Administrator, if any such dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Performance-Based Award with respect to which they were paid.

10. EXERCISE OF OPTIONS AND ISSUE OF SHARES; SETTLEMENT OF SARS.

An Option (or any part or installment thereof) shall be exercised by giving written notice to the Company or its designee (in a form acceptable to the Administrator, which may include electronic notice), together with provision for payment of the aggregate exercise price in accordance with this Section for the Shares as to which the Option is being exercised, and upon compliance with any other condition(s) set forth in the Option Agreement. Such notice shall be signed by the person exercising the Option (which signature may be provided electronically in a form acceptable to the Administrator), shall state the number of Shares with respect to which the Option is being exercised and shall contain any representation required by the Plan or the Option Agreement. Payment of the exercise price for the Shares as to which such Option is being exercised shall be made (a) in United States dollars in cash or by check; or (b) at the discretion of the Administrator, through delivery of shares of Common Stock having a Fair Market Value equal as of the date of the exercise to the aggregate cash exercise price for the number of Shares as to which the Option is being exercised; or (c) at the discretion of the Administrator, by having the Company retain from the Shares otherwise issuable upon exercise of the Option, a number of Shares having a Fair Market Value equal as of the date of exercise to the aggregate exercise price for the number of Shares as to which the Option is being exercised; or (d) at the discretion of the Administrator, in accordance with a cashless exercise program established with a securities brokerage firm, and approved by the Administrator; or (e) at the discretion of the Administrator, by any combination of (a), (b), (c) and (d) above or (f) at the discretion of the Administrator, by payment of such other lawful consideration as the Administrator may determine. Notwithstanding the foregoing, the Administrator shall accept only such payment on exercise of an ISO as is permitted by Section 422 of the Code.

The Company shall then reasonably promptly deliver the Shares as to which such Option was exercised to the Participant (or to the Participant's Survivors, as the case may be). In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the Shares may be delayed by the Company in order to comply with any law or regulation (including, without limitation, state securities or "blue sky" laws) which requires the Company to take any action with respect to the Shares prior to their issuance. The Shares shall, upon delivery, be fully paid, non-assessable Shares.

Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR that is being exercised multiplied by the excess of the Fair Market Value of one share of Common Stock on the exercise date over the strike price, less an amount equal to any Federal, state, local, and non-U.S. income, employment, and any other applicable taxes required to be withheld. The Company shall pay such amount in cash, in shares of Common Stock valued at Fair Market Value, or any combination thereof, as determined by the Administrator. Any fractional shares of Common Stock shall be settled in cash.

11. PAYMENT IN CONNECTION WITH THE ISSUANCE OF STOCK GRANTS AND STOCK-BASED AWARDS AND ISSUE OF SHARES.

Any Stock Grant or Stock-Based Award requiring payment of a purchase price for the Shares as to which such Stock Grant or Stock-Based Award is being granted shall be made (a) in United States dollars in cash or by check; or (b) at the discretion of the Administrator, through delivery of shares of Common Stock and having a Fair Market Value equal as of the date of payment to the purchase price of the Stock Grant or Stock-Based Award; or (c) at the discretion of the Administrator, by any combination of (a) and (b) above; or (d) at the discretion of the Administrator, by payment of such other lawful consideration as the Administrator may determine.

The Company shall, when required by the applicable Agreement, reasonably promptly deliver the Shares as to which such Stock Grant or Stock-Based Award was made to the Participant (or to the Participant's Survivors, as the case may be), subject to any escrow provision set forth in the applicable Agreement. In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the Shares may be delayed by the Company in order to comply with any law or regulation (including, without limitation, state securities or "blue sky" laws) which requires the Company to take any action with respect to the Shares prior to their issuance.

12. RIGHTS AS A SHAREHOLDER.

No Participant to whom a Stock Right has been granted shall have rights as a shareholder with respect to any Shares covered by such Stock Right except after due exercise of an Option or SAR for Shares or issuance of Shares as set forth in any Agreement, tender of the aggregate exercise or purchase price, if any, for the Shares being purchased and registration of the Shares in the Company's share register in the name of the Participant, and except as otherwise set forth herein or in an Agreement with respect to dividends or dividend equivalents.

13. ASSIGNABILITY AND TRANSFERABILITY OF STOCK RIGHTS.

By its terms, a Stock Right granted to a Participant shall not be transferable by the Participant other than (i) by will or by the laws of descent and distribution, or (ii) as approved by the Administrator in its discretion and set forth in the applicable Agreement, provided that no Stock Right may be transferred by a Participant for value; provided, however, transfers contemplated pursuant to a domestic relations order will not be deemed to be transfers for value. Notwithstanding the foregoing, an ISO transferred except in compliance with clause (i) above shall no longer qualify as an ISO. The designation of a beneficiary of a Stock Right by a Participant, with the prior approval of the Administrator and in such form as the Administrator shall prescribe, shall not be deemed a transfer prohibited by this Section. Except as provided above, during the Participant's lifetime, a Stock Right shall only be exercisable by or issued to such Participant (or his or her legal representative) and shall not be assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to execution, attachment or similar process. Any attempted transfer, assignment, pledge, hypothecation or other disposition of any Stock Right or of any rights granted thereunder contrary to the provisions of this Plan, or the levy of any attachment or similar process upon a Stock Right, shall be null and void.

14. EFFECT ON OPTIONS OR SARS OF TERMINATION OF SERVICE OTHER THAN FOR CAUSE OR DEATH OR DISABILITY.

Except as otherwise provided in a Participant's Option or SAR Agreement, in the event of a termination of service (whether as an Employee, director or Consultant) with the Company or an Affiliate before the Participant has exercised an Option or SAR, the following rules apply:

(a) A Participant who ceases to be an Employee, director or Consultant of the Company or of an Affiliate (for any reason other than termination for Cause, Disability, or death for which events there are special rules in Sections 15, 16, and 17, respectively), may exercise any Option or SAR granted to him or her to the extent that the Option or SAR is exercisable on the date of such termination of service, but only within such term as the Administrator has designated in a Participant's Option Agreement.

(b) Except as provided in Subsection (c) below, or Section 16 or 17, in no event may an Option intended to be an ISO be exercised later than three months after the Participant's termination of employment.

(c) The provisions of this Section, and not the provisions of Section 16 or 17, shall apply to a Participant who subsequently becomes Disabled or dies after the termination of employment, director status or consultancy; provided, however, in the case of a Participant's Disability or death within three months after the termination of employment, director status or consultancy, the Participant or the Participant's Survivors may exercise the Option or SAR within one year after the date of the Participant's termination of service, but in no event after the date of expiration of the term of the Option or SAR, respectively.

(d) Notwithstanding anything herein to the contrary, if subsequent to a Participant's termination of employment, termination of director status or termination of consultancy, but prior to the exercise of an Option or SAR, the Administrator determines that, either prior or subsequent to the Participant's termination, the Participant engaged in conduct which would constitute Cause, then such Participant shall forthwith cease to have any right to exercise any Option or SAR.

(e) A Participant to whom an Option or SAR has been granted under the Plan who is absent from the Company or an Affiliate because of temporary disability (any disability other than a Disability as defined in Section 1 hereof), or who is on leave of absence for any purpose, shall not, during the period of any such absence, be deemed, by virtue of such absence alone, to have terminated such Participant's employment, director status or consultancy with the Company or with an Affiliate, except as the Administrator may otherwise expressly provide; provided, however, that, for ISOs, any leave of absence granted by the Administrator of greater than three months, unless pursuant to a contract or statute that guarantees the right to reemployment, shall cause such ISO to become a Non-Qualified Option on the date that is six months following the commencement of such leave of absence.

(f) Except as required by law or as set forth in a Participant's Option or SAR Agreement, Options or SARs granted under the Plan shall not be affected by any change of a Participant's status within or among the Company and any Affiliates, so long as the Participant continues to be an Employee, director or Consultant of the Company or any Affiliate.

15. EFFECT ON OPTIONS OR SARS OF TERMINATION OF SERVICE FOR CAUSE.

Except as otherwise provided in a Participant's Option or SAR Agreement, the following rules apply if the Participant's service (whether as an Employee, director or Consultant) with the Company or an Affiliate is terminated for Cause prior to the time that all his or her outstanding Options or SARs have been exercised:

(a) All outstanding and unexercised Options or SARs as of the time the Participant is notified his or her service is terminated for Cause will immediately be forfeited.

(b) Cause is not limited to events which have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service but prior to the exercise of an Option or SAR, that either prior or subsequent to the Participant's termination the Participant engaged in conduct which would constitute Cause, then the right to exercise any Option or SAR is forfeited.

16. EFFECT ON OPTIONS OR SARS OF TERMINATION OF SERVICE FOR DISABILITY.

Except as otherwise provided in a Participant's Option or SAR Agreement:

(a) Except as otherwise provided in an Agreement, a Participant who ceases to be an Employee, director or Consultant of the Company or of an Affiliate by reason of Disability may exercise any Option or SAR granted to such Participant to the extent that the Option or SAR has become exercisable but has not been exercised on the date of the Participant's termination of service due to Disability.

(b) A Disabled Participant may exercise the Option or SAR only within the period ending one year after the date of the Participant's termination of service due to Disability, notwithstanding that the Participant might have been able to exercise the Option or SAR as to some or all of the Shares on a later date if the Participant had not been terminated due to Disability and had continued to be an Employee, director or Consultant or, if earlier, within the originally prescribed term of the Option or SAR.

(c) The Administrator shall make the determination both of whether Disability has occurred and the date of its occurrence (unless a procedure for such determination is set forth in another agreement between the Company and such Participant, in which case such procedure shall be used for such determination). If requested, the Participant shall be examined by a physician selected or approved by the Administrator, the cost of which examination shall be paid for by the Company.

17. EFFECT ON OPTIONS OR SARS OF DEATH WHILE AN EMPLOYEE, DIRECTOR OR CONSULTANT.

Except as otherwise provided in a Participant's Option or SAR Agreement:

(a) Except as otherwise provided in an Agreement, in the event of the death of a Participant while the Participant is an Employee, director or Consultant of the Company or of an Affiliate, such Option or SAR may be exercised by the Participant's Survivors to the extent that the Option or SAR has become exercisable but has not been exercised on the date of death.

(b) If the Participant's Survivors wish to exercise the Option or SAR, they must take all necessary steps to exercise the Option or SAR within one year after the date of death of such Participant, notwithstanding that the decedent might have been able to exercise the Option or SAR as to some or all of the Shares on a later date if he or she had not died and had continued to be an Employee, director or Consultant or, if earlier, within the originally prescribed term of the Option.

18. EFFECT OF TERMINATION OF SERVICE ON UNACCEPTED STOCK GRANTS AND STOCK-BASED AWARDS.

In the event of a termination of service (whether as an Employee, director or Consultant) with the Company or an Affiliate for any reason before the Participant has accepted a Stock Grant or a Stock-Based Award and paid the purchase price, if required, such grant shall terminate.

For purposes of this Section 18 and Section 19 below, a Participant to whom a Stock Grant or a Stock-Based Award has been issued under the Plan who is absent from work with the Company or with an Affiliate because of temporary disability (any disability other than a Disability as defined in Section 1 hereof), or who is on an approved leave of absence for any purpose, shall not, during the period of any such absence, be deemed, by virtue of such absence alone, to have terminated such Participant's employment, director status or consultancy with the Company or with an Affiliate, except as the Administrator may otherwise expressly provide.

19. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE OTHER THAN FOR CAUSE, DEATH OR DISABILITY.

Except as otherwise provided in a Participant's Agreement, in the event of a termination of service for any reason (whether as an Employee, director or Consultant), other than termination for Cause, death or Disability for which there are special rules in Sections 20, 21, and 22 below, before all forfeiture provisions or Company rights of repurchase shall have lapsed, then the Company shall have the right to cancel or repurchase that number of Shares subject to a Stock Grant or Stock-Based Award as to which the Company's forfeiture or repurchase rights have not lapsed.

20. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE FOR CAUSE.

Except as otherwise provided in a Participant's Agreement, the following rules apply if the Participant's service (whether as an Employee, director or Consultant) with the Company or an Affiliate is terminated for Cause:

(a) All Shares subject to any Stock Grant or Stock-Based Award that remain subject to forfeiture provisions or as to which the Company shall have a repurchase right shall be immediately forfeited to the Company as of the time the Participant is notified his or her service is terminated for Cause.

(b) Cause is not limited to events which have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service, that either prior or subsequent to the Participant's termination the Participant engaged in conduct which would constitute Cause, then all Shares subject to any Stock Grant or Stock-Based Award that remained subject to forfeiture provisions or as to which the Company had a repurchase right on the date of termination shall be immediately forfeited to the Company.

21. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE FOR DISABILITY.

Except as otherwise provided in a Participant's Agreement, if a Participant ceases to be an Employee, director or Consultant of the Company or of an Affiliate by reason of Disability, any Shares underlying such Stock Rights subject to forfeiture provisions or the Company's rights of repurchase have not lapsed on the date of Disability, will be forfeited or subject to repurchase, as applicable, upon such termination.

The Administrator shall make the determination both as to whether Disability has occurred and the date of its occurrence (unless a procedure for such determination is set forth in another agreement between the Company and such Participant, in which case such procedure shall be used for such determination). If requested, the Participant shall be examined by a physician selected or approved by the Administrator, the cost of which examination shall be paid for by the Company.

22. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF DEATH WHILE AN EMPLOYEE, DIRECTOR OR CONSULTANT.

Except as otherwise provided in a Participant's Agreement, the following rules apply in the event of the death of a Participant while the Participant is an Employee, director or Consultant of the Company or of an Affiliate, , any Shares underlying such Stock Rights subject to forfeiture provisions or the Company's rights of repurchase have not lapsed on the date of death, will be forfeited or subject to repurchase, as applicable, upon such termination.

23. PURCHASE FOR INVESTMENT.

Unless the offering and sale of the Shares shall have been effectively registered under the Securities Act, the Company shall be under no obligation to issue Shares under the Plan unless and until the following conditions have been fulfilled:

(a) The person who receives a Stock Right shall warrant to the Company, prior to the receipt of Shares, that such person is acquiring such Shares for his or her own account, for investment, and not with a view to, or for sale in connection with, the distribution of any such Shares, in which event the person acquiring such Shares shall be bound by the provisions of the following legend (or a legend in substantially similar form) which shall be endorsed upon the certificate evidencing the Shares issued pursuant to such exercise or such grant of a Stock Right:

> "The shares represented by this certificate have been taken for investment and they may not be sold or otherwise transferred by any person, including a pledgee, unless (1) either (a) a Registration Statement with respect to such shares shall be effective under the Securities Act of 1933, as amended, or (b) the Company shall have received an opinion of counsel satisfactory to it that an exemption from registration under such Act is then available, and (2) there shall have been compliance with all applicable state securities laws."

(b) At the discretion of the Administrator, the Company shall have received an opinion of its counsel that the Shares may be issued in compliance with the Securities Act without registration thereunder.

24. DISSOLUTION OR LIQUIDATION OF THE COMPANY.

Upon the dissolution or liquidation of the Company, all Options granted under this Plan which as of such date shall not have been exercised and all Stock Grants and Stock-Based Awards which have not been accepted, to the extent required under the applicable Agreement, will terminate and become null and void; provided, however, that if the rights of a Participant or a Participant's Survivors have not otherwise terminated and expired, the Participant or the Participant's Survivors will have the right immediately prior to such dissolution or liquidation to exercise or accept any Stock Right to the extent that the Stock Right is exercisable or subject to acceptance as of the date immediately prior to such dissolution or liquidation. Upon the dissolution or liquidation of the Company, any outstanding Stock-Based Awards shall immediately terminate unless otherwise determined by the Administrator or specifically provided in the applicable Agreement.

25. ADJUSTMENTS.

Upon the occurrence of any of the following events, a Participant's rights with respect to any Stock Right granted to him or her hereunder shall be adjusted as hereinafter provided, unless otherwise specifically provided in a Participant's Agreement.

(a) **Stock Dividends and Stock Splits.** If (i) the shares of Common Stock shall be subdivided or combined into a greater or smaller number of shares or if the Company shall issue any shares of Common Stock as a stock dividend on its outstanding Common Stock, or (ii) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock, each Stock Right and the number of shares of Common Stock deliverable thereunder shall be appropriately increased or decreased proportionately, and appropriate adjustments shall be made including, in the exercise, strike or purchase price per share and, as determined by the Administrator in its sole discretion, in the Performance Goals applicable to outstanding Performance-Based Awards to reflect such events. The number of Shares subject to the limitations in Section 3(a) and 4(c) shall also be proportionately adjusted upon the occurrence of such events.

(b) **Corporate Transactions.**

In the event that the Company is subject to a Corporate Transaction, including a Change in Control, outstanding Stock Rights acquired under the Plan shall be subject to the agreement evidencing the Corporate Transaction, which need not treat all outstanding Stock Rights in an identical manner (including different Stock Rights held by the same Participant). Such agreement, without the Participant's consent, shall provide for one or more of the following with respect to all outstanding Stock Rights as of the effective date of such Corporate Transaction:

(i) The continuation of an outstanding Stock Right by the Company (if the Company is the successor entity).

(ii) The assumption of an outstanding Stock Right by the successor or acquiring entity (if any) of such Corporate Transaction (or by its parents, if any), which assumption will be binding on all selected Participants; provided that the exercise price or strike price and the number and nature of shares issuable upon exercise of any Option or SAR, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code and/or Section 409A of the Code, as applicable.

(iii) The substitution by the successor or acquiring entity in such Corporate Transaction (or by its parents, if any) of equivalent awards with substantially the same terms for such outstanding Stock Rights (except that the exercise price or strike price and the number and nature of shares issuable upon exercise of any Option or SAR, respectively, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code and/or Section 409A of the Code, as applicable).

(iv) The full or partial acceleration of exercisability or vesting and accelerated expiration of an outstanding Stock Right and lapse of the Company's right to repurchase or re-acquire shares acquired under a Stock Right or lapse of forfeiture rights with respect to shares acquired under a Stock Right.

(v) The settlement of such outstanding Stock Right (whether or not then vested or exercisable) in cash, cash equivalents, or securities of the successor entity (or its parent, if any) with a Fair Market Value equal to the required amount per Share provided in the definitive agreement evidencing the Corporate Transaction, as determined by the Committee in its sole discretion, followed by the cancellation of such Stock Rights; provided however, that such Stock Right may be cancelled without consideration if such Stock Right has no value, as determined by the Committee in its sole discretion (which will include, but not be limited, to situations where the per Share exercise price of an Option or the per Share strike price of an SAR exceeds the required amount per Share provided in the definitive agreement evidencing the Corporate Transaction). Subject to compliance with Section 409A of the Code, such payment may be made in installments and may be deferred until the date or dates the Stock Right would have become exercisable or vested. Such payment may be subject to vesting based on the Participant's continuous service status. For purposes of this paragraph, the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

The Board shall have full power and authority to assign the Company's right to repurchase or re-acquire or forfeiture rights to such successor or acquiring corporation. In addition, in the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Stock Rights, as provided above, pursuant to a Corporate Transaction, the Committee will notify the Participant in writing or electronically that such Stock Right will be exercisable (to the extent vested and exercisable pursuant to its terms) for a period of time determined by the Committee in its sole discretion, and such Stock Right will terminate upon the expiration of such period.

(c) **Recapitalization or Reorganization.** In the event of a recapitalization or reorganization of the Company other than a Corporate Transaction pursuant to which securities of the Company or of another corporation are issued with respect to the outstanding shares of Common Stock, a Participant upon exercising an Option or SAR or accepting a Stock Grant after the recapitalization or reorganization shall be entitled to receive for the price paid upon such exercise or acceptance if any, the number of replacement securities which would have been received by the Participant in the recapitalization or reorganization of the Company if such Option or SAR had been exercised or Stock Grant accepted prior to such recapitalization or reorganization.

(d) **Adjustments to Stock-Based Awards.** Upon the happening of any of the events described in Subsections (a), (b) or (c) above, any outstanding Stock-Based Award shall be appropriately adjusted to reflect the events described in such Subsections. The Administrator or the Successor Board shall determine the specific adjustments to be made under this Section 25, including, but not limited to the effect of any, Corporate Transaction and Change in Control and, subject to Section 4, its determination shall be conclusive.

(e) **Assumption of Awards by the Company.** The Company, from time to time, may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either (a) granting a Stock Right under this Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to a Stock Right granted under this Plan (a "Substitute Award"). Such substitution or assumption will be permissible if the holder of the Substitute Award would have been eligible to be granted a Stock Right under this Plan if the other company had applied the rules of this Plan to such grant. The exercise price and the number and nature of Shares issuable upon exercise or settlement of any such Substitute Award will be adjusted appropriately pursuant to Section 424(a) of the Code and/or Section 409A of the Code, as applicable.

26. ISSUANCES OF SECURITIES.

Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares subject to Stock Rights. Except as expressly provided herein, no adjustments shall be made for dividends paid in cash or in property (including without limitation, securities) of the Company prior to any issuance of Shares pursuant to a Stock Right.

27. FRACTIONAL SHARES.

No fractional shares shall be issued under the Plan and the person exercising a Stock Right shall receive from the Company cash in lieu of such fractional shares equal to the Fair Market Value thereof.

28. WITHHOLDING.

In the event that any federal, state, or local income taxes, employment taxes, Federal Insurance Contributions Act withholdings or other amounts are required by applicable law or governmental regulation to be withheld from the Participant's salary, wages or other remuneration in connection with the issuance of a Stock Right or Shares under the Plan or for any other reason required by law, the Company may withhold from the Participant's compensation, if any, or may require that the Participant advance in cash to the Company, or to any Affiliate of the Company which employs or employed the Participant, up to the statutory maximum amount of such withholdings unless a different withholding arrangement, including the use of shares of the Company's Common Stock is authorized by the Administrator (and permitted by law). For purposes hereof, the fair market value of the shares withheld for purposes of payroll withholding shall be determined in the manner set forth under the definition of Fair Market Value provided in Section 1 above, as of the most recent practicable date prior to the date of exercise. If the Fair Market Value of the shares withheld is less than the amount of payroll withholdings required, the Participant may be required to advance the difference in cash to the Company or the Affiliate employer. Any determination made by the Committee to allow a Participant who is subject to Rule 16b-3 to pay taxes with shares of Common Stock through net settlement or previously owned shares shall be approved by either a committee made up of solely two or more Qualified Members or the full Board.

