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FORM DEFA14A

(Additional Proxy Soliciting Materials (definitive))

Filed 05/29/12

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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): **May 29, 2012**

Interline Brands, Inc.
(Exact name of registrant as specified in its charter)

Delaware		
(State or other jurisdiction of incorporation)	**001-32380** (Commission File Number)	**03-0542659** (I.R.S. Employer Identification No.)

701 San Marco Boulevard, Jacksonville, Florida 32207
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(904) 421-1400**

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2 below):

☐ 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))

Item 1.01 Entry into a Material Definitive Agreement

Interline Brands, Inc., a Delaware corporation (the "Company"), announced on May 29, 2012 that the Company had entered into an Agreement and Plan of Merger, dated as of May 29, 2012 (the "Merger Agreement"), with Isabelle Holding Company Inc., a Delaware corporation ("Parent"), and Isabelle Acquisition Sub Inc., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub" and, together with Parent, the "Acquiring Parties"). The Acquiring Parties are controlled by investment funds managed by Goldman, Sachs & Co. Investment funds managed by P2 Capital Partners, LLC ("P2") also own an interest in the Acquiring Parties.

The Merger Agreement provides for, upon the terms and subject to the conditions in the Merger Agreement, the merger of Merger Sub with and into the Company with the Company surviving as a wholly-owned subsidiary of Parent (the "Merger").

Pursuant to the Merger Agreement, at the effective time of the Merger, each outstanding share of common stock of the Company (other than any shares owned by the Company or the Acquiring Parties or by any stockholders who are entitled to and who properly exercise appraisal rights under Delaware law (collectively, the "Excluded Stockholders")), will be cancelled and will be converted automatically into the right to receive $25.50 in cash (the "Merger Consideration"), without interest. In connection with the closing of the Merger, the Company's Chief Executive Officer has agreed to invest in Parent a portion of his after-tax proceeds from the transaction, and it is anticipated that other members of senior management of the Company may also invest in Parent a portion of their after-tax proceeds from the transaction, on terms to be agreed upon between management and Parent.

Stockholders of the Company will be asked to approve the Merger at a special meeting that will be held on a date to be announced. Consummation of the Merger is subject to customary conditions, including without limitation: (i) the approval by the holders of a majority of the outstanding shares of the Company's common stock entitled to vote on the Merger at a duly called stockholders meeting (the "Stockholder Approval"), (ii) the expiration or early termination of the waiting period applicable to the Merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and (iii) the absence of any order enjoining or prohibiting the Merger. Moreover, each party's obligation to consummate the Merger is subject to certain other conditions, including without limitation: (x) the accuracy of the other party's representations and warranties contained in the Merger Agreement (generally, subject to certain materiality qualifiers) and (y) the other party's compliance with its covenants and agreements contained in the Merger Agreement in all material respects. In addition, the obligation of the Acquiring Parties to consummate the Merger is subject to (1) the absence of any Company Material Adverse Effect (as defined in the Merger Agreement) from the date of the Merger Agreement to the effective time of the Merger and (2) the Company having not less than $50 million of Available Cash (as defined in the Merger Agreement) on the date of closing. As of today, the Company has approximately $67 million of Available Cash. The Acquiring Parties also are not required to consummate the Merger until after completion of a marketing period for the debt financing. Availability of financing for the Merger is not a condition to the Acquiring Parties' obligations to consummate the Merger.

The Company has made customary representations and warranties to the Acquiring Parties in the Merger Agreement. The Company has also entered into certain customary covenants and agreements in the Merger Agreement, including without limitation covenants regarding: (i) the conduct of the business of the Company prior to the consummation of the Merger and (ii) the calling and holding of a meeting of the Company's stockholders for the purpose of obtaining the Stockholder Approval.

Following the execution of the Merger Agreement and continuing until 11:59 p.m. (New York City time) on June 28, 2012 (the "Go-Shop Period"), the Company and its representatives may, subject to certain limitations specified in the Merger Agreement, initiate, solicit and encourage alternative acquisition proposals from third parties, including by way of providing non-public information, and

enter into, engage in and maintain discussions or negotiations with third parties with respect to alternative acquisition proposals, or inquiries, proposals or offers or other efforts or attempts that could lead to an alternative acquisition proposal. The Company and its representatives may continue to engage in the activities described in the previous sentence for an additional fifteen days after the Go-Shop Period (and subject to further extension in certain circumstances) (the date such period expires, the "Cut-Off Date") with respect to certain third parties that have made alternative acquisition proposals during the Go-Shop Period. Except as described in the previous sentence, starting at 12:00 a.m. on June 29, 2012, the Company will become subject to customary "no-shop" restrictions on its ability to solicit alternative acquisition proposals from third parties and to provide information to and enter into, engage in and maintain discussions or negotiations with third parties regarding alternative acquisition proposals. However, prior to receipt of the Stockholder Approval, the no-shop provision is subject to a "fiduciary out" provision that allows the Company to provide information and participate in discussions with respect to an unsolicited written takeover proposal that the Board of Directors of the Company (the "Board") has determined constitutes or would reasonably be expected to lead to a Superior Proposal (as defined in the Merger Agreement) and, subject to compliance with the terms of the Merger Agreement, to change its recommendation due to an intervening event or to approve, recommend or declare advisable, and authorize the Company to enter into an acquisition agreement with respect to a Superior Proposal.

The Merger Agreement contains certain termination rights for both the Company and the Acquiring Parties. The Merger Agreement provides that, upon termination under specified circumstances, the Company would be required to pay Parent a termination fee in an amount equal to $29.9 million; however, if the termination in any such circumstances is in connection with a Superior Proposal arising during the Go-Shop Period and entered into prior to the Cut-Off Date, the Company would be required to pay Parent a termination fee equal to $13.9 million. The Merger Agreement also provides that Parent will be required to pay the Company a reverse termination fee equal to $51.3 million upon termination under certain specified circumstances, and a reverse termination fee of $68.4 million in the event of termination under such circumstances if Parent has committed a willful and material breach of any of its representations, warranties, covenants or agreements under the Merger Agreement. In addition, subject to certain limitations, either party may terminate the Merger Agreement if the Merger is not consummated by November 29, 2012.