29. NOTICE TO COMPANY OF DISQUALIFYING DISPOSITION.

Each Employee who receives an ISO must agree to notify the Company in writing immediately after the Employee makes a Disqualifying Disposition of any Shares acquired pursuant to the exercise of an ISO. A "Disqualifying Disposition" is defined in Section 424(c) of the Code and includes any disposition (including any sale or gift) of such Shares before the later of (a) two years after the date the Employee was granted the ISO, or (b) one year after the date the Employee acquired Shares by exercising the ISO, except as otherwise provided in Section 424(c) of the Code. If the Employee has died before such Shares are sold, these holding period requirements do not apply and no Disqualifying Disposition can occur thereafter.

30. TERMINATION OF THE PLAN.

The Plan will terminate on February 6, 2030 the date which is ten years from the earlier of the date of its adoption by the Board and the date of its approval by the shareholders of the Company. The Plan may be terminated at an earlier date by vote of the shareholders or the Board of the Company; provided, however, that any such earlier termination shall not affect any Agreements executed prior to the effective date of such termination. Termination of the Plan shall not affect any Stock Rights theretofore granted.

31. AMENDMENT OF THE PLAN AND AGREEMENTS.

The Plan may be amended by the shareholders of the Company. The Plan may also be amended by the Administrator; provided that any amendment approved by the Administrator which the Administrator determines is of a scope that requires shareholder approval shall be subject to obtaining such shareholder approval including, without limitation, to the extent necessary to qualify any or all outstanding Stock Rights granted under the Plan or Stock Rights to be granted under the Plan for favorable federal income tax treatment as may be afforded ISOs under Section 422 of the Code and to the extent necessary to qualify the Shares issuable under the Plan for listing on any national securities exchange or quotation in any national automated quotation system of securities dealers. Other than as set forth in Section 25 of the Plan, the Administrator may not, without shareholder approval, reduce the exercise price of an Option or SAR or cancel any outstanding Option or SAR in exchange for a replacement option or SAR having a lower exercise price, any Stock Grant, any other Stock-Based Award or for cash. In addition, the Administrator may not take any other action that is considered a direct or indirect "repricing" for purposes of the shareholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Shares are listed, including any other action that is treated as a repricing under generally accepted accounting principles. Any modification or amendment of the Plan shall not, without the consent of a Participant, adversely affect his or her rights under a Stock Right previously granted to him or her, unless such amendment is required by applicable law or necessary to preserve the economic value of such Stock Right. With the consent of the Participant affected, the Administrator may amend outstanding Agreements in a manner which may be adverse to the Participant but which is not inconsistent with the Plan. In the discretion of the Administrator, outstanding Agreements may be amended by the Administrator in a manner which is not adverse to the Participant. Nothing in this Section 31 shall limit the Administrator's authority to take any action permitted pursuant to Section 25.

32. EMPLOYMENT OR OTHER RELATIONSHIP.

Nothing in this Plan or any Agreement shall be deemed to prevent the Company or an Affiliate from terminating the employment, consultancy or director status of a Participant, nor to prevent a Participant from terminating his or her own employment, consultancy or director status or to give any Participant a right to be retained in employment or other service by the Company or any Affiliate for any period of time.

33. SECTION 409A.

If a Participant is a "specified employee" as defined in Section 409A of the Code (and as applied according to procedures of the Company and its Affiliates) as of his "separation from service" (as such term is defined in Treasury Regulation § 1.409A-1(h)), to the extent any payment under this Plan or pursuant to the grant of a Stock-Based Award constitutes deferred compensation (after taking into account any applicable exemptions from Section 409A of the Code), and to the extent required by Section 409A of the Code, no payments due under this Plan or pursuant to a Stock-Based Award may be made until the earlier of: (i) the first day of the seventh month following the Participant's separation from service, or (ii) the Participant's date of death; provided, however, that any payments delayed during this six-month period shall be paid in the aggregate in a lump sum, without interest, on the first day of the seventh month following the Participant's separation from service.

The Administrator shall administer the Plan with a view toward ensuring that Stock Rights under the Plan that are subject to Section 409A of the Code comply with the requirements thereof and that Options under the Plan be exempt from the requirements of Section 409A of the Code, but neither the Administrator nor any member of the Board, nor the Company nor any of its Affiliates, nor any other person acting hereunder on behalf of the Company, the Administrator or the Board shall be liable to a Participant or any Survivor by reason of the acceleration of any income, or the imposition of any additional tax or penalty, with respect to a Stock Right, whether by reason of a failure to satisfy the requirements of Section 409A of the Code or otherwise.

34. INDEMNITY.

Neither the Board nor the Administrator, nor any members of either, nor any employees of the Company or any parent, subsidiary, or other Affiliate, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with their responsibilities with respect to this Plan, and the Company hereby agrees to indemnify the members of the Board, the members of the Committee, and the employees of the Company and its parent or subsidiaries in respect of any claim, loss, damage, or expense (including reasonable counsel fees) arising from any such act, omission, interpretation, construction or determination to the full extent permitted by law.

35. CLAWBACK/RECOVERY POLICY.

All Stock Rights granted under the Plan will be subject to clawback or recoupment under any clawback or recoupment policy adopted by the Board or the Committee or required by applicable law during the term of Participant's employment or other service with the Company that is applicable to Employees, directors or Consultants of the Company. In addition, the Administrator may impose such other clawback, recovery or recoupment provisions in an Agreement as the Administrator determines necessary or appropriate. No recovery of compensation under such a clawback or recoupment policy will be an event giving rise to a right to voluntarily terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan or agreement with the Company.

36. GOVERNING LAW.

This Plan shall be construed and enforced in accordance with the law of the State of Delaware.

Exhibit 10.6

ONE WATER MARINE HOLDINGS, LLC
EMPLOYMENT AGREEMENT
(Austin Singleton)

THIS EMPLOYMENT AGREEMENT (this "**Agreement**") is entered into in Atlanta, Georgia between **ONE WATER MARINE HOLDINGS, LLC**, a Delaware limited liability company (the "**Company**"), and **PHILIP A. SINGLETON, JR.** ("**Executive**"), as of February 11, 2020 (the "**Effective Date**").

Background Facts:

A. The Company wishes to continue to employ Executive as its Chief Executive Officer (the "**Position**"); and

B. Executive wishes to continue his employment relationship with the Company; and

C. OneWater Marine Inc., a Delaware corporation, ("**OWM Public**") is traded on NASDAQ and holds as its only asset a significant equity interest in the Company and will benefit from this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties, intending to be legally bound, agree as follows, and by the execution of the joinder to this Agreement, OWM Public agrees that the Executive shall hold the same Position with OWM Public. OWM Public will be a third-party beneficiary hereof and will honor all provisions of this Agreement applicable to it:

SECTION 1. TERM OF EMPLOYMENT

The Company agrees to employ Executive, and Executive agrees to be employed by the Company, for a period beginning on the Commencement Date and ending four (4) years thereafter, unless otherwise terminated as provided herein (the "**Term**").

SECTION 2. DEFINITIONS

A. *"Affiliates"* means those entities the majority of the control over which is held by the Company or another Affiliate\Persons controlled by, controlling or under common control with the Company.

B. *"Board of Managers"* means the Board of Managers of the Company which shall be made up of the same individuals, holding the same positions as the Board of Directors of OWM Public, as it shall exist from time to time.

C. *"Cause"* means the occurrence of any one or more of the following:

(1) Executive has been convicted of, or pleads guilty or *nolo contendere* to, a felony involving dishonesty, theft, misappropriation, embezzlement, fraud crimes against property or person, or any act of moral turpitude which negatively impacts the Company; or

(2) Executive intentionally furnishes materially false, misleading, or gross omissive information concerning a substantial matter material to the Company or persons to whom Executive reports; or

(3) Executive intentionally and wrongfully materially damages material assets of the Company; or

(4) Executive inappropriately discloses Confidential Information of the Company which has a material economic effect on the Company; or

(5) Executive engages in any activity which would constitute a breach of the duty of loyalty as hereinafter defined; or

(6) Executive solicits or accepts compensation in any form from any source other than the Company with respect to his service on behalf of the Company (excluding customary business gifts of nominal value); or

(7) Executive breaches in any material fashion any stated employment policy or provision of the Company's ethics policy when adopted **and** which could reasonably be expected to expose the Company to liability in any material financial respect or negatively impact the Company or its business reputation in any material financial effect; or

(8) Executive commits a material breach of this Agreement which is not cured within fifteen (15) days after written notice is received by Executive in sufficient detail to permit Executive to understand the nature of the breach.; or

(9) Executive engages in acts or omissions which constitute a material failure to follow reasonable and lawful directives of the Company, provided, however, that such acts or omissions are not cured by Executive within fifteen (15) days following the Company's giving notice to Executive that the Company considers such acts or omissions to be "Cause" under this Agreement.

Failure to meet performance standards or objectives that does not involve any acts or omissions identified in (1) through (8) above shall not constitute Cause for purposes hereof. For purposes of this definition of "Cause," the term "Company" includes each of its Affiliates.

D. "*Change in Control"* means the occurrence of any of the following; provided, however, that the acquisition by conversion or otherwise of equity interests in the Company by OWM Public shall not be considered in applying the conditions below; and provided, further, however that any of the following which occur with respect to OWM Public itself (with the term "Company" including OWM Public and the term Board of Managers including the Board of Directors of OWM Public) shall also constitute a Change in Control:

(1) The Board of Managers approves the sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions;

(2) The Company sells and/or one or more equity holders sells a sufficient amount of its equity interests (whether by tender offer, original issuance, or a single or series of related purchase and sale agreements and/or transactions) sufficient to confer on the purchaser or purchasers thereof (whether individually or a group acting in concert) beneficial ownership of at least fifty percent (50) of the combined voting power of the voting securities of the Company;

(3) The Company is party to a merger, consolidation or combination, other than any merger, consolidation or combination that would result in the holders of the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger, consolidation or combination; or

(4) A majority of the Board of Managers consists of individuals who are not Continuing Directors (for this purpose, a Continuing Director is an individual who (i) was a director of the Company on the Effective Date or (ii) whose election or nomination as a manager of the Company is approved by a vote of at least a majority of the managers then comprising the Continuing Directors).

For purposes hereof, the definition of a Change of Control shall be construed and interpreted so as to comply with the definition contained in Code Section 409A.

E. *"Code"* means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code shall be deemed to refer to any successor provision thereto and the regulations promulgated thereunder.

F. "*Commencement Date"* shall be the Effective Date of this Agreement.

G. *"Company"* means One Water Marine Holdings, LLC, a Delaware limited liability company; for the purposes of this Agreement.

H. "*Company Operating Agreement*" means the Restated Operating Agreement of the Company dated February 11, 2020, as amended from time to time.

I. "*Committee"* means the Company's Compensation Committee or, if no such committee exists, the term Compensation Committee shall mean the Company's Board of Managers.

J. "*Continuation Period*" means a period equal to twenty-four (24) months. There shall be no Continuation Period following a termination by the Company or its Affiliates for Cause or a termination by Executive without Good Reason.

K. "*Current Insurance Coverage*" means medical, dental, life and accident and disability insurance with coverage consistent with the lesser of (i) the coverage in effect immediately prior to Executive's termination, or (ii) the coverage in effect from time to time as applied to persons in positions similar to the position held by Executive at the time of termination.

L. "*Disability*" means Executive's inability, due to physical or mental incapacity, to perform his duties under this Agreement, with a reasonable accommodation, on a full-time basis for a period of three (3) consecutive months along with the Executive's treating physician's statement that in such physician's opinion that his condition will not sufficiently improve within that period to be able to resume substantially all of his duties on a full time basis. Any dispute as to Disability shall be conclusively determined in the manner set forth in Section 7.G below.

M. "Executives" is defined to mean named executive officers including Philip A. Singleton, Jr.

N. "GAAP" means generally accepted accounting principles" as practiced in the United States.

O. "*Good Reason*" means the occurrence of any one or more of the following:

(1) A material and continuing failure to pay to Executive compensation and benefits (as described in Section 4) that have been earned, if any, by Executive, except failure to pay or provide compensation or benefits that are in dispute between the Company and Executive unless such failure continues following the resolution of such dispute; or

(2) A material reduction in Executive's compensation or benefits (as described in Section 4) other than a uniform reduction applied to all Executives of the Company that does not result in a reduction of Base Salary of more than fifteen percent (15%); or

(3) Any failure by the Company to comply with any of the material provisions of this Agreement and which is not remedied by the Company within fifteen (15) days after receipt of notice thereof given by Executive; or

(4) Any requirement that Executive perform duties that, in the good faith and reasonable professional judgment of Executive, after consultation with the Board of Managers of the Company, are inconsistent with ethical or lawful business practices; or

(5) Executive's being required to relocate to a principal place of employment more than fifty (50) miles from his current principal place of employment in Atlanta, Georgia during the Term; or

If following a Change in Control only, there occurs a material change in Executive's duties, roles, or responsibilities. For purposes of this subsection, "material change" shall be of such a character that a reasonable person serving in a like or similar executive capacity would feel compelled to resign from employment. Examples of "material change" include, but are not limited to substantial reduction of Executive's authority to make decisions relating to his business responsibilities; Executive being required to assume or perform substantially greater responsibilities (without reasonable additional compensation) than previously required to perform; substantial reduction of Executive's responsibilities for personnel matters relating to his business operations; substantial alteration or change in Executive's work schedule; any restructuring or reassignment of any of Executive's responsibilities, in a manner that diminishes them or is materially adverse to Executive, from that which was in effect at the time of the Change in Control; and other substantial changes in Executive's terms or conditions of employment not related to Executive's principal business responsibilities. Good Reason pursuant to this subsection shall not exist unless (a) Executive's "material change" has existed for a period of at least two months; (b) Executive has consulted with management senior to Executive and his supervisor, in a good faith effort to resolve the issues giving Executive reason to believe a "material change" has occurred; (c) Executive gives written notice of Executive's resignation for Good Reason under this paragraph within six months following the commencement of the "material change," and (d) Executive's Termination Date is within thirty (30) days of delivery such notice. For purposes of this definition of "Good Reason," the term "Company" includes each of its Affiliates.

P. "*OWM Public*" means OneWater Marine Inc., a Delaware corporation.

Q. *"Termination Date"* means the date of Executive's termination of employment, or if Executive continues to provide services to the Company or its 409A affiliates following his termination of employment, such later date as is considered a separation from service from the Company and its 409A affiliates within the meaning of Code Section 409A. For purposes of this Agreement, Executive's "termination of employment" shall be presumed to occur when the Company and Executive reasonably anticipate that no further services will be performed by Executive for the Company and its 409A affiliates or that the level of bona fide services Executive will perform as an employee of the Company and its 409A affiliates will permanently decrease to no more than 20% of the average level of *bona fide* services performed by Executive (whether as an employee or independent contractor) for the Company and its 409A affiliates over the immediately preceding 36-month period (or such lesser period of services). Whether Executive has experienced a termination of employment shall be determined by the Company in good faith with any dispute resolved in accordance with the provisions of Section 7. G and consistent with Section 409A of the Code. Notwithstanding the foregoing, if Executive takes a leave of absence for purposes of military leave, sick leave or other such *bona fide* reason, Executive will not be deemed to have experienced a termination of employment for the first six (6) months of such leave of absence, or if longer, for so long as Executive's right to reemployment is provided either by statute or by contract, including this Agreement; provided that if the leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than six (6) months, where such impairment causes Executive to be unable to perform the duties of his position of employment or any substantially similar position of employment, with or without a reasonable accommodation, the leave may be extended by the Company for up to twenty-nine (29) months without causing a termination of employment. For purposes hereof, the term "409A affiliate" means each entity that is required to be included in the Company's controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; provided, however, that the phrase "at least 50 percent" shall be used in place of the phrase "at least 80 percent" each place it appears therein or in the regulations thereunder.

SECTION 3. TITLE; POWERS AND RESPONSIBILITIES

A. *Title*. Executive shall be the Chief Executive Officer of the Company and each of its Affiliates, or such other title as designated by the Company's Board of Managers. Executive shall assume those duties under this Agreement as of the Commencement Date.

B. *Powers and Responsibilities.*

(1) As Chief Executive Officer, Executive shall have responsibility for overall oversight and operation of all aspects of the Company's business, subject to the directives of the Board of Managers, and shall have the duties and responsibilities normally applicable to the chief executive of a publicly traded corporation, with respect to the Company and its Affiliates. Executive shall use Executive's reasonable best efforts to faithfully perform the duties of his Position and shall perform such duties as are usually performed by a person serving in Executive's position with a business similar in size and scope as the Company and such other additional duties as may be prescribed from time to time by the Board of Managers of the Company which are reasonable and consistent with the Company's operations, taking into account officer's expertise and job responsibilities. Executive agrees to devote Executive's full business time and attention to the business and affairs of the Company; provided, this is not intended to prevent Executive from participating in personal, charitable or civic activities which do not interfere with the discharge of his responsibilities as the CEO in any material respects hereinafter referred to as "Permitted Exceptions". Executive shall serve on such boards and in such offices of the Company or its subsidiaries as the Company's Board of Managers reasonably requests without additional compensation but not to overwhelm and interfere with the discharge of his primary responsibilities to the Company.

(2) Executive, as a condition to his employment under this Agreement, represents and warrants that he can assume and fulfill responsibilities described in Section 3.B without any risk of violating any non-compete or other restrictive covenant or other agreement to which he is a party. During the Term, Executive shall not enter into any agreement that would preclude, hinder or impair his ability to fulfill responsibilities described in Section 3.B specifically or this Agreement generally except the Permitted Exceptions referred to in Section 3.B.

(3) The Company represents and warrants that it has the legal ability to engage the Executive to assume and fulfill responsibilities described in Section 3.B without any risk of violating any of its governance documents, or any other agreements it has with any other entity in the world including without limitation any lending documents, any other documents, any SEC documents, Orders, Decrees or restriction, any other State, Federal, and or municipal agreements, orders, decrees or the like contracts of any kind, State, Federal and Municipal court orders, judgments, agreements with third parties or any other restrictive provision contained in any contract, governance documents and or court or quasi court order(s) or rule(s) or regulation(s) of any federal and/ or state and or municipal law to which it is a party.

SECTION 4. COMPENSATION AND BENEFITS

The compensation and benefits described in this Section 4 shall be the total and exclusive consideration to be paid to or for the benefit of Executive, in whatever form and from whatever source derived, on account of his service to the Company and its Affiliates, unless otherwise approved in advance by the Company in writing.

A. *Base Salary.* Executive's base salary shall be $670,000.00 per year payable monthly (or more frequently) beginning on the effective date of OWM Public's initial public offering, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Committee ("**Base Salary**"). The Base Salary and any payments to Executive during any Continuation Period shall be payable in accordance with the Company's standard payroll practices and policies (unless otherwise expressly provided herein) and shall be subject to such withholdings as required by law or as otherwise permissible under such practices or policies. From the Effective Date through September 30, 2022, the Executive's current base salary shall continue to apply.

B. *Annual Incentive Bonus.* Executive shall be eligible to receive an annual incentive bonus each calendar year which is a percentage or multiple of $520,000 (the "**Annual Bonus**"). The Annual Bonus shall be awarded upon Executive's achieving reasonable goals annually as set forth by the Committee, and paid to Executive in a lump sum promptly after it has been awarded, but in any event on or before the later of (i) ninety (90) days after the end of the fiscal year with respect to which the Annual Bonus was awarded, or (ii) ten (10) days following the issue of the audited financials for the fiscal year with respect to which the Annual Bonus was awarded (but, in any event, during the fiscal year following the year to which the Annual Bonus relates). Nothing in this Section 4.B guarantees that an Annual Bonus will be paid in any given year, but instead the Annual Bonus must be earned by Executive on the terms set forth herein, if at all; provided, however, that the criteria shall be adopted in good faith and not with the intent of discriminating against the Executive. The Annual Bonus shall be calculated and paid on a quarterly basis with the payment to be made within thirty (30) days following the end of each fiscal quarter based on meeting the Performance Criteria for the year to date through the end of the fiscal quarter then ended. The Annual Bonus shall be subject to a true-up at the end of each fiscal year so that the total Annual Bonus paid with respect to the entire year is neither above or below the appropriate Annual Bonus or the entire year.

(1) The Annual Bonus and will be determined by actual (not pro-forma) performance in 2 areas (the "**Performance Criteria**"):

- pre-tax income bonus (80% of overall bonus target)
- aged inventory bonus (20% of overall bonus target)

(2) The criteria for each performance area will be determined annually by the Committee, with the input of management. The Committee will set minimum increases in each of the annual targets from year to year as appropriate. Specifically, the pre-tax income budget will be agreed upon annually by the Board of Managers after recommendations from the Committee with due consideration given to Executive's input and will be based on the annual budget suggested by management. The approved pre-tax income budget becomes the "Target" for determining the annual pre-tax income bonus.

(3) The "Threshold" for receiving any pre-tax income bonus is achieving 80% of the budgeted pre-tax income and the "Maximum" pre-tax income bonus is paid at 140% of budgeted pre-tax income. The pre-tax income bonus is 50% of pre-tax income bonus target at "Threshold" and 200% of pre-tax income bonus target at "Maximum". In between "Threshold" and "Maximum" the pre-tax income bonus is a straight-line progression between 50% and 200%. Thus, if the actual pre-tax income is exactly the budgeted amount, the pre-tax income bonus would be 100% of the pre-tax income bonus target. For purposes of this calculation, the board may use its discretion to include or exclude certain one-time items included in the calculation of pre-tax income. However, subject to the prior sentence GAAP will be applied consistently with this calculation and exercise as is used in the preceding two years financial statements and income tax returns.

(4) The calculation of the aged inventory bonus will be similar in structure to the pre-tax income bonus and will include a threshold of 80% and a maximum performance level of 140%, with bonus payouts of 50% to 200% based on straight-line progression between threshold and maximum performance. The Compensation Committee will work with management to develop appropriate threshold and maximum targets for the aged inventory management bonus targets. Annual incentive will be paid annually based on the audited financial statements and after approval of the calculation by the Compensation Committee.

C. *Equity Grants*. The Executive shall also receive equity grants annually, beginning with the Company's fiscal year beginning October 1, 2019, in the form of Restricted Shares (defined below) constituting forty percent (40%) of the total possible equity Grant, and Performance Shares (defined below) constituting sixty percent (60%) of the total possible equity Grant. Notwithstanding anything herein to the contrary, to avoid excessive dilution, a maximum number of Restricted Shares and Performance Shares to be issued annually in the aggregate to the Executive and all other executives receiving equity grants for the year in question may be set in the sole discretion of the Committee.

(1) "*Restricted Shares*" represent a right to receive Class A shares in OWM Public as more fully described in the Articles of Incorporation of OWM Public ("**Class A Shares**"). Restricted Shares shall vest ratably over a forty-eight (48) month period so long as the Executive remains employed by the Company and its Affiliates as of the end of each calendar month unless such vesting is accelerated as otherwise provided herein. Executive's annual number of Restricted Shares shall have a total value of $208,000 (the "**Restricted Share Value**").

(2) "*Performance Shares*" represent a right to receive Class A Shares. Executive's annual number of "**Target Performance Shares**" shall have a total value of $312,000 (the "**Performance Share Value**"). The ultimate number of Performance Shares to be earned will be determined based on the performance of the Company versus specific performance objectives established by the Committee for the fiscal year following the year in which the Value Date (described below) falls (the "**Measurement Period**"). The number of such Target Performance Shares ultimately earned shall range from 0-175% of the number of Target Performance Shares calculated as the annual incentive calculation is calculated and will include performance against the Performance Criteria, or such other performance criteria as are established by the Committee from time to time. The Performance Shares earned will vest ratably over a thirty-six (36) month period.

(3) The number of Restricted Shares to be granted to equal the Restricted Share Value and the number of Target Performance Shares to be granted to equal the Performance Share Value, shall be determined based on the closing price of the Class A Shares on NASDAQ as of the day of the equity grant in question (the "**Value Date**"); *provided*, *however*, the number of Restricted Shares to be granted in connection with the initial public offering of OWM Public shall be determined based on the price offered to the underwriters in the offering.

(4) For avoidance of doubt, except as otherwise provided herein, any Equity Grants which have not vested as of the Executive's Termination Date shall be forfeited and shall not vest.

D. *Annual Review.* In October of each year, the Committee shall meet with Executive to (i) assess Executive's performance during the prior calendar year compared to the goals established in his prior annual review, and award Executive the Annual Bonus and the Equity Grants for the prior calendar year based on that assessment, (ii) adjust Executive's Base Salary for the current calendar year, taking into account such factors as the increased cost of living, any changes in Executive's allowances or benefits, Executive's development as an employee, and his standing in the community and in his profession, (iii) in consultation with Executive, set reasonable performance goals for the current year and (iv) his performance directly or indirectly related to the growth and success of the Company All performance related compensation and equity grants shall be determined after the Company has received its audited financials for the year in question. For clarity, the audit financial statements will be provided to the Executive immediately upon receipt by the Company. In addition, any computations related to any of the provision above in this Section 4 will be provided to the Executive in sufficient time for Executive's review prior to any meeting and explanation of the benefits and the decisions made in declaring the benefits. For the portion of the fiscal year during which, and following the time, the gross revenue of the Company exceeds $1 billion and for with respect to each second fiscal year thereafter, the Committee shall review the Executive's Base Salary, Annual Bonus and Equity Grants after consulting with a nationally recognized compensation consultant (such as Aon Consultants) to bring such compensation in line with the then peer group of companies.

E. *End of Term.* At the end of the Term (unless due to a termination by the Company or its Affiliates for Cause), Executive's unpaid Base Salary, Bonus and Equity Grants (to the extent vested) shall be prorated on a daily basis through the Termination Date and promptly paid to Executive, subject to such withholdings as required by law, with Performance Shares calculated with respect to the performance for the full fiscal year during which the term ended and prorated as of the Termination Date.

F. *Employee Benefit Plans.* Executive shall be entitled to receive such benefits as medical, dental, life, accident and disability insurance, to the same extent and for as long as the Company or an Affiliate maintains such plans for its other senior Executives, provided however that such plans will not be intended to be discriminatory among the Executives.

G. *Personal Time Off.* Executive shall receive a combined total of thirty (30) days' paid vacation and holidays each year during the Term, to be taken in increments of two weeks or less. Up to ten (10) days of vacation or holiday time not used during any calendar year of the Term will be carried forward to the next calendar year only, and any unused balance remaining after the carryover year will be forfeited. In no event will the Company or any Affiliate have any obligation to pay Executive for any unused vacation or holiday time not used.

H. *Expense Reimbursements.* Executive shall be reimbursed for expenses incurred in furtherance of Company business in accordance with the Company's standard policies of which Executive has been made aware in writing, and applicable laws in effect from time to time.

I. *Indemnification.* With respect to Executive's acts or failures to act during his employment in Executive's capacity as an officer, employee or agent of the Company, Executive shall be entitled to indemnification from the Company, and to liability insurance coverage (if any), on the same basis as other officers of the Company. Executive shall be indemnified by the Company, and the Company shall pay Executive's related expenses as provided in the Company's Operating Agreement.

SECTION 5. TERMINATION OF EMPLOYMENT

A. *General.* The Board of Managers shall have the right to terminate Executive's employment and this Agreement at any time with or without Cause, and Executive shall have the right to terminate his employment and this Agreement at any time with or without Good Reason; provided that obligations under this Section 5, Section 6 and Section 7 shall survive termination of the Agreement. The Board of Managers may delegate its power to terminate Executive to the person to whom Executive reports if the Executive is other than the Chief Executive Officer. If the Company intends to offer re-employment to Executive following the end of the Term of this Agreement on terms different from those then in effect, it will present its offer no later than thirty (30) days before the end of the Term. If no offer of different terms is made during such thirty (30) day period, then the Company shall be deemed to have offered the Executive a renewal of this Agreement on the same terms as the then current terms of this Agreement.

(1) If the offer contains compensation and benefits not materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have terminated his employment without Good Reason.

(2) If the offer contains compensation and benefits which are materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have been terminated by the Company and its Affiliates without Cause.

B. *Termination by Board of Managers without Cause or by Executive for Good Reason.* If the Company or any Affiliate terminates Executive's employment without Cause, or Executive resigns for Good Reason, then in either of those circumstances, the Company's only obligation to Executive under this Agreement (except as provided below with respect to termination for Disability or death) shall be to pay Executive:

(1) his earned but unpaid Base Salary and Annual Bonus, if any, prorated on a daily basis up to the Termination Date; and

(2) any expense reimbursement payments owed to Executive for expenses incurred prior to the Termination Date; and

(3) severance payments (collectively, "**Severance**") in an aggregate amount equal to (i) two hundred percent (200%) of the sum of the Executive's Base Salary which he received during the full fiscal year immediately preceding the fiscal year in which the termination occurred (the "**Base Year**"), and (ii) continuation of the Annual Bonus paid based on the Company's achievement of the Performance Criteria each year (pro-rated for partial fiscal years) during the Continuation Period. For avoidance of doubt, (x) if the termination is effective on the last day of fiscal year, then the year then ending shall be the Base Year, (y) the Severance shall not include any Equity Grants, and (z) the Annual Bonus shall be paid only if, and to the extent, the continuing executives receive their Annual Bonus based on the then existing Performance Criteria. Executive's Severance shall be payable in installments, consistent with the Company's payroll periods then in effect, for the length of the Continuation Period beginning upon Executive's Termination Date, and subject to such withholdings as required by law; provided, however, any Annual Bonuses paid during the Continuation Period will be paid at the time such Annual Bonus, if any, is paid to continuing executives based on the then existing Performance Criteria; and

(4) during the Continuation Period Executive shall also continue to receive, at the Company's cost, the Current Insurance Coverage;

(5) provided however, that as a condition to receiving such Severance and continuation of Current Insurance Coverage, Executive shall exchange with the Company a reasonable separation agreement and mutual release agreement in form acceptable to the Company and Executive, both acting reasonably; and provided further that if the taxable value of the continued life and accident and disability coverage to Executive during the Continuation Period exceeds the annual dollar limit in effect under Code Section 402(g)(1)(B) for the year of such termination or is not otherwise exempt from section 409A of the Code, then Executive shall pay the premiums in excess of such limit for such coverage during the Continuation Period and after the end of the Continuation Period, the Company shall reimburse Executive for the amount of the premiums paid by Executive, without interest thereon. Moreover, payment of the Severance (or portion thereof) shall be delayed, if required, and to the extent required to comply with Code Section 409A.

C. *Termination by the Board of Managers for Cause or by Executive without Good Reason.* If the Board of Managers of the Company terminates Executive's employment for Cause or Executive resigns without Good Reason, the Company's only obligation to Executive under this Agreement shall be to pay Executive his earned but unpaid Base Salary, if any, up to the Termination Date, and the Company shall have no obligation to pay any unpaid Annual Bonus or Equity Grant with respect to the year during which the Termination Date occurs or to pay any Severance. The Company shall only be obligated to make such payments and provide such benefits under any employee benefit plan, program or policy in which Executive was a participant as are explicitly required to be paid to Executive by the terms of any such benefit plan, program or policy following the Termination Date.

D. *Termination for Disability.* Subject to the terms of Section 2 ("Disability"), after six (6) consecutive months of such disability leave of absence, Executive's service may be terminated by the Company. In the event Executive is terminated from employment due to Disability, the Company shall:

(1) Pay Executive his Base Salary only for twelve (12) months following such termination with a credit for any disability insurance proceeds paid to the Executive; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(2) Pay Executive his unpaid Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates and calculated as though the Company achieved 100% of its target levels of performance; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(3) Pay or cause the payment of benefits to which Executive is entitled under the terms of any disability plan of the Company covering Executive at the time of such Disability:

(4) Pay premiums for COBRA coverage as provided in Section 5.F; and

(5) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.D(2) or Section 5.D(3) shall be taken into account in computing any payments or benefits described in this Section 5.D(6).

Notwithstanding Executive's Disability, during the period of Disability leave, Executive shall be paid in full (net of insurance) as if he were actively performing services. Executive agrees to simultaneously use any available leave under the Family and Medical Leave Act of 1993 during such disability leave of absence. During the period of such Disability leave of absence, the Board of Managers may designate someone to perform Executive's duties. Executive shall have the right to return to full-time service so long as he is able to resume and faithfully perform his full-time duties.

E. *Death.* If Executive's employment terminates as a result of his death, the Company shall:

(1) Pay to Executive's estate Executive's Base Salary through the end of the month in which Executive's employment terminates as soon as practicable after Executive's death;

(2) Pay to Executive's estate his Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates due to death and calculated as though the Company achieved 100% of its target levels of performance;

(3) Pay to Executive's estate a one-time payment of $1 million which may be covered by the Company maintaining key man insurance on Executive;

(4) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.E(2) shall be taken into account in computing any payments or benefits described in this Section 5.E(3); and

(5) Provide Current Insurance Coverage or pay COBRA premiums, as applicable, for Executive's dependents for the period of one year.

(6) Any amounts payable to Executive under this Agreement which are unpaid at the date of Executive's death or payable hereunder or otherwise by reason of Executive's death, shall be paid in accordance with the terms of this Agreement to Executive's estate; provided that if there is a specific beneficiary designation in place for any specific amount payable, then payment of such amount shall be made to such beneficiary.

(7) All unvested Equity Grants held by the Executive shall automatically vest on such Executive's death except for Performance Shares which shall only vest as such are earned based on realization of the Performance Criteria applicable to such grants.

F. *Benefit Continuation.* Upon termination of Executive's employment, Executive shall be provided notice of his right to continue his group health insurance coverage(s) subject to the terms of the plans and as provided under COBRA. Provided Executive is eligible for and elects COBRA coverage, and has not been terminated from employment for Cause or resigned without Good Reason, then the Company shall pay Executive's COBRA premiums commencing on the date of Executive's termination of employment and continuing for the applicable Continuation Period in order to continue Executive's health insurance coverage and maintain such coverage in effect; provided that following the end of the COBRA continuation period, if Executive's health insurance coverage is provided under a health plan that is subject to Code Section 105(h), benefits payable under such health plan shall comply with the requirements of Treasury Regulation Section 1.409A-3(i)(1)(iv) and, if necessary, the Company or an Affiliate shall amend such health plan to comply therewith.

G. *Relinquishment of Corporate Positions.* Upon Executive's termination of Employment for any of the reason cited above, then and in such event, Executive shall automatically cease to be an officer and/or director of the Company and OWM Public and their Affiliates as of his Termination Date of employment.

H. *Limitation.* Anything in this Agreement to the contrary notwithstanding, Executive's entitlement to or payments under any other plan or agreement shall be limited to the extent necessary so that no payment to be made to Executive on account of termination of his employment with the Company and its Affiliates will be subject to the excise tax imposed by Code Section 4999, but only if, by reason of such limitation, Executive's net after tax benefit shall exceed the net after tax benefit if such reduction were not made. "Net after tax benefit" shall mean (i) the sum of all payments and benefits that Executive is then entitled to receive under any section of this Agreement or other plan or agreement that would constitute a "parachute payment" within the meaning of Section 280G of the Code, less (ii) the amount of federal income tax payable with respect to the payments and benefits described in clause (i) above calculated at the maximum marginal income tax rate for each year in which such payments and benefits shall be paid to Executive (based upon the rate in effect for such year as set forth in the Code at the time of the first payment of the foregoing), less (iii) the amount of excise tax imposed with respect to the payments and benefits described in clause (i) above by Section 4999 of the Code. Any limitation under this Section 5.H of Executive's entitlement to payments shall be made in the manner and in the order directed by Executive.

SECTION 6. COVENANTS BY EXECUTIVE

A. *Company Property.* Upon the termination of Executive's employment for any reason, Executive shall promptly return all Company Property which had been entrusted or made available to Executive by the Company. "Property" means all records, files, memoranda, communication, reports, price lists, plans for current or prospective business operations, customer lists, drawings, plans, sketches, keys, codes, computer hardware and software and other property of any kind or description prepared, used or possessed by Executive during Executive's employment by the Company and its Affiliates (and any duplicates of any such Property) together with any and all information, ideas, concepts, discoveries, processes, intellectual property, inventions and the like conceived, made, developed or acquired at any time by Executive individually or with others during Executive's employment which relate to the Company and/or its Affiliates or its products or services or operations. For elimination of doubt, Company Property does not include Executive's Rolodex or Contacts file, the personal data maintained on his computer and other electronic devices and all of the above identified property which Executive knew or owned prior to his Employment by the Company.

B. *Trade Secrets.* Executive agrees that Executive shall hold in a fiduciary capacity for the benefit of the Company and its Affiliates and shall not directly or indirectly use or disclose any Trade Secret that Executive may have acquired during the term of Executive's employment by the Company and its Affiliates for so long as such information remains a Trade Secret. "Trade Secret" means information, including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing or a process that (1) derives economic value, actual or potential, from not being generally known to, and not being generally readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and (2) has been the subject of reasonable efforts by the Company or its Affiliates to maintain its secrecy. This Section 6.B is intended to provide rights to the Company and its Affiliates which are in addition to, not in lieu of, those rights the Company and its Affiliates have under the common law or applicable statutes for the protection of trade secrets. Notwithstanding the foregoing the parties hereto acknowledge that some of the information and ideas, concepts and plans and procedure were developed by Executive prior to his association with Company and its Affiliates and, thus, are his to use and share.

C. *Confidential Information.* During the Term and continuing thereafter indefinitely, Executive shall hold in a fiduciary capacity for the benefit of the Company, and shall not directly or indirectly use or disclose, any Confidential Information that Executive may have acquired (whether or not developed or compiled by Executive and whether or not Executive is authorized to have access to such information) during the term of, and in the course of, or as a result of Executive's employment by the Company and its Affiliates without the prior written consent of the Board of Managers unless and except to the extent that such disclosure is (i) made in the ordinary course of Executive's performance of his duties under this Agreement or (ii) required by any subpoena or other legal process (in which event Executive will give the Company prompt notice of such subpoena or other legal process in order to permit the Company to seek appropriate protective orders); provided, however, that nothing contained in this Agreement shall limit Executive's ability to communicate with any federal or state government agency or otherwise participate in any investigation or proceeding that may be conducted by any such federal or state government agency, including by providing documents or other Confidential Information, without notice to the Company or the Board of Managers. This Agreement does not limit Executive's right to receive an award for any information provided to any federal or state government agency. "Confidential Information" means any secret, confidential or proprietary information possessed by the Company or any of its subsidiaries or affiliates, including, without limitation, trade secrets, customer or supplier lists, details of client or consultant contracts, current and anticipated customer requirements, pricing policies, price lists, market studies, business plans, operational methods, marketing plans or strategies, advertising campaigns, information regarding customers or suppliers, computer software programs (including object code and source code), data and documentation data, base technologies, systems, structures and architectures, inventions and ideas, past current and planned research and development, compilations, devices, methods, techniques, processes, financial information and data, business acquisition plans and new personnel acquisition plans and the terms and conditions of this Agreement that has not become generally available to the public. Notwithstanding anything to the contrary contained herein, the term "Confidential Information" shall in no event apply to any information which (x) was generally available to or known by the public prior to the Commencement Date; (y) has become generally available to or known by the public after the Commencement Date other than as the result of a direct or indirect disclosure by Executive; and (z) was known and used by Executive prior to his Employment by the Company. Subject to the exceptions in this paragraph, the existence and terms of this Agreement are confidential and are not to be disclosed to or discussed with any other person except Executive's attorneys, accountants, bankers and financial advisors.

D. *Restriction.* During the Term and for a period of two years thereafter, Executive will not be an employee, agent, director, stockholder or owner (except of not more than a 5% interest in the voting securities of any publicly traded entity), partner, consultant, financial backer, creditor or be otherwise directly or indirectly connected with or participate in the ownership, management, operation or control of any business, firm, proprietorship, corporation, partnership, association, entity, venture or other form or property ownership a material part of the business activities of which (a "**Competing Business**") is the development, ownership, leasing or management of retail marine dealerships and related operations ("**Business**") within an area (the "**Restricted Area**") which is (i) any state in which the Company or any of its Affiliates conducted any part of the Business in any material respect within the twelve (12) months preceding the Termination Date. Notwithstanding the foregoing, nothing in this Agreement shall be construed as limiting Executive's ability to invest personally in real estate or other investments which do not constitute a Competing Business, subject to the limitations of this Section 6 generally.

E. *Non-Solicitation.* During the Term and for a period of two years thereafter (such period is referred to as the "**No Recruit Period**"), Executive will not solicit or attempt to solicit, either directly or indirectly, any person that he knows or should reasonably know to be an employee of the Company, whether any such employees are now or hereafter through the No Recruit Period so employed or engaged by the Company, to terminate or alter their employment with the Company. The foregoing is not intended to limit any legal rights or remedies that any employee of the Company or any Affiliate may have under common law with regard to any interference by Executive at any time with the contractual relationship the Company or any Affiliate may have with any of its employees.

F. *Reasonable and Continuing Obligations.* Executive agrees that Executive's obligations under this Section 6 are obligations which will continue beyond the date Executive's employment terminates and that such obligations are reasonable, fair and equitable in scope. The terms and duration are necessary to protect the Company's legitimate business interests and are a material inducement to the Company to enter into this Agreement. Executive further acknowledges that the consideration for this Section 6 is his employment or continued employment. Executive will not be paid any additional compensation during this Restricted Period for application or enforcement of the restrictive covenants contained in this Section 6.

G. *Work Product.* The term "**Work Product**" includes any and all information, programs, concepts, processes, discoveries, improvements, formulas, know-how and inventions, in any form whatsoever, relating to the business or activities of the Company, or resulting from or suggested by any work developed by Executive in connection with the Company, or by Executive at the Company's request during his employment with the Company. Executive acknowledges that all Work Product developed during the Term is property of the Company and/or its Affiliates and accordingly, Executive does hereby irrevocably assign all Work Product developed by Executive to the Company and agrees: (a) to assign to the Company, free from any obligation of the Company to Executive, all of Executive's right, title and interest in and to Work Product conceived, discovered, researched, or developed by Executive either solely or jointly with others during the term of this Agreement and for three (3) months after the termination or nonrenewal of this Agreement; and (b) to disclose to the Company promptly and in writing such Work Product upon Executive's acquisition thereof.

H. *Cooperation.* During and subsequent to termination of the employment of Executive, Executive will, at no costs to the Executive, cooperate with the Company and furnish any and all complete and truthful information, testimony or affidavits in connection with any matter that arose during Executive's employment, that in any way relates to the business or operations of the Company or any of its subsidiary corporations, divisions or affiliates, or of which Executive may have any knowledge or involvement; and will consult with and provide information to the Company and its representatives concerning such matters. Executive shall not undermine the authority of the Company, its Board of Managers or others within the Company to whom Executive reports, nor speak or publish disparaging information about the Company or its Affiliates. Subsequent to the termination of the employment of Executive, the parties will make their good faith best efforts to have such cooperation performed at reasonable times and places and in a manner as not to unreasonably interfere with any other employment in which Executive may then be engaged. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony, sworn statement or declaration that is not complete and truthful. However if Executive does travel outside the metropolitan area in the United States where Executive then resides to provide any testimony or otherwise provide any such assistance, then the Company will reimburse Executive for any reasonable, ordinary and necessary travel and lodging expenses incurred by Executive to do so based on "first class" accommodations as to travel, food, lodging and transportation provided Executive submits all documentation required under the Company's standard travel expense reimbursement policies of which Executive has been made aware in writing, and as otherwise may be reasonably required to satisfy any requirements under applicable tax laws for the Company or its Affiliates to deduct those expenses. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony or affidavit that is not complete and truthful.