Parent has obtained equity and debt financing commitments for the transactions contemplated by the Merger Agreement, the proceeds of which (together with available cash at the Company) will be used by Parent to pay the aggregate Merger Consideration and all related fees and expenses and to refinance certain indebtedness of the Company. GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., and GS Capital Partners VI GmbH & Co. KG (the "Investors") have severally and not jointly committed to capitalize Parent, at or prior to the closing of the Merger, with an aggregate equity contribution in an amount of $369,273,082, on the terms and subject to the conditions set forth in the equity commitment letter entered into by the Investors in connection with the Merger (the "GS Equity Commitment Letter"). The GS Equity Commitment Letter will terminate automatically upon any termination of the Merger Agreement. In addition, GS Capital Partners VI Fund, L.P. ("GS Fund VI") has executed a limited guarantee in favor of the Company to guarantee, subject to the limitations described therein, the payment of any termination fee and certain other expenses by Parent. P2 has also committed to capitalize Parent, at or prior to the closing of the Merger, with an equity contribution in an aggregate amount of $6,351,657 (the "P2 Cash Contribution"), as well as a contribution to Parent of 927,386 shares of common stock of the Company, on the terms and subject to the conditions set forth in the equity commitment letter entered into by P2 in connection with the Merger.

Parent has advised the Company that Goldman Sachs Lending Partners LLC ("GSLP") and Bank of America, N.A. ("Bank of America" and, collectively with GSLP, the "Lenders") have committed to

provide a $250 million senior secured asset based revolving credit facility, a $303 million senior unsecured opco bridge facility (the "Opco Bridge Facility"), and a $375 million senior unsecured holdco bridge facility (the "Holdco Bridge Facility"), on the terms and subject to the conditions set forth in a debt commitment letter dated May 29, 2012 (the "Debt Commitment Letter"). The obligation of the Lenders to provide debt financing under the Debt Commitment Letter is subject to a number of conditions, including without limitation: (i) the absence of a Company Material Adverse Effect (as defined in the Debt Commitment Letter) since December 31, 2011, (ii) execution and delivery of definitive documentation with respect to the debt financing contemplated by the Debt Commitment Letter and otherwise reasonably satisfactory to the Lenders, (iii) accuracy of certain specified representations and warranties in the loan documents and in the Merger Agreement, (iv) receipt of equity financing from the Investors representing at least 30.0% of the pro forma capitalization of the Company after consummation of the Merger and (v) consummation of the Merger in accordance with the Merger Agreement. The final termination date for the Debt Commitment Letter is the earliest of: (i) the date on which the Merger Agreement is terminated in accordance with its terms prior to the consummation of the transactions, (ii) the consummation of the Merger with or without the funding of any of the proposed credit facilities, (iii) in the case of the Opco Bridge Facility, the receipt of the consenting vote of holders of a majority in aggregate principal amount of the existing 7.00% senior subordinated notes due 2018 (the "Existing Notes") of the Company's subsidiary Interline Brands, Inc., a New Jersey corporation, to a certain consent in accordance with the related indenture, (iv) Parent's engagement or allowance of any person other than the Lenders to act as arranger and/or bookrunner (or otherwise to perform the duties and exercise the authority customarily performed and exercised by persons in such roles) for any amendment, modification, waiver or offer with respect to the Existing Notes, (v) in the case of the Holdco Bridge Facility prior to the date of issuance of Holdco Permanent Debt (as defined in the related fee letter), the business day following receipt by the Lenders of written notice from Parent terminating in full the Holdco Bridge Facility commitments on such date and (vi) 11:59 p.m., New York City time, on November 29, 2012.

Barclays Capital Inc. ("Barclays") serves as the financial advisor to the Board. On May 29, 2012, Barclays delivered a written opinion to the Board that, as of the date of the opinion and subject to the limitations contained therein, the consideration to be offered to the stockholders of the Company (other than the Excluded Stockholders) in the Merger is fair from a financial point of view to such stockholders.

The Merger Agreement has been attached as an exhibit to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company, the Acquiring Parties or any of their respective affiliates or businesses. The representations, warranties, covenants and agreements contained in the Merger Agreement were made only for the purposes of such agreement and as of specified dates, were solely for the benefit of the parties to such agreement and may be subject to limitations agreed upon by the contracting parties. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors and security holders are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties, covenants and agreements or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, the Acquiring Parties or any of their respective affiliates or businesses. Moreover, the assertions embodied in the representations and warranties contained in the Merger Agreement are qualified by information in confidential disclosure letters that the parties have exchanged. Accordingly, investors and security holders should not rely on the representations and warranties as characterizations of the actual state of facts of the Company, the Acquiring Parties or any of their respective affiliates or businesses. Moreover, information concerning the subject matter of the representations and warranties may change

after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

The foregoing description of the Merger Agreement is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit 2.1 hereto, and is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure

On May 29, 2012, the Company issued a press release announcing the execution of the Merger Agreement, which is furnished as Exhibit 99.1 hereto.

Forward-Looking Statements

Statements herein regarding the proposed transaction between Isabelle Holding Company Inc. ("Parent"), Isabelle Acquisition Sub Inc. ("Merger Sub") and Interline Brands, Inc. (the "Company"), future financial and operating results, benefits and synergies of the transaction, future opportunities for the combined company and any other statements about future expectations constitute forward looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based upon current beliefs and expectations and are subject to significant risks and uncertainties. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward looking statements, including: the ability to obtain governmental approvals of the transaction on the proposed terms and schedule and the failure of the Company's stockholders to approve the transaction. Additional factors that may affect future results are contained in each company's filings with the Securities and Exchange Commission ("SEC"), including each company's Annual Report on Form 10-K for the year ended December 30, 2011, which are available at the SEC's Web site http://www.sec.gov. The information set forth herein speaks only as of the date hereof, and any intention or obligation to update any forward looking statements as a result of developments occurring after the date hereof is hereby disclaimed.

Important Additional Information will be Filed with the SEC:

In connection with the proposed transaction, the Company plans to file with the SEC a Proxy Statement. Investors and security holders of the Company are urged to read the Proxy Statement and any other relevant documents filed with the SEC when they are available because they will contain important information about the Company, the proposed transaction and related matters. The final Proxy Statement will be mailed to stockholders of the Company. Investors and security holders of the Company will be able to obtain copies of the Proxy Statement, when they become available, as well as other filings with the SEC that will be incorporated by reference into such documents, containing information about the Company, without charge, at the SEC's Internet site (http://www.sec.gov). These documents may also be obtained for free from the Company by directing a request to the Company, Investor Relations, 701 San Marco Boulevard, Jacksonville, FL 32207 or at the Company's Investor Relations page on its corporate website at http://ir.interlinebrands.com.

Participants in Solicitation

The Company and its respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the Company's stockholders in respect of the proposed transaction. Information regarding the Company's participants is available in the Company's Annual Report on Form 10-K for the year ended December 30, 2011 and the Company's proxy statement, dated March 23, 2012, for its 2012 annual meeting of stockholders, which are filed with the SEC. Additional information regarding the interests of such participants will be included in the Proxy Statement to be filed with the SEC.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Exhibit
2.1	Agreement and Plan of Merger, dated as of May 29, 2012, by and among Interline Brands, Inc., Isabelle Holding Company Inc. and Isabelle Acquisition Sub Inc. (Schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.)
99.1	Joint Press Release, dated May 29, 2011, of Interline Brands, Inc., GS Capital Partners L.P. and P2 Capital Partners, LLC, announcing the Agreement and Plan of Merger.

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.

INTERLINE BRANDS, INC.

By: /s/ MICHAEL AGLIATA

Michael Agliata
Vice President, General Counsel & Secretary

Date: May 29, 2012

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Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

among

Isabelle Holding Company Inc.,

Isabelle Acquisition Sub Inc.

and

Interline Brands, Inc.

Dated as of May 29, 2012

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of May 29, 2012 (this " *Agreement* "), by and among Isabelle Holding Company Inc., a Delaware corporation (" *Parent* "), Isabelle Acquisition Sub Inc., a Delaware corporation (" *Merger Sub* "), and Interline Brands, Inc., a Delaware corporation (the " *Company* ").

RECITALS

WHEREAS, the board of directors of the Company (the " *Company Board* ") and the board of directors of Merger Sub, have each (a) unanimously approved the merger of Merger Sub with and into the Company on the terms and subject to the conditions of this Agreement (the " *Merger* ") and have approved and declared advisable this Agreement and (b) declared that it is advisable and in the best interests of their respective stockholders that the Company and Merger Sub enter into this Agreement and consummate the Merger on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of the Company to enter into this Agreement, each of GS Capital Partners and P2 Capital Master Fund I, L.P. (the " *Guarantors* ") is entering into a limited guarantee in favor of the Company (each a " *Limited Guaranty* " and together the " *Limited Guaranties* "), pursuant to which, subject to the terms and conditions contained therein, the Guarantors are guaranteeing certain obligations of Parent and Merger Sub in connection with this Agreement; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement and the Merger and also to prescribe certain conditions to the Merger;

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

ARTICLE I

The Merger

1.1. *The Merger*. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, in accordance with the provisions of the DGCL, and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the " *Surviving Corporation* "), and the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in *Article II* .

1.2. *Closing.* The closing of the Merger (the " *Closing* ") will take place: (*a*) at 9:00 a.m., New York City time, on the third Business Day after satisfaction or waiver of all of the conditions set forth in *Article VI* (other than those conditions that by their terms are to be satisfied by actions at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), at the offices of Fried, Frank, Harris, Shriver & Jacobson, LLP, One New York Plaza, New York, New York 10004; *provided* that, if the Marketing Period has not ended at the time of the satisfaction or waiver of all of the conditions set forth in *Article VI* (other than the conditions that by their terms are to be satisfied by actions at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), the Closing shall occur on the earlier to occur of (*i*) a date before or during the Marketing Period specified by Parent on three (3) Business Days' notice to the Company and (*ii*) the third Business Day immediately following the final day of the Marketing Period (subject, in each case, to the satisfaction or waiver of all of the conditions set forth in *Article VI* as of the date determined pursuant to this proviso), or (*b*) at such other date, time, and/or place as agreed to in writing by Parent and the Company. The date on which the Closing actually occurs is referred to herein as the " *Closing Date* ." For the avoidance of doubt, a condition may only be waived in writing by the party or parties entitled to the benefit of such condition under this Agreement.

1.3. *Effective Time.* Subject to the terms and conditions hereof, on the Closing Date, the Company and Parent will cause an appropriate certificate of merger (the " *Certificate of Merger* ") to be duly executed and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall take all such reasonable further actions as may be required by Law to make the Merger effective. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the office of the Secretary of State of the State of Delaware or at such later date and time as Parent and the Company shall agree and specify in the Certificate of Merger in accordance with the DGCL (the " *Effective Time* ").

ARTICLE II

Effects of the Merger

2.1. *Effects of the Merger.* The Merger shall have the effects specified in the DGCL and this Agreement.

2.2. *The Certificate of Incorporation.* At the Effective Time, the certificate of incorporation of the Surviving Corporation (the " *Charter* ") shall be, by virtue of the Merger, amended and restated in its entirety to be in the form of the certificate of incorporation of Merger Sub (except with respect to the name of the Surviving Corporation, which from and after the Effective Time shall be the name of the Company), until thereafter amended as provided therein or by applicable Law.

2.3. *The Bylaws.* At the Effective Time, the bylaws of the Surviving Corporation (the " *Bylaws* ") shall be, by virtue of the Merger, amended and restated in their entirety to be in the form of the bylaws of Merger Sub (except that the name of the Surviving Corporation shall be the name of the Company), until thereafter amended as provided therein or by applicable Law.

2.4. *Directors.* Any director of the Company whose resignation has been requested by Parent shall resign with effect as of immediately prior to the Effective Time, and the directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be (together with any directors of the Company whose resignation has not been requested by Parent) the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

2.5. *Officers.* The officers of the Company immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and Bylaws.

2.6. *Effect on Capital Stock.* At the Effective Time, as a result of the Merger and without any action on the part of the Company, Merger Sub, or any holder of any capital stock of the Company or Merger Sub:

(a) *Merger Consideration.* Each share of Common Stock (a " *Share* " or, collectively, the " *Shares* ") issued and outstanding immediately prior to the Effective Time, other than (*i*) the Shares described in *Sections 2.6(d)* and *2.8(b)* , and (*ii*) Shares (the " *Dissenting Shares* ") that are, as of immediately prior to the Effective Time, owned by stockholders (" *Dissenting Stockholders* ") who have perfected and not withdrawn a demand for, or lost their right to, payment of the fair value of such Shares pursuant to the DGCL (each Share referred to in clause (i) or (ii) above being an " *Excluded Share* " and collectively, " *Excluded Shares* "), shall be converted into the right to receive $25.50 in cash (the " *Per Share Merger Consideration* "), without interest. Subject to *Section 2.8(b)* , at the Effective Time, all of the Shares shall cease to be outstanding, shall automatically be cancelled and retired and shall cease to exist, and each certificate (a " *Certificate* ", it being understood that any reference herein to "Certificate" shall be deemed to include reference to book-entry account statements relating to the ownership of Shares) which immediately prior to the Effective Time

represented any Shares (other than Excluded Shares) shall thereafter represent only the right to receive the Per Share Merger Consideration multiplied by the number of such Shares, without interest.