I. *Remedies.* Executive recognizes that his duties may entail the receipt of Trade Secrets and Confidential Information as defined in this Section 6. Those Trade Secrets and Confidential Information have been developed by the Company and/or its Affiliates at substantial cost and constitute valuable and unique property of the Company and its Affiliates. Moreover, each of the provisions of this Section 6 have been specifically bargained for by the Company as a condition of the benefits derived by Executive hereunder. Accordingly, Executive acknowledges that protection of Trade Secrets and Confidential Information is a legitimate business interest. Subject to Dispute Resolution determination, if Executive shall breach the covenants contained in this Section 6 in a "material respect", the Company shall have no further obligation to make any payment to Executive pursuant to this Agreement, other than any accrued wages earned and owed to Executive at the time of termination and/or Severance Payments due prior to the breach, and may recover from Executive all such damages as it may be entitled to at law or in equity. In addition, Executive acknowledges that any such breach may result in irreparable harm to the Company. The Company shall be entitled to seek specific performance of the covenants in this Section 6, including entry of a temporary restraining order in state or federal court, preliminary and permanent injunctive relief against activities in violation of this Section 6, or both, or other appropriate judicial remedy, writ or order, in addition to any damages and legal expenses which the Company or any Affiliate may be legally entitled to recover. Executive acknowledges and agrees that the covenants in this Section 6 shall be construed as agreements independent of any other provision of this Agreement or any other agreement between the Company or any Affiliate and Executive, and that the existence of any claim or cause of action by Executive against the Company or any Affiliate, whether predicated upon this Agreement or any other agreement, shall not constitute a defense to the enforcement by the Company or any Affiliate of such covenants.

SECTION 7. MISCELLANEOUS

A. *Notices.* Notices and all other communications shall be in writing and shall be deemed to have been duly given when personally delivered, the next day if by facsimile transmission and/or overnight delivery by a recognized overnight carrier (such as Federal Express or UPS) or three (3) days when mailed by United States postal service, registered or certified mail with a copy to the addressee by email. Notices to the Company shall be sent to:

To Executive:

Mr. Philip A. Singleton, Jr.

Copy to:
Bruce L. Gordon
Gordon, Dana & Gilmore, LLC
600 University Park Place, Suite 100
Birmingham, Alabama 35209

To the Company:

One Water Marine Holdings, LLC
Attn: Mitchell W. Legler, Chairman
4471 Legendary Dr.
Destin, Florida 32541

Copy to:

Michael Gold, Esq
6515 Shiloh Rd. Ste 100
Alpharetta, GA 30005

Notices and communications to Executive shall be sent to the address Executive most recently provided to the Company.

B. *No Waiver.* No failure by either the Company or Executive at any time to give notice of any breach by the other of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of any provisions or conditions of this Agreement.

C. *Governing Law*. This Agreement shall be governed by Georgia law without reference to the choice of law principles thereof.

D. *Assignment; Parties.* This Agreement shall be binding upon and inure to the benefit of the Company and any successor in interest to the Company. The Company may assign this Agreement to any affiliate or successor that acquires all or substantially all of the assets and business of the Company or a majority of the voting interests of the Company, expressly including OWM Public which is hereby declared a third-party beneficiary of this Agreement. The Company will require any successor (whether direct or indirect, by operation of law, by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company) to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean Company as defined above and, unless the context otherwise requires, any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Executive's rights and obligations under this Agreement are personal and shall not be assigned or transferred. The Executive's obligations under this Agreement are not assignable. Notwithstanding any assignment by Company nothing herein will eliminate the Company and other obligors from the payment of the amounts due hereunder.

E. *Other Agreements.* This Agreement replaces and merges any and all previous agreements and understandings regarding all the terms and conditions of Executive's employment relationship with the Company, and this Agreement constitutes the entire agreement between the Company and Executive with respect to such terms and conditions.

F. *Amendment.* No amendment to this Agreement shall be effective unless it is in writing and signed by the Company and by Executive.

G. *Invalidity and Severability.* If any part of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remaining part shall be unaffected and shall continue in full force and effect, and the invalid or otherwise unenforceable part shall be deemed not to be part of this Agreement.

H. *Dispute Resolution.* If a dispute arises between the parties as to the proper interpretation or application of this Agreement, or if a party believes that the other party is in violation hereof and the alleged breach is not cured within ten (10) business days after notice from the complaining party to the other party, then unless both of the parties agree in writing to waive the provisions of this Section 7.H, their dispute shall be resolved exclusively by binding arbitration conducted in accordance with the Georgia Arbitration Code (the "**Arbitration Rules**," which term shall include any replacement of that code, however designated, and the administrative rules and court decisions implementing or interpreting same), except as may be expressly modified herein. Judgment on any award rendered by the arbitrator may be entered in the appropriate state court of Fulton County, Georgia having jurisdiction thereof.

(1) *Arbitrator; Venue.* The arbitration shall take place in Atlanta, Georgia before a three (3) panel of arbitrators to be mutually agreed upon by the parties involved in the dispute. In the event such parties cannot agree on a three (3) panel of neutral arbitrators within ten (10) days after a party calls for the arbitration of a dispute hereunder, each party shall within seven (7) days thereafter select a representative who (i) is currently a circuit court mediator certified under the rules of the Georgia Supreme Court, (ii) is not affiliated with or related to either party or either party's attorneys or accountants, and (iii) has his or her principal office in Fulton County, Georgia or the adjacent counties. Under no circumstances will the American Arbitration Association be used for this dispute resolution.

(2) *Discovery.* Notwithstanding anything to the contrary contained in Section 682.08 or elsewhere in the Arbitration Rules, the parties shall be permitted <u>full</u> discovery in any arbitration proceedings as provided by the Georgia Rules of Civil Procedure, subject to review by the panel of arbitrators of any allegation of abuse of discovery rights allowed by the Georgia Rules of Civil Procedure.

(3) *Injunctive Relief.* Any party to the arbitration may apply to the panel of arbitrators for the entry of injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Any such injunctive relief shall be in addition to any and all other remedies available to the parties under this Agreement.

(4) *Limitation of Remedies.* The measure of damages under this Agreement in connection with a breach by a party shall be the actual damages sustained by the other party or parties, and the panel of arbitrators is not authorized to award incidental, consequential, treble, punitive or other multiple damages or to modify this Agreement, and the jurisdiction of the arbitrator shall be so limited.

(5) *Costs and Fees.* The arbitrator may, in the panel of arbitrators' sole and absolute discretion, award to the substantially prevailing party, if any, as determined by the arbitrator, all of the substantially prevailing party's costs and fees for the dispute in question. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, out-of-pocket expenses such as courier and copying costs, witness fees, and attorneys' fees.

(6) *Final Award.* The arbitrator shall in every case make a reasoned award, which shall be final and conclusive except as otherwise provided in the Arbitration Rules, and the failure of the arbitrator to make a reasoned award shall be grounds for vacating the award upon the motion of either party pursuant to Section 682.13 of the Arbitration Rules.

(7) *Disability.* Physical incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined as a factual matter in accordance with this Section 7.H following the procedures set forth above. Mental incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined in accordance with Georgia law, except that:

(a) Executive shall be represented by an attorney employed by Executive and compensated by the Company, rather than by a judicially appointed attorney.

(b) All required appointments, orders and findings shall be made by the arbitrator rather than the court, except that an order of the court may be sought to enforce or appeal the results of arbitration.

(c) All costs of arbitration to determine Executive's mental incapacity, including all experts' fees and expenses and the attorney's fees and expenses of both parties, shall be paid by the Company.

(8) *Confidentiality.* Neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, except as may be required by law to be filed in court or in order to appeal or enforce the award.

(9) *Joint and Several Liability.* The Company and its Affiliates shall be jointly and severally liable for any awards (and judgments thereon) entered in Executive's favor.

I. *Counterparts.* This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. *Section 409A.* The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code and the regulations and guidance promulgated thereunder (collectively "**Section 409A**") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered consistent with such intent.

(1) For purposes of Section 409A, Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (*e.g.*, "payment shall be made within sixty calendar days following the Termination Date"), the actual date of payment within the specified period shall be within the sole discretion of the Company. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement that is considered non-qualified deferred compensation.

(2) In addition, notwithstanding anything in this Agreement to the contrary, if at the time of Executive's "separation from service" the Company determines that Executive is a "specified employee" (such terms within the meaning of Section 409A), then to the extent any payment or benefit that Executive becomes entitled to under this Agreement on account of Executive's separation from service would be considered deferred compensation otherwise subject to the twenty percent (20%) additional tax imposed pursuant to Section 409A, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six (6) months and one day after your separation from service, or (ii) Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(3) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit; (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year; provided, that this clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect; and (iii) such payments shall be made on or before the last day of the taxable year following the taxable year in which the expense was incurred.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

[SIGNATURE PAGE OF EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the Company (for itself and each of its Affiliates) and Executive have executed this Agreement effective as of the Effective Date.

Company:

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Mitchell W. Legler
Mitchell W. Legler, Chairman

Executive:
/s/ Philip A. Singleton, Jr.
PHILIP A. SINGLETON, JR.

Joinder

By signing below, the undersigned OneWater Marine Inc., a Delaware corporation, does hereby agree to be bound by the terms of the preceding agreement as apply to the undersigned.

Dated as of the date of the foregoing agreement.

ONEWATER MARINE INC.

By: /s/ Mitchell W. Legler
Mitchell W. Legler, Chairman

Exhibit 10.7

ONE WATER MARINE HOLDINGS, LLC
EMPLOYMENT AGREEMENT
(Anthony Aisquith)

THIS EMPLOYMENT AGREEMENT (this "**Agreement**") is entered into in Atlanta, Georgia between **ONE WATER MARINE HOLDINGS, LLC**, a Delaware limited liability company (the "**Company**"), and **ANTHONY AISQUITH** ("**Executive**"), as of February 11, 2020 (the "**Effective Date**").

Background Facts:

A. The Company wishes to continue to employ Executive as its President and Chief Operating Officer (the "**Position**"); and

B. Executive wishes to continue his employment relationship with the Company; and

C. OneWater Marine Inc., a Delaware corporation, ("**OWM Public**") is traded on NASDAQ and holds as its only asset a significant equity interest in the Company and will benefit from this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties, intending to be legally bound, agree as follows, and by the execution of the joinder to this Agreement, OWM Public agrees that the Executive shall hold the same Position with OWM Public. OWM Public will be a third-party beneficiary hereof and will honor all provisions of this Agreement applicable to it:

SECTION 1. TERM OF EMPLOYMENT

The Company agrees to employ Executive, and Executive agrees to be employed by the Company, for a period beginning on the Commencement Date and ending four (4) years thereafter, unless otherwise terminated as provided herein (the "**Term**").

SECTION 2. DEFINITIONS

A. *"Affiliates"* means those entities the majority of the control over which is held by the Company or another Affiliate\Persons controlled by, controlling or under common control with the Company.

B. *"Board of Managers"* means the Board of Managers of the Company which shall be made up of the same individuals, holding the same positions as the Board of Directors of OWM Public, as it shall exist from time to time.

C. *"Cause"* means the occurrence of any one or more of the following:

(1) Executive has been convicted of, or pleads guilty or *nolo contendere* to, a felony involving dishonesty, theft, misappropriation, embezzlement, fraud crimes against property or person, or any act of moral turpitude which negatively impacts the Company; or

(2) Executive intentionally furnishes materially false, misleading, or gross omissive information concerning a substantial matter material to the Company or persons to whom Executive reports; or

(3) Executive intentionally and wrongfully materially damages material assets of the Company; or

(4) Executive inappropriately discloses Confidential Information of the Company which has a material economic effect on the Company; or

(5) Executive engages in any activity which would constitute a breach of the duty of loyalty as hereinafter defined; or

(6) Executive solicits or accepts compensation in any form from any source other than the Company with respect to his service on behalf of the Company (excluding customary business gifts of nominal value); or

(7) Executive breaches in any material fashion any stated employment policy or provision of the Company's ethics policy when adopted **and** which could reasonably be expected to expose the Company to liability in any material financial respect or negatively impact the Company or its business reputation in any material financial effect; or

(8) Executive commits a material breach of this Agreement which is not cured within fifteen (15) days after written notice is received by Executive in sufficient detail to permit Executive to understand the nature of the breach.; or

(9) Executive engages in acts or omissions which constitute a material failure to follow reasonable and lawful directives of the Company, provided, however, that such acts or omissions are not cured by Executive within fifteen (15) days following the Company's giving notice to Executive that the Company considers such acts or omissions to be "Cause" under this Agreement.

Failure to meet performance standards or objectives that does not involve any acts or omissions identified in (1) through (8) above shall not constitute Cause for purposes hereof. For purposes of this definition of "Cause," the term "Company" includes each of its Affiliates.

D. "*Change in Control"* means the occurrence of any of the following; provided, however, that the acquisition by conversion or otherwise of equity interests in the Company by OWM Public shall not be considered in applying the conditions below; and provided, further, however that any of the following which occur with respect to OWM Public itself (with the term "Company" including OWM Public and the term Board of Managers including the Board of Directors of OWM Public) shall also constitute a Change in Control:

(1) The Board of Managers approves the sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions;

(2) The Company sells and/or one or more equity holders sells a sufficient amount of its equity interests (whether by tender offer, original issuance, or a single or series of related purchase and sale agreements and/or transactions) sufficient to confer on the purchaser or purchasers thereof (whether individually or a group acting in concert) beneficial ownership of at least fifty percent (50) of the combined voting power of the voting securities of the Company;

(3) The Company is party to a merger, consolidation or combination, other than any merger, consolidation or combination that would result in the holders of the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger, consolidation or combination; or

(4) A majority of the Board of Managers consists of individuals who are not Continuing Directors (for this purpose, a Continuing Director is an individual who (i) was a director of the Company on the Effective Date or (ii) whose election or nomination as a manager of the Company is approved by a vote of at least a majority of the managers then comprising the Continuing Directors).

For purposes hereof, the definition of a Change of Control shall be construed and interpreted so as to comply with the definition contained in Code Section 409A.

E. *"Code"* means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code shall be deemed to refer to any successor provision thereto and the regulations promulgated thereunder.

F. "*Commencement Date"* shall be the Effective Date of this Agreement.

G. *"Company"* means One Water Marine Holdings, LLC, a Delaware limited liability company; for the purposes of this Agreement.

H. "*Company Operating Agreement*" means the Restated Operating Agreement of the Company dated February 11, 2020, as amended from time to time.

I. "*Committee"* means the Company's Compensation Committee or, if no such committee exists, the term Compensation Committee shall mean the Company's Board of Managers.

J. "*Continuation Period*" means a period equal to twenty-four (24) months. There shall be no Continuation Period following a termination by the Company or its Affiliates for Cause or a termination by Executive without Good Reason.

K. "*Current Insurance Coverage*" means medical, dental, life and accident and disability insurance with coverage consistent with the lesser of (i) the coverage in effect immediately prior to Executive's termination, or (ii) the coverage in effect from time to time as applied to persons in positions similar to the position held by Executive at the time of termination.

L. "*Disability*" means Executive's inability, due to physical or mental incapacity, to perform his duties under this Agreement, with a reasonable accommodation, on a full-time basis for a period of three (3) consecutive months along with the Executive's treating physician's statement that in such physician's opinion that his condition will not sufficiently improve within that period to be able to resume substantially all of his duties on a full time basis. Any dispute as to Disability shall be conclusively determined in the manner set forth in Section 7.G below.

M. "Executives" is defined to mean named executive officers including Anthony Aisquith.

N. "GAAP" means generally accepted accounting principles" as practiced in the United States.

O. "*Good Reason*" means the occurrence of any one or more of the following:

(1) A material and continuing failure to pay to Executive compensation and benefits (as described in Section 4) that have been earned, if any, by Executive, except failure to pay or provide compensation or benefits that are in dispute between the Company and Executive unless such failure continues following the resolution of such dispute; or

(2) A material reduction in Executive's compensation or benefits (as described in Section 4) other than a uniform reduction applied to all Executives of the Company that does not result in a reduction of Base Salary of more than fifteen percent (15%); or

(3) Any failure by the Company to comply with any of the material provisions of this Agreement and which is not remedied by the Company within fifteen (15) days after receipt of notice thereof given by Executive; or

(4) Any requirement that Executive perform duties that, in the good faith and reasonable professional judgment of Executive, after consultation with the Board of Managers of the Company, are inconsistent with ethical or lawful business practices; or

(5) Executive's being required to relocate to a principal place of employment more than fifty (50) miles from his current principal place of employment in Atlanta, Georgia during the Term; or

If following a Change in Control only, there occurs a material change in Executive's duties, roles, or responsibilities. For purposes of this subsection, "material change" shall be of such a character that a reasonable person serving in a like or similar executive capacity would feel compelled to resign from employment. Examples of "material change" include, but are not limited to substantial reduction of Executive's authority to make decisions relating to his business responsibilities; Executive being required to assume or perform substantially greater responsibilities (without reasonable additional compensation) than previously required to perform; substantial reduction of Executive's responsibilities for personnel matters relating to his business operations; substantial alteration or change in Executive's work schedule; any restructuring or reassignment of any of Executive's responsibilities, in a manner that diminishes them or is materially adverse to Executive, from that which was in effect at the time of the Change in Control; and other substantial changes in Executive's terms or conditions of employment not related to Executive's principal business responsibilities. Good Reason pursuant to this subsection shall not exist unless (a) Executive's "material change" has existed for a period of at least two months; (b) Executive has consulted with management senior to Executive and his supervisor, in a good faith effort to resolve the issues giving Executive reason to believe a "material change" has occurred; (c) Executive gives written notice of Executive's resignation for Good Reason under this paragraph within six months following the commencement of the "material change," and (d) Executive's Termination Date is within thirty (30) days of delivery such notice. For purposes of this definition of "Good Reason," the term "Company" includes each of its Affiliates.

P. "*OWM Public*" means OneWater Marine Inc., a Delaware corporation.

Q. "*Termination Date*" means the date of Executive's termination of employment, or if Executive continues to provide services to the Company or its 409A affiliates following his termination of employment, such later date as is considered a separation from service from the Company and its 409A affiliates within the meaning of Code Section 409A. For purposes of this Agreement, Executive's "termination of employment" shall be presumed to occur when the Company and Executive reasonably anticipate that no further services will be performed by Executive for the Company and its 409A affiliates or that the level of bona fide services Executive will perform as an employee of the Company and its 409A affiliates will permanently decrease to no more than 20% of the average level of *bona fide* services performed by Executive (whether as an employee or independent contractor) for the Company and its 409A affiliates over the immediately preceding 36-month period (or such lesser period of services). Whether Executive has experienced a termination of employment shall be determined by the Company in good faith with any dispute resolved in accordance with the provisions of Section 7.G and consistent with Section 409A of the Code. Notwithstanding the foregoing, if Executive takes a leave of absence for purposes of military leave, sick leave or other such *bona fide* reason, Executive will not be deemed to have experienced a termination of employment for the first six (6) months of such leave of absence, or if longer, for so long as Executive's right to reemployment is provided either by statute or by contract, including this Agreement; provided that if the leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than six (6) months, where such impairment causes Executive to be unable to perform the duties of his position of employment or any substantially similar position of employment, with or without a reasonable accommodation, the leave may be extended by the Company for up to twenty-nine (29) months without causing a termination of employment. For purposes hereof, the term "409A affiliate" means each entity that is required to be included in the Company's controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; provided, however, that the phrase "at least 50 percent" shall be used in place of the phrase "at least 80 percent" each place it appears therein or in the regulations thereunder.

SECTION 3. TITLE; POWERS AND RESPONSIBILITIES

A. *Title*. Executive shall be the President and Chief Operating Officer of the Company and each of its Affiliates, or such other title as designated by the Company's Board of Managers. Executive shall assume those duties under this Agreement as of the Commencement Date.

B. *Powers and Responsibilities.*

(1) As President and Chief Operating Officer, Executive shall have responsibility for overall oversight and operation of all aspects of the Company's business, subject to the directives of the Board of Managers, and shall have the duties and responsibilities normally applicable to the chief operating officer of a publicly traded corporation, with respect to the Company and its Affiliates. Executive shall use Executive's reasonable best efforts to faithfully perform the duties of his Position and shall perform such duties as are usually performed by a person serving in Executive's position with a business similar in size and scope as the Company and such other additional duties as may be prescribed from time to time by the Board of Managers of the Company which are reasonable and consistent with the Company's operations, taking into account officer's expertise and job responsibilities. Executive agrees to devote Executive's full business time and attention to the business and affairs of the Company; provided, this is not intended to prevent Executive from participating in personal, charitable or civic activities which do not interfere with the discharge of his responsibilities as the CEO in any material respects hereinafter referred to as "Permitted Exceptions". Executive shall serve on such boards and in such offices of the Company or its subsidiaries as the Company's Board of Managers reasonably requests without additional compensation but not to overwhelm and interfere with the discharge of his primary responsibilities to the Company

(2) Executive, as a condition to his employment under this Agreement, represents and warrants that he can assume and fulfill responsibilities described in Section 3.B without any risk of violating any non-compete or other restrictive covenant or other agreement to which he is a party. During the Term, Executive shall not enter into any agreement that would preclude, hinder or impair his ability to fulfill responsibilities described in Section 3.B specifically or this Agreement generally except the Permitted Exceptions referred to in Section 3.B.

(3) The Company represents and warrants that it has the legal ability to engage the Executive to assume and fulfill responsibilities described in Section 3.B without any risk of violating any of its governance documents, or any other agreements it has with any other entity in the world including without limitation any lending documents, any other documents, any SEC documents, Orders, Decrees or restriction, any other State, Federal, and or municipal agreements, orders, decrees or the like contracts of any kind, State, Federal and Municipal court orders, judgments, agreements with third parties or any other restrictive provision contained in any contract, governance documents and or court or quasi court order(s) or rule(s) or regulation(s) of any federal and/ or state and or municipal law to which it is a party.

SECTION 4. COMPENSATION AND BENEFITS

The compensation and benefits described in this Section 4 shall be the total and exclusive consideration to be paid to or for the benefit of Executive, in whatever form and from whatever source derived, on account of his service to the Company and its Affiliates, unless otherwise approved in advance by the Company in writing

A. *Base Salary.* Executive's base salary shall be $670,000.00 per year payable monthly (or more frequently) beginning on the effective date of OWM Public's initial public offering, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Committee ("**Base Salary**"). The Base Salary and any payments to Executive during any Continuation Period shall be payable in accordance with the Company's standard payroll practices and policies (unless otherwise expressly provided herein) and shall be subject to such withholdings as required by law or as otherwise permissible under such practices or policies. From the Effective Date through September 30, 2022, the Executive's current base salary shall continue to apply.