(b) *Cancellation of Excluded Shares.* Each Excluded Share (other than those cancelled in accordance with *Section 2.8(b)*), by virtue of the Merger and without any action on the part of the holder thereof, shall cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall cease to exist, subject to the right of the Record Holder of any Dissenting Shares to receive the payment referred to in *Section 2.7(f)* with respect to such Dissenting Shares.

(c) *Merger Sub.* At the Effective Time, each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and non-assessable share of common stock, par value $0.01 per share, of the Surviving Corporation, and such shares shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(d) *Treasury Shares and Parent-Owned Shares.* Any Share owned by the Company (whether held in treasury or otherwise) or by Parent or Merger Sub, in each case immediately prior to the Effective Time, shall not represent the right to receive the Per Share Merger Consideration and shall be treated as an Excluded Share pursuant to *Sections 2.6(a)* and *(b)* hereof.

2.7. *Payment.*

(a) *Paying Agent.* Immediately prior to the Effective Time, Parent shall enter into a paying agent agreement in form and substance reasonably acceptable to the Company with a paying agent selected by Parent and reasonably satisfactory to the Company (the " *Paying Agent* "). Immediately prior to or at the Effective Time, Parent shall deposit and/or cause to be deposited (including by causing the Company and its Subsidiaries to deposit) with the Paying Agent, for the benefit of the Record Holders of Shares, for exchange in accordance with this *Article II* through the Paying Agent, an aggregate cash amount in immediately available funds necessary for the Paying Agent to make the aggregate payments under *Section 2.6(a)* (such cash being hereinafter referred to as the " *Exchange Fund* "). If, after the Effective Time, a Dissenting Stockholder effectively withdraws its demand for, or loses its, dissenters' rights pursuant to Section 262 of the DGCL with respect to any Dissenting Shares, Parent shall deposit, or cause to be deposited, with the Paying Agent additional funds in an amount equal to the product of (*i*) the number of Dissenting Shares for which the Dissenting Stockholder has withdrawn its demand for, or lost its, dissenters' rights pursuant to Section 262 of the DGCL and (*ii*) the Per Share Merger Consideration. The Paying Agent shall invest the Exchange Fund as directed by Parent; *provided* that such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's, respectively, or in money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of investment. Any interest and other income resulting from such investment shall be payable to Parent or the Surviving Corporation and any amounts in excess of the amounts payable under *Section 2.6(a)* shall be promptly returned to the Surviving Corporation. In addition to the foregoing, to the extent that there are any losses with respect to any such investments, Parent shall, or shall cause the Surviving Corporation to, promptly replace or restore the cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times maintained at a level sufficient for the Paying Agent to make such aggregate payments under *Section 2.6(a)* . The Exchange Fund shall not be used for any purpose other than to fund payments due pursuant to *Section 2.6(a)* .

(b) *Payment Procedures.*

(i) *Letter of Transmittal.* As soon as reasonably practicable after the Effective Time, the Surviving Corporation shall instruct the Paying Agent to mail to each Record Holder of Shares (other than Excluded Shares held by a Record Holder that does not also hold Shares that are not Excluded Shares) a letter of transmittal in customary form and with such other provisions as Parent and the Company shall reasonably agree and instructions for use in surrendering the Certificates representing such Shares and determining the amount to which such Record Holder is entitled as a result of the Merger in respect thereof. If any Dissenting Shares cease to be Dissenting Shares pursuant to *Section 2.7(f)* , Parent shall cause the Paying Agent promptly (and in any event within three (3) Business Days) after the date on which such Dissenting Shares cease to be Dissenting Shares to mail to the Record Holder of Shares the letter of transmittal and instructions referred to in the immediately preceding sentence, with respect to such Record Holder of Shares.

(ii) *Payment for Shares.* Upon delivery to the Paying Agent of such letter of transmittal by any Record Holder of Shares (other than Excluded Shares), duly completed and signed in accordance with its instructions, together with such other documents as may be reasonably required by the Paying Agent pursuant to such instructions and surrender of the Certificate that immediately prior to the Effective Time represented such Shares (or affidavit of loss in lieu thereof as provided in *Section 2.7 (e)* , or, if such Shares are held in book-entry or other uncertificated form, upon the entry through a book-entry transfer agent of the surrender of such Shares on a book-entry account statement), such Record Holder shall be entitled to receive from the Exchange Fund, and the Paying Agent shall pay, a cash amount in immediately available funds equal to the number of such Shares multiplied by the Per Share Merger Consideration, and, if applicable, the Certificate so surrendered shall forthwith be cancelled. No interest will be paid or accrued on any amount payable as provided above. Risk of loss of, and title to, any Certificate will pass only upon proper delivery as provided above. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, payment to be delivered upon compliance with the procedures described above may be made to the transferee if the applicable letter of transmittal and the Certificate representing such Shares is presented to the Paying Agent and is accompanied by all documents reasonably required by the Paying Agent to evidence and effect such transfer and to evidence that any applicable stock transfer Taxes have been paid or are not applicable. The Per Share Merger Consideration paid with respect to any Share in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to such Share.

(c) *Transfers.* From and after the Effective Time, the stock transfer books of the Company shall be closed and there shall be no transfers on the stock transfer books of the Company of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Person presents to the Surviving Corporation, Parent or the Paying Agent any Certificates or any transfer instructions relating to Shares cancelled in the Merger, such Person shall be given a copy of the letter of transmittal referred to in *Section 2.7(b)(i)* and instructed to comply with the instructions in that letter of transmittal in order to receive the cash to which such Person is entitled pursuant to this *Article II* .

(d) *Termination of Exchange Fund.* Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the Record Holders of Shares for one year after the Effective Time shall be delivered to the Surviving Corporation. Any Record Holder of Shares (other than Excluded Shares) who has not theretofore complied with this *Article II* shall thereafter look only to the Parent and Surviving Corporation for payment of the Per Share Merger Consideration for such Shares upon compliance with the instructions in the form of

letter of transmittal referred to in *Section 2.7(b)(i)* , without any interest thereon. Notwithstanding anything to the contrary herein, none of the Surviving Corporation, Parent, the Paying Agent or any other Person shall be liable to any Record Holder of Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar Laws.

(e) *Lost, Stolen or Destroyed Certificates.* In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact, in form reasonably satisfactory to Parent and the Paying Agent, by the Person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by Parent, the posting by such Person of a bond in customary amount and upon such terms as may be required by Parent as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent will make a payment in an amount equal to the number of Shares formerly represented by such lost, stolen or destroyed Certificate multiplied by the Per Share Merger Consideration, without any interest thereon.

(f) *Dissenting Shares.* Notwithstanding anything in this Agreement to the contrary, no Person who has prior to the Effective Time perfected a demand for dissenters' rights pursuant to Section 262 of the DGCL with respect to any Dissenting Shares shall be entitled to receive the Per Share Merger Consideration with respect to such Dissenting Shares unless and until such Person shall have effectively withdrawn (in accordance with Section 262 of the DGCL) or lost such Person's right to payment of fair value under the DGCL with respect to such Dissenting Shares. Unless and until a Dissenting Stockholder shall have effectively so withdrawn or lost such Dissenting Stockholder's right to appraisal under the DGCL with respect to Dissenting Shares, such Dissenting Stockholder shall be entitled to receive only the payment provided by Section 262 of the DGCL with respect to such Dissenting Shares. The Company shall give Parent (*i*) prompt notice of any written demands for payment of fair value, attempted withdrawals of such demands, and any other instruments served pursuant to applicable Law that are received by the Company relating to Company stockholders' dissenters' rights and (*ii*) the opportunity to participate in and control all negotiations and proceedings with respect to demands for payment of fair value by Company stockholders under the DGCL. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for payment of fair value, offer to settle or settle any such demands.

(g) *Withholding Rights.* Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement (including pursuant to *Sections 2.6(a)* and *2.8*) such Taxes as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the " *Code* ") or the rules and regulations promulgated thereunder, or under any other applicable provision of Law. To the extent that amounts are so deducted and withheld by Parent, the Surviving Corporation or the Paying Agent, as the case may be, and paid over to the proper Governmental Entity, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Record Holder of Shares in respect of which such deduction and withholding was made by Parent, the Surviving Corporation or the Paying Agent, as the case may be.

2.8. *Company Equity Awards.*

(a) At the Effective Time, (*i*) each unvested Company Stock Option shall become immediately vested and exercisable in full, and (*ii*) unless otherwise agreed to in writing by the Parent and a holder of Company Stock Options prior to the Effective Time, all Company Stock Options that are outstanding and are unexercised as of immediately prior to the Effective Time shall be cancelled and, in exchange therefor, each holder of any such cancelled Company Stock Option shall be entitled to receive, in consideration of the cancellation of such Company Stock

Option and in settlement therefor, a payment in cash of an amount equal to the product of (*A*) the total number of Shares previously subject to such Company Stock Option and (*B*) the excess, if any, of the Per Share Merger Consideration over the exercise price per Share previously subject to such Company Stock Option (such amount being hereinafter referred to as the " *Option Consideration* "). The Option Consideration shall be paid by the Surviving Corporation as soon as practicable following the Closing Date, and in any event within three (3) Business Days (at Parent's option, through the Company's payroll system or through the Paying Agent). From and after the Effective Time, there shall be outstanding no Company Stock Options, and the former holders thereof shall be entitled only to the payment of the Option Consideration, if any. Any Company Stock Option with respect to which the Option Consideration is $0, shall be cancelled for no consideration. The Company shall take such steps as may be necessary to terminate the Company Stock Incentive Plans as of the Effective Time.

(b) At the Effective Time, (*i*) each share of Restricted Stock outstanding under the Company Stock Incentive Plans shall become immediately vested in full and all restrictions thereupon shall lapse, (*ii*) each RSU outstanding under the Company Stock Incentive Plans shall become immediately vested in full and all restrictions thereupon shall lapse; *provided* , that with respect to all or any portion of an RSU award that vests on the achievement of performance measures, the number of Shares subject to such award or portion thereof earned or deemed earned shall be equal to the maximum amount of such award, and (*iii*) unless otherwise agreed to in writing by the Parent and the holder of such Restricted Stock or vested RSU prior to the Effective Time, each such share of Restricted Stock and each outstanding vested RSU (including those RSUs that vest by reason of the consummation of the transaction) shall be cancelled and the holder thereof shall be paid as soon as practicable following the Closing Date, and in any event within three (3) Business Days (at Parent's option, through the Company's payroll system or through the Paying Agent) an amount equal to the Per Share Merger Consideration in respect of each Share underlying the cancelled vested share of Restricted Stock or RSU (as applicable) and in the case of clause (iii), unless a valid deferral election is in place with respect to such amount, in which case such amount shall be paid in accordance with such election.

(c) The Company Board (or appropriate committee thereof) shall pass resolutions and take all other such action as may be reasonably necessary to effectuate the treatment of the Company Stock Options, Restricted Stock and RSUs (collectively, the " *Company Equity Awards* ") as contemplated by this *Section 2.8* to the effect that (*i*) all awards issued under the Company Stock Incentive Plans shall be settled as of the Effective Time as contemplated by this Agreement, and (*ii*) neither any holder of Company Equity Awards, nor any other participant in any Company Stock Incentive Plan shall have any right thereunder to acquire any securities of the Company, the Surviving Corporation, Parent, or to receive any payment or benefit with respect to any award previously granted under the Company Stock Incentive Plans, except as provided in this *Section 2.8* .

ARTICLE III

Representations and Warranties of the Company

Except as set forth in (*a*) the Company SEC Documents (excluding, in each case, any disclosures contained or referenced therein under the captions "Risk Factors" or "Forward Looking Statements" and any other disclosures contained or referenced therein relating to information, factors or risks that are predictive, cautionary or forward-looking in nature) filed with the SEC after December 31, 2011 and prior to the date of this Agreement (and then (i) only to the extent that the relevance of any disclosed event, item or occurrence in such Company SEC Documents to a matter covered by a representation or warranty set forth in this *Article III* is reasonably apparent as to matters and items which are subject of such representation or warranty, (ii) other than any matters required to be

disclosed for purposes of *Sections 3.1* , *3.2* , *3.3* , *3.6* and *3.7* , which matters shall only be disclosed by specific disclosure in the respective corresponding section of the Company Disclosure Letter, and (iii) without giving effect to any amendment to any such documents filed on or after the date hereof) or (*b*) the corresponding sections or subsections of the disclosure letter delivered to Parent by the Company concurrently with the execution and delivery of this Agreement (the " *Company Disclosure Letter* ") (it being acknowledged and agreed that disclosure of any item in any section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to any other section or subsection only to the extent that the relevance of such disclosure to such other section or subsection is reasonably apparent on the face of such disclosure), the Company hereby represents and warrants to Parent and Merger Sub as follows:

3.1. *Organization, Standing and Power.* The Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has requisite corporate, partnership, limited liability company or other company (as the case may be) power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be in good standing or to have such corporate, partnership, limited liability company or other company (as the case may be) power and authority has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each of its Subsidiaries is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true, complete and correct copies of its certificate of incorporation and by-laws and has made available to Parent the certificate of incorporation and by-laws (or similar organizational documents) of each of its Subsidiaries.