B. *Annual Incentive Bonus.* Executive shall be eligible to receive an annual incentive bonus each calendar year which is a percentage or multiple of $520,000 (the "**Annual Bonus**"). The Annual Bonus shall be awarded upon Executive's achieving reasonable goals annually as set forth by the Committee, and paid to Executive in a lump sum promptly after it has been awarded, but in any event on or before the later of (i) ninety (90) days after the end of the fiscal year with respect to which the Annual Bonus was awarded, or (ii) ten (10) days following the issue of the audited financials for the fiscal year with respect to which the Annual Bonus was awarded (but, in any event, during the fiscal year following the year to which the Annual Bonus relates). Nothing in this Section 4.B guarantees that an Annual Bonus will be paid in any given year, but instead the Annual Bonus must be earned by Executive on the terms set forth herein, if at all; provided, however, that the criteria shall be adopted in good faith and not with the intent of discriminating against the Executive. The Annual Bonus shall be calculated and paid on a quarterly basis with the payment to be made within thirty (30) days following the end of each fiscal quarter based on meeting the Performance Criteria for the year to date through the end of the fiscal quarter then ended. The Annual Bonus shall be subject to a true-up at the end of each fiscal year so that the total Annual Bonus paid with respect to the entire year is neither above or below the appropriate Annual Bonus or the entire year.

(1) The Annual Bonus and will be determined by actual (not pro-forma) performance in 2 areas (the "**Performance Criteria**"):

- pre-tax income bonus (80% of overall bonus target)
- aged inventory bonus (20% of overall bonus target)

(2) The criteria for each performance area will be determined annually by the Committee, with the input of management. The Committee will set minimum increases in each of the annual targets from year to year as appropriate. Specifically, the pre-tax income budget will be agreed upon annually by the Board of Managers after recommendations from the Committee with due consideration given to Executive's input and will be based on the annual budget suggested by management. The approved pre-tax income budget becomes the "Target" for determining the annual pre-tax income bonus.

(3) The "Threshold" for receiving any pre-tax income bonus is achieving 80% of the budgeted pre-tax income and the "Maximum" pre-tax income bonus is paid at 140% of budgeted pre-tax income. The pre-tax income bonus is 50% of pre-tax income bonus target at "Threshold" and 200% of pre-tax income bonus target at "Maximum". In between "Threshold" and "Maximum" the pre-tax income bonus is a straight-line progression between 50% and 200%. Thus, if the actual pre-tax income is exactly the budgeted amount, the pre-tax income bonus would be 100% of the pre-tax income bonus target. For purposes of this calculation, the board may use its discretion to include or exclude certain one-time items included in the calculation of pre-tax income. However, subject to the prior sentence GAAP will be applied consistently with this calculation and exercise as is used in the preceding two years financial statements and income tax returns.

(4) The calculation of the aged inventory bonus will be similar in structure to the pre-tax income bonus and will include a threshold of 80% and a maximum performance level of 140%, with bonus payouts of 50% to 200% based on straight-line progression between threshold and maximum performance. The Compensation Committee will work with management to develop appropriate threshold and maximum targets for the aged inventory management bonus targets. Annual incentive will be paid annually based on the audited financial statements and after approval of the calculation by the Compensation Committee.

C. *Equity Grants*. The Executive shall also receive equity grants annually, beginning with the Company's fiscal year beginning October 1, 2019, in the form of Restricted Shares (defined below) constituting forty percent (40%) of the total possible equity Grant, and Performance Shares (defined below) constituting sixty percent (60%) of the total possible equity Grant. Notwithstanding anything herein to the contrary, to avoid excessive dilution, a maximum number of Restricted Shares and Performance Shares to be issued annually in the aggregate to the Executive and all other executives receiving equity grants for the year in question may be set in the sole discretion of the Committee.

(1) "*Restricted Shares*" represent a right to receive Class A shares in OWM Public as more fully described in the Articles of Incorporation of OWM Public ("**Class A Shares**"). Restricted Shares shall vest ratably over a forty-eight (48) month period so long as the Executive remains employed by the Company and its Affiliates as of the end of each calendar month unless such vesting is accelerated as otherwise provided herein. Executive's annual number of Restricted Shares shall have a total value of $208,000 (the "**Restricted Share Value**").

(2) "*Performance Shares*" represent a right to receive Class A Shares. Executive's annual number of "**Target Performance Shares**" shall have a total value of $312,000 (the "**Performance Share Value**"). The ultimate number of Performance Shares to be earned will be determined based on the performance of the Company versus specific performance objectives established by the Committee for the fiscal year following the year in which the Value Date (described below) falls (the "**Measurement Period**"). The number of such Target Performance Shares ultimately earned shall range from 0-175% of the number of Target Performance Shares calculated as the annual incentive calculation is calculated and will include performance against the Performance Criteria, or such other performance criteria as are established by the Committee from time to time. The Performance Shares earned will vest ratably over a thirty-six (36) month period.

(3) The number of Restricted Shares to be granted to equal the Restricted Share Value and the number of Target Performance Shares to be granted to equal the Performance Share Value, shall be determined based on the closing price of the Class A Shares on NASDAQ as of the day of the equity grant in question (the "**Value Date**"); *provided*, *however*, that the number of Restricted Shares to be granted in connection with the initial public offering of OWM Public shall be determined based on the price offered to the underwriters in the offering.

(4) For avoidance of doubt, except as otherwise provided herein, any Equity Grants which have not vested as of the Executive's Termination Date shall be forfeited and shall not vest.

D. *Annual Review.* In October of each year, the Committee shall meet with Executive to (i) assess Executive's performance during the prior calendar year compared to the goals established in his prior annual review, and award Executive the Annual Bonus and the Equity Grants for the prior calendar year based on that assessment, (ii) adjust Executive's Base Salary for the current calendar year, taking into account such factors as the increased cost of living, any changes in Executive's allowances or benefits, Executive's development as an employee, and his standing in the community and in his profession, (iii) in consultation with Executive, set reasonable performance goals for the current year and (iv) his performance directly or indirectly related to the growth and success of the Company All performance related compensation and equity grants shall be determined after the Company has received its audited financials for the year in question. For clarity, the audit financial statements will be provided to the Executive immediately upon receipt by the Company. In addition, any computations related to any of the provision above in this Section 4 will be provided to the Executive in sufficient time for Executive's review prior to any meeting and explanation of the benefits and the decisions made in declaring the benefits. For the portion of the fiscal year during which, and following the time, the gross revenue of the Company exceeds $1 billion and for with respect to each second fiscal year thereafter, the Committee shall review the Executive's Base Salary, Annual Bonus and Equity Grants after consulting with a nationally recognized compensation consultant (such as Aon Consultants) to bring such compensation in line with the then peer group of companies.

E. *End of Term.* At the end of the Term (unless due to a termination by the Company or its Affiliates for Cause), Executive's unpaid Base Salary, Bonus and Equity Grants (to the extent vested) shall be prorated on a daily basis through the Termination Date and promptly paid to Executive, subject to such withholdings as required by law, with Performance Shares calculated with respect to the performance for the full fiscal year during which the term ended and prorated as of the Termination Date..

F. *Employee Benefit Plans.* Executive shall be entitled to receive such benefits as medical, dental, life, accident and disability insurance, to the same extent and for as long as the Company or an Affiliate maintains such plans for its other senior Executives, provided however that such plans will not be intended to be discriminatory among the Executives.

G. *Personal Time Off.* Executive shall receive a combined total of thirty (30) days' paid vacation and holidays each year during the Term, to be taken in increments of two weeks or less. Up to ten (10) days of vacation or holiday time not used during any calendar year of the Term will be carried forward to the next calendar year only, and any unused balance remaining after the carryover year will be forfeited. In no event will the Company or any Affiliate have any obligation to pay Executive for any unused vacation or holiday time not used.

H. *Expense Reimbursements.* Executive shall be reimbursed for expenses incurred in furtherance of Company business in accordance with the Company's standard policies of which Executive has been made aware in writing, and applicable laws in effect from time to time.

I. *Indemnification.* With respect to Executive's acts or failures to act during his employment in Executive's capacity as an officer, employee or agent of the Company, Executive shall be entitled to indemnification from the Company, and to liability insurance coverage (if any), on the same basis as other officers of the Company. Executive shall be indemnified by the Company, and the Company shall pay Executive's related expenses as provided in the Company's Operating Agreement.

SECTION 5. TERMINATION OF EMPLOYMENT

A. *General.* The Board of Managers shall have the right to terminate Executive's employment and this Agreement at any time with or without Cause, and Executive shall have the right to terminate his employment and this Agreement at any time with or without Good Reason; provided that obligations under this Section 5, Section 6 and Section 7 shall survive termination of the Agreement. The Board of Managers may delegate its power to terminate Executive to the person to whom Executive reports if the Executive is other than the Chief Executive Officer. If the Company intends to offer re-employment to Executive following the end of the Term of this Agreement on terms different from those then in effect, it will present its offer no later than thirty (30) days before the end of the Term. If no offer of different terms is made during such thirty (30) day period, then the Company shall be deemed to have offered the Executive a renewal of this Agreement on the same terms as the then current terms of this Agreement.

(1) If the offer contains compensation and benefits not materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have terminated his employment without Good Reason.

(2) If the offer contains compensation and benefits which are materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have been terminated by the Company and its Affiliates without Cause.

B. *Termination by Board of Managers without Cause or by Executive for Good Reason.* If the Company or any Affiliate terminates Executive's employment without Cause, or Executive resigns for Good Reason, then in either of those circumstances, the Company's only obligation to Executive under this Agreement (except as provided below with respect to termination for Disability or death) shall be to pay Executive:

(1) his earned but unpaid Base Salary and Annual Bonus, if any, prorated on a daily basis up to the Termination Date; and

(2) any expense reimbursement payments owed to Executive for expenses incurred prior to the Termination Date; and

(3) severance payments (collectively, "**Severance**") in an aggregate amount equal to (i) two hundred percent (200%) of the sum of the Executive's Base Salary which he received during the full fiscal year immediately preceding the fiscal year in which the termination occurred (the "**Base Year**"), and (ii) continuation of the Annual Bonus paid based on the Company's achievement of the Performance Criteria each year (pro-rated for partial fiscal years) during the Continuation Period. For avoidance of doubt, (x) if the termination is effective on the last day of fiscal year, then the year then ending shall be the Base Year, (y) the Severance shall not include any Equity Grants, and (z) the Annual Bonus shall be paid only if, and to the extent, the continuing executives receive their Annual Bonus based on the then existing Performance Criteria. Executive's Severance shall be payable in installments, consistent with the Company's payroll periods then in effect, for the length of the Continuation Period beginning upon Executive's Termination Date, and subject to such withholdings as required by law; provided, however, any Annual Bonuses paid during the Continuation Period will be paid at the time such Annual Bonus, if any, is paid to continuing executives based on the then existing Performance Criteria; and

(4) during the Continuation Period Executive shall also continue to receive, at the Company's cost, the Current Insurance Coverage;

(5) provided however, that as a condition to receiving such Severance and continuation of Current Insurance Coverage, Executive shall exchange with the Company a reasonable separation agreement and mutual release agreement in form acceptable to the Company and Executive, both acting reasonably; and provided further that if the taxable value of the continued life and accident and disability coverage to Executive during the Continuation Period exceeds the annual dollar limit in effect under Code Section 402(g)(1)(B) for the year of such termination or is not otherwise exempt from section 409A of the Code, then Executive shall pay the premiums in excess of such limit for such coverage during the Continuation Period and after the end of the Continuation Period, the Company shall reimburse Executive for the amount of the premiums paid by Executive, without interest thereon. Moreover, payment of the Severance (or portion thereof) shall be delayed, if required, and to the extent required to comply with Code Section 409A.

C. *Termination by the Board of Managers for Cause or by Executive without Good Reason.* If the Board of Managers of the Company terminates Executive's employment for Cause or Executive resigns without Good Reason, the Company's only obligation to Executive under this Agreement shall be to pay Executive his earned but unpaid Base Salary, if any, up to the Termination Date, and the Company shall have no obligation to pay any unpaid Annual Bonus or Equity Grant with respect to the year during which the Termination Date occurs or to pay any Severance. The Company shall only be obligated to make such payments and provide such benefits under any employee benefit plan, program or policy in which Executive was a participant as are explicitly required to be paid to Executive by the terms of any such benefit plan, program or policy following the Termination Date.

D. *Termination for Disability.* Subject to the terms of Section 2 ("Disability"), after six (6) consecutive months of such disability leave of absence, Executive's service may be terminated by the Company. In the event Executive is terminated from employment due to Disability, the Company shall:

(1) Pay Executive his Base Salary only for twelve (12) months following such termination with a credit for any disability insurance proceeds paid to the Executive; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(2) Pay Executive his unpaid Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates and calculated as though the Company achieved 100% of its target levels of performance; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(3) Pay or cause the payment of benefits to which Executive is entitled under the terms of any disability plan of the Company covering Executive at the time of such Disability:

(4) Pay premiums for COBRA coverage as provided in Section 5.F; and

(5) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.D(2) or Section 5.D(3) shall be taken into account in computing any payments or benefits described in this Section 5.D(6).

Notwithstanding Executive's Disability, during the period of Disability leave, Executive shall be paid in full (net of insurance) as if he were actively performing services. Executive agrees to simultaneously use any available leave under the Family and Medical Leave Act of 1993 during such disability leave of absence. During the period of such Disability leave of absence, the Board of Managers may designate someone to perform Executive's duties. Executive shall have the right to return to full-time service so long as he is able to resume and faithfully perform his full-time duties.

E. *Death.* If Executive's employment terminates as a result of his death, the Company shall:

(1) Pay to Executive's estate Executive's Base Salary through the end of the month in which Executive's employment terminates as soon as practicable after Executive's death;

(2) Pay to Executive's estate his Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates due to death and calculated as though the Company achieved 100% of its target levels of performance;

(3) Pay to Executive's estate a one-time payment of $1 million which may be covered by the Company maintaining key man insurance on Executive;

(4) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.E(2) shall be taken into account in computing any payments or benefits described in this Section 5.E(3); and

(5) Provide Current Insurance Coverage or pay COBRA premiums, as applicable, for Executive's dependents for the period of one year.

(6) Any amounts payable to Executive under this Agreement which are unpaid at the date of Executive's death or payable hereunder or otherwise by reason of Executive's death, shall be paid in accordance with the terms of this Agreement to Executive's estate; provided that if there is a specific beneficiary designation in place for any specific amount payable, then payment of such amount shall be made to such beneficiary.

(7) All unvested Equity Grants held by the Executive shall automatically vest on such Executive's death except for Performance Shares which shall only vest as such are earned based on realization of the Performance Criteria applicable to such grants.

F. *Benefit Continuation.* Upon termination of Executive's employment, Executive shall be provided notice of his right to continue his group health insurance coverage(s) subject to the terms of the plans and as provided under COBRA. Provided Executive is eligible for and elects COBRA coverage, and has not been terminated from employment for Cause or resigned without Good Reason, then the Company shall pay Executive's COBRA premiums commencing on the date of Executive's termination of employment and continuing for the applicable Continuation Period in order to continue Executive's health insurance coverage and maintain such coverage in effect; provided that following the end of the COBRA continuation period, if Executive's health insurance coverage is provided under a health plan that is subject to Code Section 105(h), benefits payable under such health plan shall comply with the requirements of Treasury Regulation Section 1.409A-3(i)(1)(iv) and, if necessary, the Company or an Affiliate shall amend such health plan to comply therewith.

G. *Relinquishment of Corporate Positions.* Upon Executive's termination of Employment for any of the reason cited above, then and in such event, Executive shall automatically cease to be an officer and/or director of the Company and OWM Public and their Affiliates as of his Termination Date of employment.

H. *Limitation.* Anything in this Agreement to the contrary notwithstanding, Executive's entitlement to or payments under any other plan or agreement shall be limited to the extent necessary so that no payment to be made to Executive on account of termination of his employment with the Company and its Affiliates will be subject to the excise tax imposed by Code Section 4999, but only if, by reason of such limitation, Executive's net after tax benefit shall exceed the net after tax benefit if such reduction were not made. "Net after tax benefit" shall mean (i) the sum of all payments and benefits that Executive is then entitled to receive under any section of this Agreement or other plan or agreement that would constitute a "parachute payment" within the meaning of Section 280G of the Code, less (ii) the amount of federal income tax payable with respect to the payments and benefits described in clause (i) above calculated at the maximum marginal income tax rate for each year in which such payments and benefits shall be paid to Executive (based upon the rate in effect for such year as set forth in the Code at the time of the first payment of the foregoing), less (iii) the amount of excise tax imposed with respect to the payments and benefits described in clause (i) above by Section 4999 of the Code. Any limitation under this Section 5.H of Executive's entitlement to payments shall be made in the manner and in the order directed by Executive.

SECTION 6. COVENANTS BY EXECUTIVE

A. *Company Property.* Upon the termination of Executive's employment for any reason, Executive shall promptly return all Company Property which had been entrusted or made available to Executive by the Company. "Property" means all records, files, memoranda, communication, reports, price lists, plans for current or prospective business operations, customer lists, drawings, plans, sketches, keys, codes, computer hardware and software and other property of any kind or description prepared, used or possessed by Executive during Executive's employment by the Company and its Affiliates (and any duplicates of any such Property) together with any and all information, ideas, concepts, discoveries, processes, intellectual property, inventions and the like conceived, made, developed or acquired at any time by Executive individually or with others during Executive's employment which relate to the Company and/or its Affiliates or its products or services or operations. For elimination of doubt, Company Property does not include Executive's Rolodex or Contacts file, the personal data maintained on his computer and other electronic devices and all of the above identified property which Executive knew or owned prior to his Employment by the Company.

B. *Trade Secrets.* Executive agrees that Executive shall hold in a fiduciary capacity for the benefit of the Company and its Affiliates and shall not directly or indirectly use or disclose any Trade Secret that Executive may have acquired during the term of Executive's employment by the Company and its Affiliates for so long as such information remains a Trade Secret. "Trade Secret" means information, including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing or a process that (1) derives economic value, actual or potential, from not being generally known to, and not being generally readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and (2) has been the subject of reasonable efforts by the Company or its Affiliates to maintain its secrecy. This Section 6.B is intended to provide rights to the Company and its Affiliates which are in addition to, not in lieu of, those rights the Company and its Affiliates have under the common law or applicable statutes for the protection of trade secrets. Notwithstanding the foregoing the parties hereto acknowledge that some of the information and ideas, concepts and plans and procedure were developed by Executive prior to his association with Company and its Affiliates and, thus, are his to use and share.

C. *Confidential Information.* During the Term and continuing thereafter indefinitely, Executive shall hold in a fiduciary capacity for the benefit of the Company, and shall not directly or indirectly use or disclose, any Confidential Information that Executive may have acquired (whether or not developed or compiled by Executive and whether or not Executive is authorized to have access to such information) during the term of, and in the course of, or as a result of Executive's employment by the Company and its Affiliates without the prior written consent of the Board of Managers unless and except to the extent that such disclosure is (i) made in the ordinary course of Executive's performance of his duties under this Agreement or (ii) required by any subpoena or other legal process (in which event Executive will give the Company prompt notice of such subpoena or other legal process in order to permit the Company to seek appropriate protective orders); provided, however, that nothing contained in this Agreement shall limit Executive's ability to communicate with any federal or state government agency or otherwise participate in any investigation or proceeding that may be conducted by any such federal or state government agency, including by providing documents or other Confidential Information, without notice to the Company or the Board of Managers. This Agreement does not limit Executive's right to receive an award for any information provided to any federal or state government agency. "Confidential Information" means any secret, confidential or proprietary information possessed by the Company or any of its subsidiaries or affiliates, including, without limitation, trade secrets, customer or supplier lists, details of client or consultant contracts, current and anticipated customer requirements, pricing policies, price lists, market studies, business plans, operational methods, marketing plans or strategies, advertising campaigns, information regarding customers or suppliers, computer software programs (including object code and source code), data and documentation data, base technologies, systems, structures and architectures, inventions and ideas, past current and planned research and development, compilations, devices, methods, techniques, processes, financial information and data, business acquisition plans and new personnel acquisition plans and the terms and conditions of this Agreement that has not become generally available to the public. Notwithstanding anything to the contrary contained herein, the term "Confidential Information" shall in no event apply to any information which (x) was generally available to or known by the public prior to the Commencement Date; (y) has become generally available to or known by the public after the Commencement Date other than as the result of a direct or indirect disclosure by Executive; and (z) was known and used by Executive prior to his Employment by the Company. Subject to the exceptions in this paragraph, the existence and terms of this Agreement are confidential and are not to be disclosed to or discussed with any other person except Executive's attorneys, accountants, bankers and financial advisors.

D. *Restriction.* During the Term and for a period of two years thereafter, Executive will not be an employee, agent, director, stockholder or owner (except of not more than a 5% interest in the voting securities of any publicly traded entity), partner, consultant, financial backer, creditor or be otherwise directly or indirectly connected with or participate in the ownership, management, operation or control of any business, firm, proprietorship, corporation, partnership, association, entity, venture or other form or property ownership a material part of the business activities of which (a "**Competing Business**") is the development, ownership, leasing or management of retail marine dealerships and related operations ("**Business**") within an area (the "**Restricted Area**") which is (i) any state in which the Company or any of its Affiliates conducted any part of the Business in any material respect within the twelve (12) months preceding the Termination Date. Notwithstanding the foregoing, nothing in this Agreement shall be construed as limiting Executive's ability to invest personally in real estate or other investments which do not constitute a Competing Business, subject to the limitations of this Section 6 generally.

E. *Non-Solicitation.* During the Term and for a period of two years thereafter (such period is referred to as the "**No Recruit Period**"), Executive will not solicit or attempt to solicit, either directly or indirectly, any person that he knows or should reasonably know to be an employee of the Company, whether any such employees are now or hereafter through the No Recruit Period so employed or engaged by the Company, to terminate or alter their employment with the Company. The foregoing is not intended to limit any legal rights or remedies that any employee of the Company or any Affiliate may have under common law with regard to any interference by Executive at any time with the contractual relationship the Company or any Affiliate may have with any of its employees.

F. *Reasonable and Continuing Obligations.* Executive agrees that Executive's obligations under this Section 6 are obligations which will continue beyond the date Executive's employment terminates and that such obligations are reasonable, fair and equitable in scope. The terms and duration are necessary to protect the Company's legitimate business interests and are a material inducement to the Company to enter into this Agreement. Executive further acknowledges that the consideration for this Section 6 is his employment or continued employment. Executive will not be paid any additional compensation during this Restricted Period for application or enforcement of the restrictive covenants contained in this Section 6.

G. *Work Product.* The term "Work Product" includes any and all information, programs, concepts, processes, discoveries, improvements, formulas, know-how and inventions, in any form whatsoever, relating to the business or activities of the Company, or resulting from or suggested by any work developed by Executive in connection with the Company, or by Executive at the Company's request during his employment with the Company. Executive acknowledges that all Work Product developed during the Term is property of the Company and/or its Affiliates and accordingly, Executive does hereby irrevocably assign all Work Product developed by Executive to the Company and agrees: (a) to assign to the Company, free from any obligation of the Company to Executive, all of Executive's right, title and interest in and to Work Product conceived, discovered, researched, or developed by Executive either solely or jointly with others during the term of this Agreement and for three (3) months after the termination or nonrenewal of this Agreement; and (b) to disclose to the Company promptly and in writing such Work Product upon Executive's acquisition thereof.

H. *Cooperation.* During and subsequent to termination of the employment of Executive, Executive will, at no costs to the Executive, cooperate with the Company and furnish any and all complete and truthful information, testimony or affidavits in connection with any matter that arose during Executive's employment, that in any way relates to the business or operations of the Company or any of its subsidiary corporations, divisions or affiliates, or of which Executive may have any knowledge or involvement; and will consult with and provide information to the Company and its representatives concerning such matters. Executive shall not undermine the authority of the Company, its Board of Managers or others within the Company to whom Executive reports, nor speak or publish disparaging information about the Company or its Affiliates. Subsequent to the termination of the employment of Executive, the parties will make their good faith best efforts to have such cooperation performed at reasonable times and places and in a manner as not to unreasonably interfere with any other employment in which Executive may then be engaged. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony, sworn statement or declaration that is not complete and truthful. However if Executive does travel outside the metropolitan area in the United States where Executive then resides to provide any testimony or otherwise provide any such assistance, then the Company will reimburse Executive for any reasonable, ordinary and necessary travel and lodging expenses incurred by Executive to do so based on "first class" accommodations as to travel, food, lodging and transportation provided Executive submits all documentation required under the Company's standard travel expense reimbursement policies of which Executive has been made aware in writing, and as otherwise may be reasonably required to satisfy any requirements under applicable tax laws for the Company or its Affiliates to deduct those expenses. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony or affidavit that is not complete and truthful.

I. *Remedies.* Executive recognizes that his duties may entail the receipt of Trade Secrets and Confidential Information as defined in this Section 6. Those Trade Secrets and Confidential Information have been developed by the Company and/or its Affiliates at substantial cost and constitute valuable and unique property of the Company and its Affiliates. Moreover, each of the provisions of this Section 6 have been specifically bargained for by the Company as a condition of the benefits derived by Executive hereunder. Accordingly, Executive acknowledges that protection of Trade Secrets and Confidential Information is a legitimate business interest. Subject to Dispute Resolution determination, if Executive shall breach the covenants contained in this Section 6 in a "material respect", the Company shall have no further obligation to make any payment to Executive pursuant to this Agreement, other than any accrued wages earned and owed to Executive at the time of termination and/or Severance Payments due prior to the breach, and may recover from Executive all such damages as it may be entitled to at law or in equity. In addition, Executive acknowledges that any such breach may result in irreparable harm to the Company. The Company shall be entitled to seek specific performance of the covenants in this Section 6, including entry of a temporary restraining order in state or federal court, preliminary and permanent injunctive relief against activities in violation of this Section 6, or both, or other appropriate judicial remedy, writ or order, in addition to any damages and legal expenses which the Company or any Affiliate may be legally entitled to recover. Executive acknowledges and agrees that the covenants in this Section 6 shall be construed as agreements independent of any other provision of this Agreement or any other agreement between the Company or any Affiliate and Executive, and that the existence of any claim or cause of action by Executive against the Company or any Affiliate, whether predicated upon this Agreement or any other agreement, shall not constitute a defense to the enforcement by the Company or any Affiliate of such covenants.

SECTION 7. MISCELLANEOUS

A. *Notices.* Notices and all other communications shall be in writing and shall be deemed to have been duly given when personally delivered, the next day if by facsimile transmission and/or overnight delivery by a recognized overnight carrier (such as Federal Express or UPS or three (3) days when mailed by United States postal service, registered or certified mail with a copy to the addressee by email. Notices to the Company shall be sent to:

To Executive:

Mr. Anthony Aisquith

Copy to:

Bruce L. Gordon
Gordon, Dana & Gilmore, LLC
600 University Park Place, Suite 100
Birmingham, Alabama 35209

To the Company:

One Water Marine Holdings, LLC
Attn: Mitchell W. Legler, Chairman
4471 Legendary Dr.
Destin, Florida 32541

Copy to:

Michael Gold, Esq
6515 Shiloh Rd. Ste 100
Alpharetta, GA 30005

Notices and communications to Executive shall be sent to the address Executive most recently provided to the Company.

B. *No Waiver.* No failure by either the Company or Executive at any time to give notice of any breach by the other of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of any provisions or conditions of this Agreement.

C. *Governing Law*. This Agreement shall be governed by Georgia law without reference to the choice of law principles thereof.

D. *Assignment; Parties.* This Agreement shall be binding upon and inure to the benefit of the Company and any successor in interest to the Company. The Company may assign this Agreement to any affiliate or successor that acquires all or substantially all of the assets and business of the Company or a majority of the voting interests of the Company, expressly including OWM Public which is hereby declared a third-party beneficiary of this Agreement. The Company will require any successor (whether direct or indirect, by operation of law, by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company) to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean Company as defined above and, unless the context otherwise requires, any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Executive's rights and obligations under this Agreement are personal and shall not be assigned or transferred. The Executive's obligations under this Agreement are not assignable. Notwithstanding any assignment by Company nothing herein will eliminate the Company and other obligors from the payment of the amounts due hereunder.

E. *Other Agreements.* This Agreement replaces and merges any and all previous agreements and understandings regarding all the terms and conditions of Executive's employment relationship with the Company, and this Agreement constitutes the entire agreement between the Company and Executive with respect to such terms and conditions.

F. *Amendment.* No amendment to this Agreement shall be effective unless it is in writing and signed by the Company and by Executive.

G. *Invalidity and Severability.* If any part of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remaining part shall be unaffected and shall continue in full force and effect, and the invalid or otherwise unenforceable part shall be deemed not to be part of this Agreement.

H. *Dispute Resolution.* If a dispute arises between the parties as to the proper interpretation or application of this Agreement, or if a party believes that the other party is in violation hereof and the alleged breach is not cured within ten (10) business days after notice from the complaining party to the other party, then unless both of the parties agree in writing to waive the provisions of this Section 7.H, their dispute shall be resolved exclusively by binding arbitration conducted in accordance with the Georgia Arbitration Code (the "**Arbitration Rules**," which term shall include any replacement of that code, however designated, and the administrative rules and court decisions implementing or interpreting same), except as may be expressly modified herein. Judgment on any award rendered by the arbitrator may be entered in the appropriate state court of Fulton County, Georgia having jurisdiction thereof.

(1) *Arbitrator; Venue.* The arbitration shall take place in Atlanta, Georgia before a three (3) panel of arbitrators to be mutually agreed upon by the parties involved in the dispute. In the event such parties cannot agree on a three (3) panel of neutral arbitrators within ten (10) days after a party calls for the arbitration of a dispute hereunder, each party shall within seven (7) days thereafter select a representative who (i) is currently a circuit court mediator certified under the rules of the Georgia Supreme Court, (ii) is not affiliated with or related to either party or either party's attorneys or accountants, and (iii) has his or her principal office in Fulton County, Georgia or the adjacent counties. Under no circumstances will the American Arbitration Association be used for this dispute resolution.

(2) *Discovery.* Notwithstanding anything to the contrary contained in Section 682.08 or elsewhere in the Arbitration Rules, the parties shall be permitted full discovery in any arbitration proceedings as provided by the Georgia Rules of Civil Procedure, subject to review by the panel of arbitrators of any allegation of abuse of discovery rights allowed by the Georgia Rules of Civil Procedure.

(3) *Injunctive Relief.* Any party to the arbitration may apply to the panel of arbitrators for the entry of injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Any such injunctive relief shall be in addition to any and all other remedies available to the parties under this Agreement.

(4) *Limitation of Remedies.* The measure of damages under this Agreement in connection with a breach by a party shall be the actual damages sustained by the other party or parties, and the panel of arbitrators is not authorized to award incidental, consequential, treble, punitive or other multiple damages or to modify this Agreement, and the jurisdiction of the arbitrator shall be so limited.

(5) *Costs and Fees.* The arbitrator may, in the panel of arbitrators' sole and absolute discretion, award to the substantially prevailing party, if any, as determined by the arbitrator, all of the substantially prevailing party's costs and fees for the dispute in question. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, out-of-pocket expenses such as courier and copying costs, witness fees, and attorneys' fees.

(6) *Final Award.* The arbitrator shall in every case make a reasoned award, which shall be final and conclusive except as otherwise provided in the Arbitration Rules, and the failure of the arbitrator to make a reasoned award shall be grounds for vacating the award upon the motion of either party pursuant to Section 682.13 of the Arbitration Rules.

(7) *Disability.* Physical incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined as a factual matter in accordance with this Section 7.H following the procedures set forth above. Mental incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined in accordance with Georgia law, except that:

(a) Executive shall be represented by an attorney employed by Executive and compensated by the Company, rather than by a judicially appointed attorney.

(b) All required appointments, orders and findings shall be made by the arbitrator rather than the court, except that an order of the court may be sought to enforce or appeal the results of arbitration.

(c) All costs of arbitration to determine Executive's mental incapacity, including all experts' fees and expenses and the attorney's fees and expenses of both parties, shall be paid by the Company.

(8) *Confidentiality.* Neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, except as may be required by law to be filed in court or in order to appeal or enforce the award.

(9) *Joint and Several Liability.* The Company and its Affiliates shall be jointly and severally liable for any awards (and judgments thereon) entered in Executive's favor.

I. *Counterparts.* This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. *Section 409A.* The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code and the regulations and guidance promulgated thereunder (collectively "**Section 409A**") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered consistent with such intent.

(1) For purposes of Section 409A, Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (*e.g.*, "payment shall be made within sixty calendar days following the Termination Date"), the actual date of payment within the specified period shall be within the sole discretion of the Company. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement that is considered non-qualified deferred compensation.

(2) In addition, notwithstanding anything in this Agreement to the contrary, if at the time of Executive's "separation from service" the Company determines that Executive is a "specified employee" (such terms within the meaning of Section 409A), then to the extent any payment or benefit that Executive becomes entitled to under this Agreement on account of Executive's separation from service would be considered deferred compensation otherwise subject to the twenty percent (20%) additional tax imposed pursuant to Section 409A, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six (6) months and one day after your separation from service, or (ii) Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(3) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit; (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year; provided, that this clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect; and (iii) such payments shall be made on or before the last day of the taxable year following the taxable year in which the expense was incurred.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

[SIGNATURE PAGE OF EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the Company (for itself and each of its Affiliates) and Executive have executed this Agreement effective as of the Effective Date.

Company:

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Austin Singleton
Austin Singleton, CEO

Executive:

/s/ Anthony Aisquith
ANTHONY AISQUITH

Joinder

By signing below, the undersigned OneWater Marine Inc., a Delaware corporation, does hereby agree to be bound by the terms of the preceding agreement as apply to the undersigned.

Dated as of the date of the foregoing agreement.

ONEWATER MARINE INC.

By: /s/ Austin Singleton

Austin Singleton, CEO

Exhibit 10.8

ONE WATER MARINE HOLDINGS, LLC
EMPLOYMENT AGREEMENT
(Jack Ezzell)

THIS EMPLOYMENT AGREEMENT (this "**Agreement**") is entered into in Atlanta, Georgia between **ONE WATER MARINE HOLDINGS, LLC**, a Delaware limited liability company (the "**Company**"), and **JACK EZZELL** ("**Executive**"), as of February 11, 2020 (the "**Effective Date**").

Background Facts:

A. The Company wishes to continue to employ Executive as its Chief Financial Officer (the "**Position**"); and

B. Executive wishes to continue his employment relationship with the Company; and

C. OneWater Marine Inc., a Delaware corporation, ("**OWM Public**") is traded on NASDAQ and holds as its only asset a significant equity interest in the Company and will benefit from this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties, intending to be legally bound, agree as follows, and by the execution of the joinder to this Agreement, OWM Public agrees that the Executive shall hold the same Position with OWM Public. OWM Public will be a third-party beneficiary hereof and will honor all provisions of this Agreement applicable to it:

SECTION 1. TERM OF EMPLOYMENT

The Company agrees to employ Executive, and Executive agrees to be employed by the Company, for a period beginning on the Commencement Date and ending four (4) years thereafter, unless otherwise terminated as provided herein (the "**Term**").

SECTION 2. DEFINITIONS

A. *"Affiliates"* means those entities the majority of the control over which is held by the Company or another Affiliate\Persons controlled by, controlling or under common control with the Company.

B. *"Board of Managers"* means the Board of Managers of the Company which shall be made up of the same individuals, holding the same positions as the Board of Directors of OWM Public, as it shall exist from time to time.

C. *"Cause"* means the occurrence of any one or more of the following:

(1) Executive has been convicted of, or pleads guilty or *nolo contendere* to, a felony involving dishonesty, theft, misappropriation, embezzlement, fraud crimes against property or person, or any act of moral turpitude which negatively impacts the Company; or

(2) Executive intentionally furnishes materially false, misleading, or gross omissive information concerning a substantial matter material to the Company or persons to whom Executive reports; or

(3) Executive intentionally and wrongfully materially damages material assets of the Company; or

(4) Executive inappropriately discloses Confidential Information of the Company which has a material economic effect on the Company; or

(5) Executive engages in any activity which would constitute a breach of the duty of loyalty as hereinafter defined; or

(6) Executive solicits or accepts compensation in any form from any source other than the Company with respect to his service on behalf of the Company (excluding customary business gifts of nominal value); or

(7) Executive breaches in any material fashion any stated employment policy or provision of the Company's ethics policy when adopted **and** which could reasonably be expected to expose the Company to liability in any material financial respect or negatively impact the Company or its business reputation in any material financial effect; or

(8) Executive commits a material breach of this Agreement which is not cured within fifteen (15) days after written notice is received by Executive in sufficient detail to permit Executive to understand the nature of the breach.; or

(9) Executive engages in acts or omissions which constitute a material failure to follow reasonable and lawful directives of the Company, provided, however, that such acts or omissions are not cured by Executive within fifteen (15) days following the Company's giving notice to Executive that the Company considers such acts or omissions to be "Cause" under this Agreement.

Failure to meet performance standards or objectives that does not involve any acts or omissions identified in (1) through (8) above shall not constitute Cause for purposes hereof. For purposes of this definition of "Cause," the term "Company" includes each of its Affiliates.

D. "*Change in Control"* means the occurrence of any of the following; provided, however, that the acquisition by conversion or otherwise of equity interests in the Company by OWM Public shall not be considered in applying the conditions below; and provided, further, however that any of the following which occur with respect to OWM Public itself (with the term "Company" including OWM Public and the term Board of Managers including the Board of Directors of OWM Public) shall also constitute a Change in Control:

(1) The Board of Managers approves the sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions;

(2) The Company sells and/or one or more equity holders sells a sufficient amount of its equity interests (whether by tender offer, original issuance, or a single or series of related purchase and sale agreements and/or transactions) sufficient to confer on the purchaser or purchasers thereof (whether individually or a group acting in concert) beneficial ownership of at least fifty percent (50) of the combined voting power of the voting securities of the Company;

(3) The Company is party to a merger, consolidation or combination, other than any merger, consolidation or combination that would result in the holders of the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger, consolidation or combination; or

(4) A majority of the Board of Managers consists of individuals who are not Continuing Directors (for this purpose, a Continuing Director is an individual who (i) was a director of the Company on the Effective Date or (ii) whose election or nomination as a manager of the Company is approved by a vote of at least a majority of the managers then comprising the Continuing Directors).

For purposes hereof, the definition of a Change of Control shall be construed and interpreted so as to comply with the definition contained in Code Section 409A.

E. *"Code"* means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code shall be deemed to refer to any successor provision thereto and the regulations promulgated thereunder.

F. "*Commencement Date"* shall be the Effective Date of this Agreement.

G. *"Company"* means One Water Marine Holdings, LLC, a Delaware limited liability company; for the purposes of this Agreement.

H. "*Company Operating Agreement*" means the Restated Operating Agreement of the Company dated February 11, 2020, as amended from time to time.

I. "*Committee"* means the Company's Compensation Committee or, if no such committee exists, the term Compensation Committee shall mean the Company's Board of Managers.

J. *"Continuation Period"* means a period equal to twelve (12) months. There shall be no Continuation Period following a termination by the Company or its Affiliates for Cause or a termination by Executive without Good Reason.

K. *"Current Insurance Coverage"* means medical, dental, life and accident and disability insurance with coverage consistent with the lesser of (i) the coverage in effect immediately prior to Executive's termination, or (ii) the coverage in effect from time to time as applied to persons in positions similar to the position held by Executive at the time of termination.

L. *"Disability"* means Executive's inability, due to physical or mental incapacity, to perform his duties under this Agreement, with a reasonable accommodation, on a full-time basis for a period of three (3) consecutive months along with the Executive's treating physician's statement that in such physician's opinion that his condition will not sufficiently improve within that period to be able to resume substantially all of his duties on a full time basis. Any dispute as to Disability shall be conclusively determined in the manner set forth in Section 7.G below.

M. "Executives" is defined to mean named executive officers including Jack Ezzell.

N. "GAAP" means generally accepted accounting principles" as practiced in the United States.

O. *"Good Reason"* means the occurrence of any one or more of the following:

(1) A material and continuing failure to pay to Executive compensation and benefits (as described in Section 4) that have been earned, if any, by Executive, except failure to pay or provide compensation or benefits that are in dispute between the Company and Executive unless such failure continues following the resolution of such dispute; or

(2) A material reduction in Executive's compensation or benefits (as described in Section 4) other than a uniform reduction applied to all Executives of the Company that does not result in a reduction of Base Salary of more than fifteen percent (15%); or

(3) Any failure by the Company to comply with any of the material provisions of this Agreement and which is not remedied by the Company within fifteen (15) days after receipt of notice thereof given by Executive; or

(4) Any requirement that Executive perform duties that, in the good faith and reasonable professional judgment of Executive, after consultation with the Board of Managers of the Company, are inconsistent with ethical or lawful business practices; or

(5) Executive's being required to relocate to a principal place of employment more than fifty (50) miles from his current principal place of employment in Atlanta, Georgia during the Term; or

If following a Change in Control only, there occurs a material change in Executive's duties, roles, or responsibilities. For purposes of this subsection, "material change" shall be of such a character that a reasonable person serving in a like or similar executive capacity would feel compelled to resign from employment. Examples of "material change" include, but are not limited to substantial reduction of Executive's authority to make decisions relating to his business responsibilities; Executive being required to assume or perform substantially greater responsibilities (without reasonable additional compensation) than previously required to perform; substantial reduction of Executive's responsibilities for personnel matters relating to his business operations; substantial alteration or change in Executive's work schedule; any restructuring or reassignment of any of Executive's responsibilities, in a manner that diminishes them or is materially adverse to Executive, from that which was in effect at the time of the Change in Control; and other substantial changes in Executive's terms or conditions of employment not related to Executive's principal business responsibilities. Good Reason pursuant to this subsection shall not exist unless (a) Executive's "material change" has existed for a period of at least two months; (b) Executive has consulted with management senior to Executive and his supervisor, in a good faith effort to resolve the issues giving Executive reason to believe a "material change" has occurred; (c) Executive gives written notice of Executive's resignation for Good Reason under this paragraph within six months following the commencement of the "material change," and (d) Executive's Termination Date is within thirty (30) days of delivery such notice. For purposes of this definition of "Good Reason," the term "Company" includes each of its Affiliates.

P. "*OWM Public*" means OneWater Marine Inc., a Delaware corporation.

Q. "*Termination Date*" means the date of Executive's termination of employment, or if Executive continues to provide services to the Company or its 409A affiliates following his termination of employment, such later date as is considered a separation from service from the Company and its 409A affiliates within the meaning of Code Section 409A. For purposes of this Agreement, Executive's "termination of employment" shall be presumed to occur when the Company and Executive reasonably anticipate that no further services will be performed by Executive for the Company and its 409A affiliates or that the level of bona fide services Executive will perform as an employee of the Company and its 409A affiliates will permanently decrease to no more than 20% of the average level of *bona fide* services performed by Executive (whether as an employee or independent contractor) for the Company and its 409A affiliates over the immediately preceding 36-month period (or such lesser period of services). Whether Executive has experienced a termination of employment shall be determined by the Company in good faith with any dispute resolved in accordance with the provisions of Section 7.G and consistent with Section 409A of the Code. Notwithstanding the foregoing, if Executive takes a leave of absence for purposes of military leave, sick leave or other such *bona fide* reason, Executive will not be deemed to have experienced a termination of employment for the first six (6) months of such leave of absence, or if longer, for so long as Executive's right to reemployment is provided either by statute or by contract, including this Agreement; provided that if the leave of absence is due to a medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than six (6) months, where such impairment causes Executive to be unable to perform the duties of his position of employment or any substantially similar position of employment, with or without a reasonable accommodation, the leave may be extended by the Company for up to twenty-nine (29) months without causing a termination of employment. For purposes hereof, the term "409A affiliate" means each entity that is required to be included in the Company's controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; provided, however, that the phrase "at least 50 percent" shall be used in place of the phrase "at least 80 percent" each place it appears therein or in the regulations thereunder.

SECTION 3. TITLE; POWERS AND RESPONSIBILITIES

A. *Title*. Executive shall be the Chief Financial Officer of the Company and each of its Affiliates, or such other title as designated by the Company's Board of Managers. Executive shall assume those duties under this Agreement as of the Commencement Date.