3.2. *Subsidiaries.*

(a) Exhibit 21 to the Company's annual report on Form 10-K for the fiscal year ended December 30, 2011 sets forth each of the Company's "significant subsidiaries", as such term is defined in Section 1-02(w) of Regulation S-X under the Exchange Act. All of the outstanding Equity Interests of each Subsidiary of the Company that is a corporation have been duly authorized and validly issued and are fully paid and nonassessable. All of the outstanding Equity Interests of each Subsidiary of the Company are owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company, free and clear of all Liens other than Liens under the Existing ABL Facility.

(b) Except for the Equity Interests of Buyers Access and the Company's Subsidiaries set forth on Exhibit 21 to the Company's annual report on Form 10-K for the fiscal year ended December 30, 2011, the Company does not own, directly or indirectly, any other Equity Interests of any other Person. There are no outstanding contractual obligations of the Company or any of its Subsidiaries to provide any funds to or make any investment in respect of any unsatisfied subscription obligation or capital contribution or capital account funding obligation in Buyers Access or any other Person.

3.3. *Capital Structure.* The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock and 20,000,000 shares of preferred stock, par value of $.01 per share (the " *Company Preferred Stock* "). At the close of business on May 24, 2012 (the " *Capitalization Date* "), (*a*) 31,855,447 Shares were issued and outstanding, all of which were duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights, including 0 Shares that are subject to vesting or other risks of forfeiture pursuant to awards granted under the Company Stock Incentive Plans (" *Restricted Stock* "), (*b*) 2,037,163 Shares were held by the Company in its treasury, (*c*) 3,317,754

Shares were reserved for issuance pursuant to outstanding options to purchase Common Stock (the " *Company Stock Options* ") granted under the Company's 2000 Stock Award Plan and 2004 Equity Incentive Plan (collectively, the " *Company Stock Incentive Plans* "), (*d*) 729,165 are restricted stock unit awards (including any awards referred to in the Company SEC Documents as "restricted share units" and awards referred to by the Company as "deferred stock units") with respect to the Shares granted by the Company (" *RSUs* "), (*e*) 826,449 shares of Common Stock were reserved for the grant of additional awards under the Company Stock Incentive Plans, and (*f*) no shares of Company Preferred Stock were issued and outstanding. *Section 3.3* of the Company Disclosure Letter sets forth, by employee, as of the Capitalization Date, the number of Company Stock Options, shares of Restricted Stock, RSUs and, to the extent applicable, the grant date, exercise or reference price and number of Shares issuable with respect to each such award. Except as set forth in this *Section 3.3* and for changes since the Capitalization Date resulting from the exercise of Company Stock Options outstanding on such date or as may be permitted pursuant to *Section 5.1* , there are no outstanding (*i*) Equity Interests of the Company, (*ii*) bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the stockholders of the Company or its Subsidiary, as the case may be, may vote, or (*iii*) securities, options, warrants, calls, rights, commitments, profits interests, stock appreciation rights, phantom stock agreements, arrangements or undertakings to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional Equity Interests of the Company or of any of its Subsidiaries (or any security convertible or exercisable therefor) or obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking (the items in clauses (i) through (iii) being referred to collectively as the " *Company Securities* "). There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Securities. There are no voting trusts, proxies or other agreements to which the Company or any of its Subsidiaries is a party with respect to the voting of any Shares or other Company Securities. No Shares are owned by any Subsidiary of the Company.

3.4. *Authority.*

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and, subject to obtaining the Requisite Company Vote, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger and the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to adoption of this Agreement by the holders of a majority of the outstanding Shares (the " *Requisite Company Vote* "). This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent and Merger Sub) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that such enforceability (*i*) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally and (*ii*) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(b) The Company Board, at a meeting duly called and held, has unanimously (*i*) determined that this Agreement and the Merger and the other transactions contemplated hereby are fair to, and in the best interests of, the stockholders of the Company, (*ii*) approved and declared advisable this Agreement and the Merger and the other transactions contemplated hereby, and (*iii*) resolved to recommend adoption by the stockholders of the Company of this Agreement, which resolutions,

as of the date hereof, have not been subsequently withdrawn or modified in a manner adverse to Parent or Merger Sub.

3.5. *Consents and Approvals; No Violations.* Except for filings, permits, authorizations, consents and approvals set forth in *Section 3.5* of the Company Disclosure Letter or filing of the Merger Certificate with The Delaware Secretary of State, filing of the Proxy Statement, or as may be required under, and other applicable requirements of, the Exchange Act, the HSR Act, Regulatory Laws, the DGCL, the rules and regulations of the NYSE and state securities Laws, neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (*a*) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or the bylaws of the Company, or of the similar organizational documents of any of the Company's Subsidiaries, (*b*) require the Company to make any notice to, or filing with, or obtain any permit, authorization, consent or approval of, any Governmental Entity or workers council or similar organization, (*c*) assuming compliance with the matters referred to in clause (*b*) and obtaining the Requisite Company Vote, contravene, conflict with or result in a violation or breach of any provision of any applicable Law, (*d*) require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit under, any of the terms, conditions or provisions of any Material Contract, or (*e*) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, with such exceptions, in the case of each of clauses (*b*) through (*e*), as would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.6. *Company SEC Documents.* The Company has filed with or furnished to the SEC, on a timely basis, all forms, reports, statements, certifications, schedules and other documents required to be filed with the SEC or furnished to the SEC by the Company since December 31, 2009 under the Securities Act or the Exchange Act (all such forms, reports, statements, certifications, schedules and other documents filed since December 31, 2009, together with any documents so filed or furnished during such period on a voluntary basis, as the same may have been amended since their filing, collectively, the " *Company SEC Documents* "). As of their respective filing dates, the Company SEC Documents (as amended, if applicable) complied, in all material respects, with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed. At the time filed with the SEC (or if amended prior to the date hereof, as of the date of such amendment), none of the Company SEC Documents (as amended, if applicable) contained any untrue statement of a material fact or omitted a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Company SEC Documents (including the related notes and schedules thereto) complied, as of their respective dates, in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly presented in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein). None of the Company's Subsidiaries is required to file periodic reports with the SEC.