B. *Powers and Responsibilities.*

(1) As Chief Financial Officer, Executive shall have responsibility for overall oversight and operation of all aspects of the Company's business, subject to the directives of the Board of Managers, and shall have the duties and responsibilities normally applicable to the chief financial officer of a publicly traded corporation, with respect to the Company and its Affiliates. Executive shall use Executive's reasonable best efforts to faithfully perform the duties of his Position and shall perform such duties as are usually performed by a person serving in Executive's position with a business similar in size and scope as the Company and such other additional duties as may be prescribed from time to time by the Board of Managers of the Company which are reasonable and consistent with the Company's operations, taking into account officer's expertise and job responsibilities. Executive agrees to devote Executive's full business time and attention to the business and affairs of the Company; provided, this is not intended to prevent Executive from participating in personal, charitable or civic activities which do not interfere with the discharge of his responsibilities as the CEO in any material respects hereinafter referred to as "Permitted Exceptions". Executive shall serve on such boards and in such offices of the Company or its subsidiaries as the Company's Board of Managers reasonably requests without additional compensation but not to overwhelm and interfere with the discharge of his primary responsibilities to the Company

(2) Executive, as a condition to his employment under this Agreement, represents and warrants that he can assume and fulfill responsibilities described in Section 3.B without any risk of violating any non-compete or other restrictive covenant or other agreement to which he is a party. During the Term, Executive shall not enter into any agreement that would preclude, hinder or impair his ability to fulfill responsibilities described in Section 3.B specifically or this Agreement generally except the Permitted Exceptions referred to in Section 3.B.

(3) The Company represents and warrants that it has the legal ability to engage the Executive to assume and fulfill responsibilities described in Section 3.B without any risk of violating any of its governance documents, or any other agreements it has with any other entity in the world including without limitation any lending documents, any other documents, any SEC documents, Orders, Decrees or restriction, any other State, Federal, and or municipal agreements, orders, decrees or the like contracts of any kind, State, Federal and Municipal court orders, judgments, agreements with third parties or any other restrictive provision contained in any contract, governance documents and or court or quasi court order(s) or rule(s) or regulation(s) of any federal and/or state and or municipal law to which it is a party.

SECTION 4. COMPENSATION AND BENEFITS

The compensation and benefits described in this Section 4 shall be the total and exclusive consideration to be paid to or for the benefit of Executive, in whatever form and from whatever source derived, on account of his service to the Company and its Affiliates, unless otherwise approved in advance by the Company in writing.

A. *Base Salary.* Executive's base salary shall be $400,000.00 per year payable monthly (or more frequently) beginning on the effective date of OWM Public's initial public offering, with annual increases, if any, thereafter, as may be determined in the sole discretion of the Committee ("**Base Salary**"). The Base Salary and any payments to Executive during any Continuation Period shall be payable in accordance with the Company's standard payroll practices and policies (unless otherwise expressly provided herein) and shall be subject to such withholdings as required by law or as otherwise permissible under such practices or policies. From the Effective Date through September 30, 2022, the Executive's current base salary shall continue to apply.

B. *Annual Incentive Bonus.* Executive shall be eligible to receive an annual incentive bonus each calendar year which is a percentage or multiple of $100,000 (the "**Annual Bonus**"). The Annual Bonus shall be awarded upon Executive's achieving reasonable goals annually as set forth by the Committee, and paid to Executive in a lump sum promptly after it has been awarded, but in any event on or before the later of (i) ninety (90) days after the end of the fiscal year with respect to which the Annual Bonus was awarded, or (ii) ten (10) days following the issue of the audited financials for the fiscal year with respect to which the Annual Bonus was awarded (but, in any event, during the fiscal year following the year to which the Annual Bonus relates). Nothing in this Section 4.B guarantees that an Annual Bonus will be paid in any given year, but instead the Annual Bonus must be earned by Executive on the terms set forth herein, if at all; provided, however, that the criteria shall be adopted in good faith and not with the intent of discriminating against the Executive. The Annual Bonus shall be calculated and paid on a quarterly basis with the payment to be made within thirty (30) days following the end of each fiscal quarter based on meeting the Performance Criteria for the year to date through the end of the fiscal quarter then ended. The Annual Bonus shall be subject to a true-up at the end of each fiscal year so that the total Annual Bonus paid with respect to the entire year is neither above or below the appropriate Annual Bonus or the entire year.

(1) The Annual Bonus and will be determined by actual (not pro-forma) performance in 2 areas (the "**Performance Criteria**"):

- pre-tax income bonus (80% of overall bonus target)
- aged inventory bonus (20% of overall bonus target)

(2) The criteria for each performance area will be determined annually by the Committee, with the input of management. The Committee will set minimum increases in each of the annual targets from year to year as appropriate. Specifically, the pre-tax income budget will be agreed upon annually by the Board of Managers after recommendations from the Committee with due consideration given to Executive's input and will be based on the annual budget suggested by management. The approved pre-tax income budget becomes the "Target" for determining the annual pre-tax income bonus.

(3) The "Threshold" for receiving any pre-tax income bonus is achieving 80% of the budgeted pre-tax income and the "Maximum" pre-tax income bonus is paid at 140% of budgeted pre-tax income. The pre-tax income bonus is 50% of pre-tax income bonus target at "Threshold" and 200% of pre-tax income bonus target at "Maximum". In between "Threshold" and "Maximum" the pre-tax income bonus is a straight-line progression between 50% and 200%. Thus, if the actual pre-tax income is exactly the budgeted amount, the pre-tax income bonus would be 100% of the pre-tax income bonus target. For purposes of this calculation, the board may use its discretion to include or exclude certain one-time items included in the calculation of pre-tax income. However, subject to the prior sentence GAAP will be applied consistently with this calculation and exercise as is used in the preceding two years financial statements and income tax returns.

(4) The calculation of the aged inventory bonus will be similar in structure to the pre-tax income bonus and will include a threshold of 80% and a maximum performance level of 140%, with bonus payouts of 50% to 200% based on straight-line progression between threshold and maximum performance. The Compensation Committee will work with management to develop appropriate threshold and maximum targets for the aged inventory management bonus targets. Annual incentive will be paid annually based on the audited financial statements and after approval of the calculation by the Compensation Committee.

C. *Equity Grants*. The Executive shall also receive equity grants annually, beginning with the Company's fiscal year beginning October 1, 2019, in the form of Restricted Shares (defined below) **constituting** forty percent (40%) of the total possible equity Grant, and Performance Shares (defined below) constituting sixty percent (60%) of the total possible equity Grant. Notwithstanding anything herein to the contrary, to avoid excessive dilution, a maximum number of Restricted Shares and Performance Shares to be issued annually in the aggregate to the Executive and all other executives receiving equity grants for the year in question may be set in the sole discretion of the Committee.

(1) "*Restricted Shares*" represent the right to receive Class A shares in OWM Public as more fully described in the Articles of Incorporation of OWM Public ("**Class A Shares**"). Restricted Shares shall vest ratably over a forty-eight (48) month period so long as the Executive remains employed by the Company and its Affiliates as of the end of each calendar month unless such vesting is accelerated as otherwise provided herein. Executive's annual number of Restricted Shares shall have a total value of $120,000 (the "**Restricted Share Value**").

(2) "*Performance Shares*" represent the right to receive Class A Shares. Executive's annual number of "**Target Performance Shares**" shall have a total value of $180,000 (the "**Performance Share Value**"). The ultimate number of Performance Shares to be earned will be determined based on the performance of the Company versus specific performance objectives established by the Committee for the fiscal year following the year in which the Value Date (described below) falls (the "**Measurement Period**"). The number of such Target Performance Shares ultimately earned shall range from 0-175% of the number of Target Performance Shares calculated as the annual incentive calculation is calculated and will include performance against the Performance Criteria, or such other performance criteria as are established by the Committee from time to time. The Performance Shares earned will vest ratably over a thirty-six (36) month period.

(3) The number of Restricted Shares to be granted to equal the Restricted Share Value and the number of Target Performance Shares to be granted to equal the Performance Share Value, shall be determined based on the closing price of the Class A Shares on NASDAQ as of the day of the equity grant in question (the "**Value Date**"); *provided*, *however*, the number of Restricted Shares to be granted in connection with the initial public offering of OWM Public shall be determined based on the price offered to the underwriters in the offering.

(4) For avoidance of doubt, except as otherwise provided herein, any Equity Grants which have not vested as of the Executive's Termination Date shall be forfeited and shall not vest.

D. *Annual Review.* In October of each year, the Committee shall meet with Executive to (i) assess Executive's performance during the prior calendar year compared to the goals established in his prior annual review, and award Executive the Annual Bonus and the Equity Grants for the prior calendar year based on that assessment, (ii) adjust Executive's Base Salary for the current calendar year, taking into account such factors as the increased cost of living, any changes in Executive's allowances or benefits, Executive's development as an employee, and his standing in the community and in his profession, (iii) in consultation with Executive, set reasonable performance goals for the current year and (iv) his performance directly or indirectly related to the growth and success of the Company All performance related compensation and equity grants shall be determined after the Company has received its audited financials for the year in question. For clarity, the audit financial statements will be provided to the Executive immediately upon receipt by the Company. In addition, any computations related to any of the provision above in this Section 4 will be provided to the Executive in sufficient time for Executive's review prior to any meeting and explanation of the benefits and the decisions made in declaring the benefits. For the portion of the fiscal year during which, and following the time, the gross revenue of the Company exceeds $1 billion and for with respect to each second fiscal year thereafter, the Committee shall review the Executive's Base Salary, Annual Bonus and Equity Grants after consulting with a nationally recognized compensation consultant (such as Aon Consultants) to bring such compensation in line with the then peer group of companies.

E. *End of Term.* At the end of the Term (unless due to a termination by the Company or its Affiliates for Cause), Executive's unpaid Base Salary, Bonus and Equity Grants (to the extent vested) shall be prorated on a daily basis through the Termination Date and promptly paid to Executive, subject to such withholdings as required by law, with Performance Shares calculated with respect to the performance for the full fiscal year during which the term ended and prorated as of the Termination Date..

F. *Employee Benefit Plans.* Executive shall be entitled to receive such benefits as medical, dental, life, accident and disability insurance, to the same extent and for as long as the Company or an Affiliate maintains such plans for its other senior Executives, provided however that such plans will not be intended to be discriminatory among the Executives.

G. *Personal Time Off.* Executive shall receive a combined total of thirty (30) days' paid vacation and holidays each year during the Term, to be taken in increments of two weeks or less. Up to ten (10) days of vacation or holiday time not used during any calendar year of the Term will be carried forward to the next calendar year only, and any unused balance remaining after the carryover year will be forfeited. In no event will the Company or any Affiliate have any obligation to pay Executive for any unused vacation or holiday time not used.

H. *Expense Reimbursements.* Executive shall be reimbursed for expenses incurred in furtherance of Company business in accordance with the Company's standard policies of which Executive has been made aware in writing, and applicable laws in effect from time to time.

I. *Indemnification.* With respect to Executive's acts or failures to act during his employment in Executive's capacity as an officer, employee or agent of the Company, Executive shall be entitled to indemnification from the Company, and to liability insurance coverage (if any), on the same basis as other officers of the Company. Executive shall be indemnified by the Company, and the Company shall pay Executive's related expenses as provided in the Company's Operating Agreement.

SECTION 5. TERMINATION OF EMPLOYMENT

A. *General.* The Board of Managers shall have the right to terminate Executive's employment and this Agreement at any time with or without Cause, and Executive shall have the right to terminate his employment and this Agreement at any time with or without Good Reason; provided that obligations under this Section 5, Section 6 and Section 7 shall survive termination of the Agreement. The Board of Managers may delegate its power to terminate Executive to the person to whom Executive reports if the Executive is other than the Chief Executive Officer. If the Company intends to offer re-employment to Executive following the end of the Term of this Agreement on terms different from those then in effect, it will present its offer no later than thirty (30) days before the end of the Term. If no offer of different terms is made during such thirty (30) day period, then the Company shall be deemed to have offered the Executive a renewal of this Agreement on the same terms as the then current terms of this Agreement.

(1) If the offer contains compensation and benefits not materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have terminated his employment without Good Reason.

(2) If the offer contains compensation and benefits which are materially less advantageous to Executive than those set forth in this Agreement and Executive does not accept that offer within thirty (30) days following the offer having been made, then upon the expiration of the then current Term of this Agreement, Executive shall be deemed to have been terminated by the Company and its Affiliates without Cause.

B. *Termination by Board of Managers without Cause or by Executive for Good Reason.* If the Company or any Affiliate terminates Executive's employment without Cause, or Executive resigns for Good Reason, then in either of those circumstances, the Company's only obligation to Executive under this Agreement (except as provided below with respect to termination for Disability or death) shall be to pay Executive:

(1) his earned but unpaid Base Salary and Annual Bonus, if any, prorated on a daily basis up to the Termination Date; and

(2) any expense reimbursement payments owed to Executive for expenses incurred prior to the Termination Date; and

(3) severance payments (collectively, "**Severance**") in an aggregate amount equal to (i) one hundred percent (100%) of the sum of the Executive's Base Salary which he received during the full fiscal year immediately preceding the fiscal year in which the termination occurred (the "**Base Year**"), and (ii) continuation of the Annual Bonus paid based on the Company's achievement of the Performance Criteria each year (pro-rated for partial fiscal years) during the Continuation Period. For avoidance of doubt, (x) if the termination is effective on the last day of fiscal year, then the year then ending shall be the Base Year, (y) the Severance shall not include any Equity Grants, and (z) the Annual Bonus shall be paid only if, and to the extent, the continuing executives receive their Annual Bonus based on the then existing Performance Criteria. Executive's Severance shall be payable in installments, consistent with the Company's payroll periods then in effect, for the length of the Continuation Period beginning upon Executive's Termination Date, and subject to such withholdings as required by law; provided, however, any Annual Bonuses paid during the Continuation Period will be paid at the time such Annual Bonus, if any, is paid to continuing executives based on the then existing Performance Criteria; and

(4) during the Continuation Period Executive shall also continue to receive, at the Company's cost, the Current Insurance Coverage;

(5) provided however, that as a condition to receiving such Severance and continuation of Current Insurance Coverage, Executive shall execute and deliver to the Company the Separation Agreement in the form of Exhibit A attached hereto; and provided further that if the taxable value of the continued life and accident and disability coverage to Executive during the Continuation Period exceeds the annual dollar limit in effect under Code Section 402(g)(1)(B) for the year of such termination or is not otherwise exempt from section 409A of the Code, then Executive shall pay the premiums in excess of such limit for such coverage during the Continuation Period and after the end of the Continuation Period, the Company shall reimburse Executive for the amount of the premiums paid by Executive, without interest thereon. Moreover, payment of the Severance (or portion thereof) shall be delayed, if required, and to the extent required to comply with Code Section 409A.

C. *Termination by the Board of Managers for Cause or by Executive without Good Reason.* If the Board of Managers of the Company terminates Executive's employment for Cause or Executive resigns without Good Reason, the Company's only obligation to Executive under this Agreement shall be to pay Executive his earned but unpaid Base Salary, if any, up to the Termination Date, and the Company shall have no obligation to pay any unpaid Annual Bonus or Equity Grant with respect to the year during which the Termination Date occurs or to pay any Severance. The Company shall only be obligated to make such payments and provide such benefits under any employee benefit plan, program or policy in which Executive was a participant as are explicitly required to be paid to Executive by the terms of any such benefit plan, program or policy following the Termination Date.

D. *Termination for Disability.* Subject to the terms of Section 2 ("Disability"), after six (6) consecutive months of such disability leave of absence, Executive's service may be terminated by the Company. In the event Executive is terminated from employment due to Disability, the Company shall:

(1) Pay Executive his Base Salary only for twelve (12) months following such termination with a credit for any disability insurance proceeds paid to the Executive; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(2) Pay Executive his unpaid Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates and calculated as though the Company achieved 100% of its target levels of performance; provided that if such payment exceeds the applicable dollar amount in effect under Code Section 402(g)(1)(B) for the year in which such termination occurs or is not otherwise exempt from section 409A of the Code, then the payment in excess of such applicable dollar amount shall be paid following six (6) months after Executive's Termination Date;

(3) Pay or cause the payment of benefits to which Executive is entitled under the terms of any disability plan of the Company covering Executive at the time of such Disability:

(4) Pay premiums for COBRA coverage as provided in Section 5.F; and

(5) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.D(2) or Section 5.D(3) shall be taken into account in computing any payments or benefits described in this Section 5.D(6).

Notwithstanding Executive's Disability, during the period of Disability leave, Executive shall be paid in full (net of insurance) as if he were actively performing services. Executive agrees to simultaneously use any available leave under the Family and Medical Leave Act of 1993 during such disability leave of absence. During the period of such Disability leave of absence, the Board of Managers may designate someone to perform Executive's duties. Executive shall have the right to return to full-time service so long as he is able to resume and faithfully perform his full-time duties.

E. *Death.* If Executive's employment terminates as a result of his death, the Company shall:

(1) Pay to Executive's estate Executive's Base Salary through the end of the month in which Executive's employment terminates as soon as practicable after Executive's death;

(2) Pay to Executive's estate his Annual Bonus, if any, for the calendar year in which such termination of employment occurs, prorated for the number of days in such fiscal year through the end of the month in which Executive's employment terminates due to death and calculated as though the Company achieved 100% of its target levels of performance;

(3) Pay to Executive's estate a one-time payment of $500,000 which may be covered by the Company maintaining key man insurance on Executive;

(4) Make such payments and provide such benefits as otherwise called for under the terms of each other employee benefit plan, program and policy in which Executive was a participant; provided no payments made under Section 5.E(2) shall be taken into account in computing any payments or benefits described in this Section 5.E(3); and

(5) Provide Current Insurance Coverage or pay COBRA premiums, as applicable, for Executive's dependents for the period of one year.

(6) Any amounts payable to Executive under this Agreement which are unpaid at the date of Executive's death or payable hereunder or otherwise by reason of Executive's death, shall be paid in accordance with the terms of this Agreement to Executive's estate; provided that if there is a specific beneficiary designation in place for any specific amount payable, then payment of such amount shall be made to such beneficiary.

(7) All unvested Equity Grants held by the Executive shall automatically vest on such Executive's death except for Performance Shares which shall only vest as such are earned based on realization of the Performance Criteria applicable to such grants.

F. *Benefit Continuation.* Upon termination of Executive's employment, Executive shall be provided notice of his right to continue his group health insurance coverage(s) subject to the terms of the plans and as provided under COBRA. Provided Executive is eligible for and elects COBRA coverage, and has not been terminated from employment for Cause or resigned without Good Reason, then the Company shall pay Executive's COBRA premiums commencing on the date of Executive's termination of employment and continuing for the applicable Continuation Period in order to continue Executive's health insurance coverage and maintain such coverage in effect; provided that following the end of the COBRA continuation period, if Executive's health insurance coverage is provided under a health plan that is subject to Code Section 105(h), benefits payable under such health plan shall comply with the requirements of Treasury Regulation Section 1.409A-3(i)(1)(iv) and, if necessary, the Company or an Affiliate shall amend such health plan to comply therewith.

G. *Relinquishment of Corporate Positions.* Upon Executive's termination of Employment for any of the reason cited above, then and in such event, Executive shall automatically cease to be an officer and/or director of the Company and OWM Public and their Affiliates as of his Termination Date of employment.

H. *Limitation.* Anything in this Agreement to the contrary notwithstanding, Executive's entitlement to or payments under any other plan or agreement shall be limited to the extent necessary so that no payment to be made to Executive on account of termination of his employment with the Company and its Affiliates will be subject to the excise tax imposed by Code Section 4999, but only if, by reason of such limitation, Executive's net after tax benefit shall exceed the net after tax benefit if such reduction were not made. "Net after tax benefit" shall mean (i) the sum of all payments and benefits that Executive is then entitled to receive under any section of this Agreement or other plan or agreement that would constitute a "parachute payment" within the meaning of Section 280G of the Code, less (ii) the amount of federal income tax payable with respect to the payments and benefits described in clause (i) above calculated at the maximum marginal income tax rate for each year in which such payments and benefits shall be paid to Executive (based upon the rate in effect for such year as set forth in the Code at the time of the first payment of the foregoing), less (iii) the amount of excise tax imposed with respect to the payments and benefits described in clause (i) above by Section 4999 of the Code. Any limitation under this Section 5.H of Executive's entitlement to payments shall be made in the manner and in the order directed by Executive.

SECTION 6. COVENANTS BY EXECUTIVE

A. *Company Property.* Upon the termination of Executive's employment for any reason, Executive shall promptly return all Company Property which had been entrusted or made available to Executive by the Company. "Property" means all records, files, memoranda, communication, reports, price lists, plans for current or prospective business operations, customer lists, drawings, plans, sketches, keys, codes, computer hardware and software and other property of any kind or description prepared, used or possessed by Executive during Executive's employment by the Company and its Affiliates (and any duplicates of any such Property) together with any and all information, ideas, concepts, discoveries, processes, intellectual property, inventions and the like conceived, made, developed or acquired at any time by Executive individually or with others during Executive's employment which relate to the Company and/or its Affiliates or its products or services or operations. For elimination of doubt, Company Property does not include Executive's Rolodex or Contacts file, the personal data maintained on his computer and other electronic devices and all of the above identified property which Executive knew or owned prior to his Employment by the Company.

B. *Trade Secrets.* Executive agrees that Executive shall hold in a fiduciary capacity for the benefit of the Company and its Affiliates and shall not directly or indirectly use or disclose any Trade Secret that Executive may have acquired during the term of Executive's employment by the Company and its Affiliates for so long as such information remains a Trade Secret. "Trade Secret" means information, including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing or a process that (1) derives economic value, actual or potential, from not being generally known to, and not being generally readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and (2) has been the subject of reasonable efforts by the Company or its Affiliates to maintain its secrecy. This Section 6.B is intended to provide rights to the Company and its Affiliates which are in addition to, not in lieu of, those rights the Company and its Affiliates have under the common law or applicable statutes for the protection of trade secrets. Notwithstanding the foregoing the parties hereto acknowledge that some of the information and ideas, concepts and plans and procedure were developed by Executive prior to his association with Company and its Affiliates and, thus, are his to use and share.