3.7. *Internal Controls; Sarbanes-Oxley Act.*

(a) The Company and its Subsidiaries have implemented and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (*i*) transactions are executed in accordance with management's general or specific authorizations, (*ii*) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (*iii*) access to assets is permitted only in accordance with management's general or specific authorization, and (*iv*) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) The Company (*i*) has implemented and maintains disclosure controls and procedures (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure, and (*ii*) has disclosed to the Company's auditors and the audit committee of the Company Board (*A*) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial information and (*B*) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. The principal executive officer and principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act and the regulations of the SEC promulgated thereunder, and the statements contained in all such certifications were as of their respective dates made true, complete and correct.

(c) Since January 1, 2010 through the date of this Agreement, to the Knowledge of the Company, (*i*) none of the Company, any of its Subsidiaries or any director, officer, or auditor of the Company or any of its Subsidiaries has received, and the Company has no Knowledge of, any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Company or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices, and (*ii*) no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the Company Board or any committee thereof or to any director or officer of the Company.

3.8. *Absence of Material Adverse Change.* From December 31, 2011 through the date hereof, (*a*) the Company and its Subsidiaries have conducted their respective businesses in all material respects in the ordinary course consistent with past practice, (*b*) there shall not have occurred any fact, circumstance, change, event, occurrence or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and (*c*) neither the Company nor any of its Subsidiaries has taken any action or agreed to take any action that would be prohibited by *Sections 5.1(a)(i)* through *(iii)* , *(c)* , (*d*), (*e*), (*f*), (*g*), (*i*), (*j*), (*k*), (*m*), (*q*) or, to the extent applicable to such sections, (*r*) if it were taken on or after the date of this Agreement without Parent's consent.

3.9. *Information Supplied.* None of the information supplied or to be supplied by the Company or any of its Representatives for inclusion or incorporation by reference in the Proxy Statement relating to the Stockholders Meeting will, at the time the Proxy Statement is first mailed to the Company's

stockholders or at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein based on information supplied in by Parent or Merger Sub or any of their Representatives.

3.10. *Availability for Restricted Payments.*

(a) As of the date hereof, the aggregate dollar amount available to Opco to make Restricted Payments in cash to the Company under Section 4.09(a) of the Existing Notes Indenture, Section 4.09(b)(4) of the Existing Notes Indenture, Section 4.09(b)(9) of the Existing Notes Indenture, Section 4.09(b)(12) of the Existing Notes Indenture and Section 4.09(b)(13) of the Existing Notes Indenture, taken together (collectively, the " *Specified RP Baskets* ") is not less than the amount set forth in *Section 3.10(a)* of the Company Disclosure Letter.

(b) As of the date hereof, no Default or Event of Default (as defined in the Existing Notes Indenture) exists or is continuing under the Existing Notes Indenture.

(c) As of the date hereof, the Consolidated Coverage Ratio (as defined in the Existing Notes Indenture) of Opco for the four quarter period ending March 30, 2012 exceeds the ratio set forth in *Section 3.10(c)* of the Company Disclosure Letter.

3.11. *Compliance with Laws.*

(a) Each of the Company and its Subsidiaries is in compliance, and since December 31, 2009, has been in compliance, in all material respects, with all applicable Laws. Each of the Company and its Subsidiaries is in possession of all licenses, certificates, authorizations, consents, permits, approvals and other similar authorizations of, from or by a Governmental Entity (collectively, " *Permits* ") necessary for it to own, lease or operate its properties and assets and to carry on its business as now conducted, all such Permits are valid and in full force and effect, no default has occurred under, and there exists no event that, with notice or passage of time or both, would result in a default under, any such Permit, and none of the Company or any of its Subsidiaries has received any cease and desist letters or material inquiries from any Governmental Entity with respect to any such Permit, except where the absence of Permits, where the failure of Permits to be valid and in full force and effect, or where defaults under Permits have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Since December 31, 2009, (*i*) neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any of their respective Representatives, auditors or accountants has received (x) any material written notice or other written communication from a Governmental Entity that alleges that the Company or any of its Subsidiaries is not in compliance with any Law applicable to the Company, any of its Subsidiaries or their respective businesses, operations, properties or assets or (y) any material written notice or other written communication or, to the Knowledge of the Company, any oral complaint, allegation, assertion or claim on a hotline or whistleblower or similar telephone line or service regarding deficiencies in the compliance practices, procedures, methodologies or methods of the Company or its Subsidiaries or their employees or their respective internal compliance controls, including any complaint, allegation, assertion or claim that the Company or its Subsidiaries or their employees has engaged in illegal practices with respect to the business of the Company and its Subsidiaries, and (*ii*) no attorney representing the Company or its Subsidiaries or any of their employees has reported evidence of a material violation of any Laws by the Company or its Subsidiaries or any of their Representatives,

except, in each case, for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect.

(c) The Company and each Subsidiary of the Company is in compliance with the FCPA and any other applicable anti-bribery, anti-corruption or similar applicable Laws and all applicable Laws relating to financial record keeping and reporting, currency transfer and money laundering (collectively, the " *Money Laundering Laws* ") and all applicable export control Laws. The Company and its Subsidiaries have established internal controls and procedures reasonably designed to ensure compliance with the FCPA, all other anti-bribery, anti-corruption or similar Laws, all Money Laundering Laws and all export control Laws applicable to them or the conduct of their business.

3.12. *Tax Matters.*

(a) Each of the Company and its Subsidiaries has timely filed or caused to be timely filed (after taking into account all applicable extensions) all material Tax Returns required to be filed by it, and all such Tax Returns are true, complete and correct in all material respects.

(b) Each of the Company and its Subsidiaries has timely paid or caused to be timely paid all material Taxes due (whether or not shown to be due on any Tax Return).