C. *Confidential Information.* During the Term and continuing thereafter indefinitely, Executive shall hold in a fiduciary capacity for the benefit of the Company, and shall not directly or indirectly use or disclose, any Confidential Information that Executive may have acquired (whether or not developed or compiled by Executive and whether or not Executive is authorized to have access to such information) during the term of, and in the course of, or as a result of Executive's employment by the Company and its Affiliates without the prior written consent of the Board of Managers unless and except to the extent that such disclosure is (i) made in the ordinary course of Executive's performance of his duties under this Agreement or (ii) required by any subpoena or other legal process (in which event Executive will give the Company prompt notice of such subpoena or other legal process in order to permit the Company to seek appropriate protective orders); provided, however, that nothing contained in this Agreement shall limit Executive's ability to communicate with any federal or state government agency or otherwise participate in any investigation or proceeding that may be conducted by any such federal or state government agency, including by providing documents or other Confidential Information, without notice to the Company or the Board of Managers. This Agreement does not limit Executive's right to receive an award for any information provided to any federal or state government agency. "Confidential Information" means any secret, confidential or proprietary information possessed by the Company or any of its subsidiaries or affiliates, including, without limitation, trade secrets, customer or supplier lists, details of client or consultant contracts, current and anticipated customer requirements, pricing policies, price lists, market studies, business plans, operational methods, marketing plans or strategies, advertising campaigns, information regarding customers or suppliers, computer software programs (including object code and source code), data and documentation data, base technologies, systems, structures and architectures, inventions and ideas, past current and planned research and development, compilations, devices, methods, techniques, processes, financial information and data, business acquisition plans and new personnel acquisition plans and the terms and conditions of this Agreement that has not become generally available to the public. Notwithstanding anything to the contrary contained herein, the term "Confidential Information" shall in no event apply to any information which (x) was generally available to or known by the public prior to the Commencement Date; (y) has become generally available to or known by the public after the Commencement Date other than as the result of a direct or indirect disclosure by Executive; and (z) was known and used by Executive prior to his Employment by the Company. Subject to the exceptions in this paragraph, the existence and terms of this Agreement are confidential and are not to be disclosed to or discussed with any other person except Executive's attorneys, accountants, bankers and financial advisors.

D. *Restriction.* During the Term and for a period of one year thereafter, Executive will not be an employee, agent, director, stockholder or owner (except of not more than a 5% interest in the voting securities of any publicly traded entity), partner, consultant, financial backer, creditor or be otherwise directly or indirectly connected with or participate in the ownership, management, operation or control of any business, firm, proprietorship, corporation, partnership, association, entity, venture or other form or property ownership a material part of the business activities of which (a "**Competing Business**") is the development, ownership, leasing or management of retail marine dealerships and related operations ("**Business**") within an area (the "**Restricted Area**") which is (i) any state in which the Company or any of its Affiliates conducted any part of the Business in any material respect within the twelve (12) months preceding the Termination Date. Notwithstanding the foregoing, nothing in this Agreement shall be construed as limiting Executive's ability to invest personally in real estate or other investments which do not constitute a Competing Business, subject to the limitations of this Section 6 generally.

E. *Non-Solicitation.* During the Term and for a period of two years thereafter (such period is referred to as the "**No Recruit Period**"), Executive will not solicit or attempt to solicit, either directly or indirectly, any person that he knows or should reasonably know to be an employee of the Company, whether any such employees are now or hereafter through the No Recruit Period so employed or engaged by the Company, to terminate or alter their employment with the Company. The foregoing is not intended to limit any legal rights or remedies that any employee of the Company or any Affiliate may have under common law with regard to any interference by Executive at any time with the contractual relationship the Company or any Affiliate may have with any of its employees.

F. *Reasonable and Continuing Obligations.* Executive agrees that Executive's obligations under this Section 6 are obligations which will continue beyond the date Executive's employment terminates and that such obligations are reasonable, fair and equitable in scope. The terms and duration are necessary to protect the Company's legitimate business interests and are a material inducement to the Company to enter into this Agreement. Executive further acknowledges that the consideration for this Section 6 is his employment or continued employment. Executive will not be paid any additional compensation during this Restricted Period for application or enforcement of the restrictive covenants contained in this Section 6.

G. *Work Product.* The term "**Work Product**" includes any and all information, programs, concepts, processes, discoveries, improvements, formulas, know-how and inventions, in any form whatsoever, relating to the business or activities of the Company, or resulting from or suggested by any work developed by Executive in connection with the Company, or by Executive at the Company's request during his employment with the Company. Executive acknowledges that all Work Product developed during the Term is property of the Company and/or its Affiliates and accordingly, Executive does hereby irrevocably assign all Work Product developed by Executive to the Company and agrees: (a) to assign to the Company, free from any obligation of the Company to Executive, all of Executive's right, title and interest in and to Work Product conceived, discovered, researched, or developed by Executive either solely or jointly with others during the term of this Agreement and for three (3) months after the termination or nonrenewal of this Agreement; and (b) to disclose to the Company promptly and in writing such Work Product upon Executive's acquisition thereof.

H. *Cooperation.* During and subsequent to termination of the employment of Executive, Executive will, at no costs to the Executive, cooperate with the Company and furnish any and all complete and truthful information, testimony or affidavits in connection with any matter that arose during Executive's employment, that in any way relates to the business or operations of the Company or any of its subsidiary corporations, divisions or affiliates, or of which Executive may have any knowledge or involvement; and will consult with and provide information to the Company and its representatives concerning such matters. Executive shall not undermine the authority of the Company, its Board of Managers or others within the Company to whom Executive reports, nor speak or publish disparaging information about the Company or its Affiliates. Subsequent to the termination of the employment of Executive, the parties will make their good faith best efforts to have such cooperation performed at reasonable times and places and in a manner as not to unreasonably interfere with any other employment in which Executive may then be engaged. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony, sworn statement or declaration that is not complete and truthful. However if Executive does travel outside the metropolitan area in the United States where Executive then resides to provide any testimony or otherwise provide any such assistance, then the Company will reimburse Executive for any reasonable, ordinary and necessary travel and lodging expenses incurred by Executive to do so based on "first class" accommodations as to travel, food, lodging and transportation provided Executive submits all documentation required under the Company's standard travel expense reimbursement policies of which Executive has been made aware in writing, and as otherwise may be reasonably required to satisfy any requirements under applicable tax laws for the Company or its Affiliates to deduct those expenses. Nothing in this Agreement shall be construed or interpreted as requiring Executive to provide any testimony or affidavit that is not complete and truthful.

I. *Remedies.* Executive recognizes that his duties may entail the receipt of Trade Secrets and Confidential Information as defined in this Section 6. Those Trade Secrets and Confidential Information have been developed by the Company and/or its Affiliates at substantial cost and constitute valuable and unique property of the Company and its Affiliates. Moreover, each of the provisions of this Section 6 have been specifically bargained for by the Company as a condition of the benefits derived by Executive hereunder. Accordingly, Executive acknowledges that protection of Trade Secrets and Confidential Information is a legitimate business interest. Subject to Dispute Resolution determination, if Executive shall breach the covenants contained in this Section 6 in a "material respect", the Company shall have no further obligation to make any payment to Executive pursuant to this Agreement, other than any accrued wages earned and owed to Executive at the time of termination and/or Severance Payments due prior to the breach, and may recover from Executive all such damages as it may be entitled to at law or in equity. In addition, Executive acknowledges that any such breach may result in irreparable harm to the Company. The Company shall be entitled to seek specific performance of the covenants in this Section 6, including entry of a temporary restraining order in state or federal court, preliminary and permanent injunctive relief against activities in violation of this Section 6, or both, or other appropriate judicial remedy, writ or order, in addition to any damages and legal expenses which the Company or any Affiliate may be legally entitled to recover. Executive acknowledges and agrees that the covenants in this Section 6 shall be construed as agreements independent of any other provision of this Agreement or any other agreement between the Company or any Affiliate and Executive, and that the existence of any claim or cause of action by Executive against the Company or any Affiliate, whether predicated upon this Agreement or any other agreement, shall not constitute a defense to the enforcement by the Company or any Affiliate of such covenants.

SECTION 7. MISCELLANEOUS

A. *Notices.* Notices and all other communications shall be in writing and shall be deemed to have been duly given when personally delivered, the next day if by facsimile transmission and/or overnight delivery by a recognized overnight carrier (such as Federal Express or UPS) or three (3) days when mailed by United States postal service, registered or certified mail with a copy to the addressee by email. Notices to the Company shall be sent to:

To Executive:

Mr. Jack Ezzell

_____

_____

_____.com

Copy to:

_____

_____

_____.com

To the Company:

One Water Marine Holdings, LLC
Attn: Mitchell W. Legler, Chairman
4471 Legendary Dr.
Destin, Florida 32541

Copy to:

Michael Gold, Esq
6515 Shiloh Rd. Ste 100
Alpharetta, GA 30005

Notices and communications to Executive shall be sent to the address Executive most recently provided to the Company.

B. *No Waiver.* No failure by either the Company or Executive at any time to give notice of any breach by the other of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of any provisions or conditions of this Agreement.

C. *Governing Law.* This Agreement shall be governed by Georgia law without reference to the choice of law principles thereof.

D. *Assignment; Parties.* This Agreement shall be binding upon and inure to the benefit of the Company and any successor in interest to the Company. The Company may assign this Agreement to any affiliate or successor that acquires all or substantially all of the assets and business of the Company or a majority of the voting interests of the Company, expressly including OWM Public which is hereby declared a third-party beneficiary of this Agreement. The Company will require any successor (whether direct or indirect, by operation of law, by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company) to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement,

"Company" shall mean Company as defined above and, unless the context otherwise requires, any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Executive's rights and obligations under this Agreement are personal and shall not be assigned or transferred. The Executive's obligations under this Agreement are not assignable. Notwithstanding any assignment by Company nothing herein will eliminate the Company and other obligors from the payment of the amounts due hereunder.

E. *Other Agreements.* This Agreement replaces and merges any and all previous agreements and understandings regarding all the terms and conditions of Executive's employment relationship with the Company, and this Agreement constitutes the entire agreement between the Company and Executive with respect to such terms and conditions.

F. *Amendment.* No amendment to this Agreement shall be effective unless it is in writing and signed by the Company and by Executive.

G. *Invalidity and Severability.* If any part of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remaining part shall be unaffected and shall continue in full force and effect, and the invalid or otherwise unenforceable part shall be deemed not to be part of this Agreement.

H. *Dispute Resolution.* If a dispute arises between the parties as to the proper interpretation or application of this Agreement, or if a party believes that the other party is in violation hereof and the alleged breach is not cured within ten (10) business days after notice from the complaining party to the other party, then unless both of the parties agree in writing to waive the provisions of this Section 7.H, their dispute shall be resolved exclusively by binding arbitration conducted in accordance with the Georgia Arbitration Code (the "**Arbitration Rules**," which term shall include any replacement of that code, however designated, and the administrative rules and court decisions implementing or interpreting same), except as may be expressly modified herein. Judgment on any award rendered by the arbitrator may be entered in the appropriate state court of Fulton County, Georgia having jurisdiction thereof.

(1) *Arbitrator; Venue.* The arbitration shall take place in Atlanta, Georgia before a three (3) panel of arbitrators to be mutually agreed upon by the parties involved in the dispute. In the event such parties cannot agree on a three (3) panel of neutral arbitrators within ten (10) days after a party calls for the arbitration of a dispute hereunder, each party shall within seven (7) days thereafter select a representative who (i) is currently a circuit court mediator certified under the rules of the Georgia Supreme Court, (ii) is not affiliated with or related to either party or either party's attorneys or accountants, and (iii) has his or her principal office in Fulton County, Georgia or the adjacent counties. Under no circumstances will the American Arbitration Association be used for this dispute resolution.

(2) *Discovery.* Notwithstanding anything to the contrary contained in Section 682.08 or elsewhere in the Arbitration Rules, the parties shall be permitted <u>full</u> discovery in any arbitration proceedings as provided by the Georgia Rules of Civil Procedure, subject to review by the panel of arbitrators of any allegation of abuse of discovery rights allowed by the Georgia Rules of Civil Procedure.

(3) *Injunctive Relief.* Any party to the arbitration may apply to the panel of arbitrators for the entry of injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Any such injunctive relief shall be in addition to any and all other remedies available to the parties under this Agreement.

(4) *Limitation of Remedies.* The measure of damages under this Agreement in connection with a breach by a party shall be the actual damages sustained by the other party or parties, and the panel of arbitrators is not authorized to award incidental, consequential, treble, punitive or other multiple damages or to modify this Agreement, and the jurisdiction of the arbitrator shall be so limited.

(5) *Costs and Fees.* The arbitrator may, in the panel of arbitrators' sole and absolute discretion, award to the substantially prevailing party, if any, as determined by the arbitrator, all of the substantially prevailing party's costs and fees for the dispute in question. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, out-of-pocket expenses such as courier and copying costs, witness fees, and attorneys' fees.

(6) *Final Award.* The arbitrator shall in every case make a reasoned award, which shall be final and conclusive except as otherwise provided in the Arbitration Rules, and the failure of the arbitrator to make a reasoned award shall be grounds for vacating the award upon the motion of either party pursuant to Section 682.13 of the Arbitration Rules.

(7) *Disability.* Physical incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined as a factual matter in accordance with this Section 7.H following the procedures set forth above. Mental incapacity of Executive, if questioned by the Company and disputed by Executive, shall be determined in accordance with Georgia law, except that:

(a) Executive shall be represented by an attorney employed by Executive and compensated by the Company, rather than by a judicially appointed attorney.

(b) All required appointments, orders and findings shall be made by the arbitrator rather than the court, except that an order of the court may be sought to enforce or appeal the results of arbitration.

(c) All costs of arbitration to determine Executive's mental incapacity, including all experts' fees and expenses and the attorney's fees and expenses of both parties, shall be paid by the Company.

(8) *Confidentiality.* Neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, except as may be required by law to be filed in court or in order to appeal or enforce the award.

(9) *Joint and Several Liability.* The Company and its Affiliates shall be jointly and severally liable for any awards (and judgments thereon) entered in Executive's favor.

I. *Counterparts.* This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. *Section 409A.* The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, Section 409A of the Code and the regulations and guidance promulgated thereunder (collectively "**Section 409A**") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted and administered consistent with such intent.

(1) For purposes of Section 409A, Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (*e.g.*, "payment shall be made within sixty calendar days following the Termination Date"), the actual date of payment within the specified period shall be within the sole discretion of the Company. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement that is considered non-qualified deferred compensation.

(2) In addition, notwithstanding anything in this Agreement to the contrary, if at the time of Executive's "separation from service" the Company determines that Executive is a "specified employee" (such terms within the meaning of Section 409A), then to the extent any payment or benefit that Executive becomes entitled to under this Agreement on account of Executive's separation from service would be considered deferred compensation otherwise subject to the twenty percent (20%) additional tax imposed pursuant to Section 409A, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six (6) months and one day after your separation from service, or (ii) Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(3) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit; (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year; provided, that this clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect; and (iii) such payments shall be made on or before the last day of the taxable year following the taxable year in which the expense was incurred.

[SIGNATURE PAGE OF EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the Company (for itself and each of its Affiliates) and Executive have executed this Agreement effective as of the Effective Date.

Company:

ONE WATER MARINE HOLDINGS, LLC

By: /s/ Austin Singleton
Austin Singleton, CEO

Executive:

/s/ Jack Ezzell
JACK EZZELL

Joinder

By signing below, the undersigned OneWater Marine Inc., a Delaware corporation, does hereby agree to be bound by the terms of the preceding agreement as apply to the undersigned.

Dated as of the date of the foregoing agreement.

ONEWATER MARINE INC.

By: /s/ Austin Singleton
Austin Singleton, CEO

Exhibit A

SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT (hereinafter, the "**Separation Agreement**") is made and entered into this _____ day of _____, 20___, by and between **ONE WATER MARINE HOLDINGS, LLC**, a Delaware limited liability company (which, together with all of its affiliates including, without limitation, OneWater Marine Inc., a Delaware corporation, is called "**Employer**") and **JACK EZZELL** (who, together with his heirs, assigns, executors and administrators are collectively referred to as "**Employee**").

Background Facts:

Employee's employment by Employer is terminating, and both parties wish to amicably end their employment relationship and to fully and finally settle all existing or potential claims and disputes Employee has or may have against or with regard to Employer, or Employer may have against Employee, whether known or unknown and whenever arising including, without limitation any claims for additional or return compensation ("**Claims**").

NOW THEREFORE, in consideration of the mutual benefits to be derived herefrom, the parties hereto agree that the Background Facts are true and correct and do further agree as follows:

1. *Obligations of Employer.*

(a) *Severance*. In consideration of the parties' agreement to the terms herein, Employer shall provide to Employee the Severance described in Section 5.B of the Employment Agreement between the Employee and Employer having an Effective Date of February 11, 2020 (the "**Employment Agreement**").

(b) *Release*. Employer, which for purposes of this Section 1 shall include its subsidiaries, parent companies, affiliates, directors, officers, attorneys, representatives and agents, waives and releases Employee from all Claims, from any claims, demands, damages, lawsuits, obligations, promises, administrative actions, charges, and causes of action, both known and unknown, in law or in equity, of any kind whatsoever, including, but not limited to, all matters relating to or arising out of Employee's employments with Employer; excluding, however, Employee's obligations hereunder. Provided however, nothing contained herein waives or releases the Employer's obligation to be responsible for the defense of any lawsuit and/or claim against the Employee which the Employer would have been obligated to defend and pay for in the event the Employee was still employed with the Employer which will include maintaining any insurance coverage in full force and effect related thereto.

2. *Obligations of Employee*. In consideration of the foregoing, Employee agrees as follows:

(a) *Termination Date*. Employee agrees Employee's employment with Employer is terminated effective at the close of business on this date.

(b) *Release*. Employee waives and releases Employer, which for purposes of this Section 2 shall include a release of all of Employer's subsidiaries, parent companies, affiliates, directors, officers, attorneys, representatives and agents, from any Claims, other claims, demands, damages, lawsuits, obligations, promises, administrative actions, charges, and causes of action, both known and unknown, and whenever arising in law or in equity, of any kind whatsoever, including, but not limited to, all matters relating to or arising out of Employee's employment with Employer including, without limitation, all rights to any unvested deferred compensation and profit allocations. This waiver and release covers any causes of action or claims under Title VII of the Civil Rights Act of 1964, as amended; the Employee Retirement Income Security Act of 1974 ("**ERISA**"), as amended; the Age Discrimination in Employment Act of 1967, as amended; the Older Workers' Benefit Protection Act; the Family and Medical Leave Act of 1993; the Civil Rights Act of 1991; Section 1981 of the Civil Rights Act of 1866, as amended; the Americans with Disabilities Act of 1990; Executive Orders 11246 and 11478; the National Labor Relations Act, as amended; the Fair Labor Standards Act of 1938; as amended; the Equal Pay Act of 1963, as amended; the Consolidated Omnibus Budget Reconciliation Act of 1984 ("**COBRA**"), as amended; the Georgia Civil Rights Act of 1991; and any other federal or state law or municipal ordinance, including any lawsuits founded in tort (including negligence), contract (oral, written, or implied), or any other common law or equitable basis of action.

(c)Company Information. Employee shall, immediately return to Employee's supervisor at Employer's corporate headquarters, in Atlanta Georgia all "Company Information" in Employee's possession or control, including but not limited to, business reports and records, client reports and records, customer information, contracts and proposals, files, a rolodex or telephone or computerized listing of customers, any other customers, any other customer lists, internal memoranda concerning any of the above, and all credit cards, door and file keys, computer access codes, software, and other physical or personal property which Employee received, prepared or helped prepare in connection with Employee's employment with Employer; and Employee shall not make or retain any copies, duplicates, reproductions, or excerpts thereof. The term "Company Information" as used in this Separation Agreement includes, without limitation, (1) confidential information including, without limitation, information received from third parties under confidential conditions; and (2) other technical, business, or financial information, the use or disclosure of which might reasonably be construed to be contrary to the interests of Employer in a material respect economically. Each breach by Employee of this promise of confidentiality shall be a material breach of this Separation Agreement.

3. *Non-Admission*. Neither this Separation Agreement, nor anything contained herein, is to be construed as an admission by Employer or Employee of any liability, wrongdoing, or unlawful conduct whatsoever.

4. *Continuing Covenants; Enforcement*. Notwithstanding anything herein to the contrary, Employee agrees that the provisions of Sections 6 (*Covenants by Executive*) and 7.H (*Dispute Resolution*) of the Employment Agreement shall remain in full force and effect, subject to any limitations stated therein or otherwise applicable by law or in equity for a period of eighteen months (18) months following termination of employment of the Employee, and Employee shall faithfully fulfill his responsibilities thereunder. Any violation of such provisions shall, among other remedies, cause a termination of all Severance (as that term is defined in the Employment Agreement) and all other post-termination benefits provided in the Employment Agreement.

5. *Severability*. If any provision of this Separation Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Separation Agreement shall continue unabated and in full force and effect.

6. *Entire Agreement*. This Separation Agreement contains the entire understanding and agreement between the parties and shall not be modified or superseded except upon express written consent of the parties to this Separation Agreement. Employee represents and acknowledges that in executing this Separation Agreement, he does not rely and has not relied upon any representation or statement made by Employer, or its agents, representatives and/or attorneys, which is not set forth in this Separation Agreement.

7. *Supersedes Past Agreements*. Except for the terms set forth in the Employment Agreement which are continuing obligations for Employee after termination of employment, which obligations remain in full force and effect, this Separation Agreement supersedes and renders null and void any previous employment agreements or contracts, whether written or oral, between Employee and Employer.

8. *Governing Law; Enforcement*. This Separation Agreement shall be governed by the laws of the State of Georgia. In the event of litigation arising from this Separation Agreement the attorneys' fees and expenses of the prevailing party shall be paid by the losing party. Any action to enforce or construe this Separation Agreement shall be brought solely in the state or federal courts sitting in Fulton County, Georgia, and both parties consent to the exclusive jurisdiction and venue of such courts.

9. *Opportunity to Consider and Confer*. Employee and Employer acknowledge that each has had the opportunity to read, study, consider, and deliberate upon this Separation Agreement, have been given the opportunity to consult with counsel or an otherwise competent representative, and both parties fully understand and are in complete agreement with all of the terms of this Separation Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

[SIGNATURE PAGE OF SEPARATION AGREEMENT]

IN WITNESS WHEREOF, and intending to be legally bound, Employer, by its authorized representative, and Employee execute this Separation Agreement and by signing below voluntarily and with full knowledge of the significance of all of its provisions.

PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT, WAIVER AND RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

ONE WATER MARINE HOLDINGS, LLC

By: _____

_____

JACK EZZELL