(c) There are, to the Knowledge of the Company, no pending audits, examinations, investigations or other proceedings in respect of Taxes of the Company or any of its Subsidiaries, except for such audits, examinations, investigations or other proceedings that are not reasonably expected to give rise to any material liability. No Governmental Entity has asserted or threatened to assert any deficiency, claim or issue with respect to Taxes or any adjustment to Taxes against the Company or any of its Subsidiaries with respect to any taxable period for which the period of assessment or collection remains open, except for such deficiencies, claims, or issues that are not reasonably expected to give rise to any material liability. All U.S. federal income Tax Returns filed with respect to Tax years of the Company and its Subsidiaries through the Tax year ended December 31, 2007 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under applicable Law, after giving effect to extensions or waivers, has expired.

(d) To the Knowledge of the Company, no claim has been made in writing by a Governmental Entity in a jurisdiction where the Company or any Subsidiary does not file a particular type of Tax Return that the Company or any such Subsidiary is or may be required to file such Tax Return in such jurisdiction, except for such claims as would not be reasonably expected to give rise to any material liability.

(e) Neither the Company nor any of its Subsidiaries (*i*) has received or applied for a Tax ruling or entered into a closing agreement pursuant to Section 7121 of the Code (or any predecessor provision or any comparable provision of state, local or foreign Law) or (*ii*) is a party to any Tax sharing or indemnity agreement. Neither the Company nor any of its Subsidiaries is liable for any Taxes of any other Person (other than the Company and its Subsidiaries) pursuant to Treasury Regulation Section 1.1502-6 (or any comparable provision of state, local or foreign Law).

(f) With respect to each of the Company and its Subsidiaries, (*i*) there is no currently effective waiver, document or other agreement extending the statute of limitation or period of assessment or collection of any material Taxes and (*ii*) no power of attorney with respect to any material Taxes has been executed or filed with any Governmental Entity (excluding powers of attorney granted to employees of the Company or any of its Subsidiaries acting on behalf of the Company or any of its Subsidiaries). Neither the Company nor any of its Subsidiaries has extended the time within which to file any material Tax Return (other than an automatic extension not requiring the consent of any Governmental Entity), which Tax Return has since not been filed.

(g) Each of the Company and its Subsidiaries, within the time and in the manner prescribed by Law, has withheld and paid over to the proper Governmental Entity all material amounts required to be withheld and paid over under applicable Law (including Sections 1441, 1442, 3102 and 3402 of the Code or any other applicable provision of state, local or foreign Law).

(h) Neither the Company nor any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(i) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (*i*) in the two-year period ending on the date of this Agreement (or will constitute such a corporation in the two-year period ending on the Effective Time) or (*ii*) that could otherwise constitute a "plan" or "series of related transactions" in conjunction with the transactions contemplated by this Agreement.

(j) Neither the Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing as a result of any (*i*) change in method of accounting for a taxable period ending on or prior to the Closing Date under Section 481 of the Code (or any corresponding provision of state, local or foreign Law), (*ii*) installment sale or open transaction disposition made on or prior to the Closing Date, (*iii*) prepaid amount received on or prior to the Closing Date or (*iv*) any election pursuant to Section 108(i) of the Code (or any similar provision of state, local or foreign law) made on or prior to the Closing Date.

(k) A list of (*i*) all of the states, territories and jurisdictions in which material Tax Returns with respect to the Company or any of its Subsidiaries were filed for the past three (3) years and (*ii*) all elections made under Treasury Regulation Section 301.7701-3 for the Company or any of its Subsidiaries are set forth on *Section 3.12* of the Company Disclosure Letter. True, complete and correct copies of all such Tax Returns have been made available to Parent. No other material elections for Tax purposes (including entity classification elections) have been made with respect to the Company or any of its Subsidiaries that are in force or by which the Company or any of its Subsidiaries is bound.

(l) Neither the Company nor any of its Subsidiaries has outstanding any material deferred intercompany gain or loss under United States federal income tax Law or under any comparable provision of state, local or foreign Law.

(m) The Company is not a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

3.13. *Liabilities.* Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than liabilities and obligations: (*a*) reflected, reserved for or disclosed in the Company's consolidated balance sheet for the fiscal quarter ended March 30, 2012 included in the Company SEC Documents (or in the related notes and schedules thereto), (*b*) incurred in the ordinary course of business since March 30, 2012, (*c*) incurred in connection with the Merger or any other transactions expressly permitted or required by this Agreement, or (*d*) that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect.

3.14. *Litigation.* Except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, (*i*) there is no Action pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries and (*ii*) neither the Company nor any of its Subsidiaries is subject to or bound by any material outstanding Order.

3.15. *Benefit Plans.*

(a) Each material Benefit Plan and each material Employment Agreement is listed in *Section 3.15(a)* of the Company Disclosure Letter. Each such Benefit Plan and Employment Agreement has been publicly filed or otherwise made available to Parent, and with respect to each such Benefit Plan, the Company has made available to Parent a true, complete and correct copy of (to the extent applicable) (*i*) each trust, funding, insurance or administrative agreement relating to each such Benefit Plan; (*ii*) the most recent summary plan description of other written explanation of each such Benefit Plan provided to participants; (*iii*) the two most recent Forms 5500 required to have been filed with the IRS (or any similar reports filed in any comparable non-U.S. Governmental Entity) and any schedule thereto; and (*iv*) the most recent determination letter issued by the IRS (or comparable qualification document issued by a comparable non-U.S. Governmental Entity). Neither the Company nor any of its Subsidiaries has communicated any intention or commitment to amend or modify any Benefit Plan or Employment Agreement or to establish or implement any other employee or retiree benefit or compensation plan or arrangement.

(b) Each Benefit Plan and each Employment Agreement has been maintained in compliance in all material respects with its terms and with the requirements of applicable Law. All material employer or employee contributions, premiums and expenses to or in respect of each Benefit Plan have been paid in full or, to the extent not yet due, have been adequately accrued on the applicable financial statements of the Company included in the Company SEC Documents in accordance with GAAP.

(c) No Benefit Plan is subject to Title IV of ERISA, neither the Company nor any of its Subsidiaries or ERISA Affiliates has incurred any liability under Title IV of ERISA and, to the Knowledge of the Company, there are no facts or circumstances that could reasonably be expected to give rise to such liability. Neither the Company nor any of its Subsidiaries or its ERISA Affiliates has at any time during the six-year period preceding the date hereof maintained, contributed to or incurred any liability under any "multiemployer plan" (as defined in Section 3(37) of ERISA).

(d) As of the date hereof, there are no pending or, to the Knowledge of the Company, threatened, disputes, arbitrations, claims, suits or grievances involving a Benefit Plan or Employment Agreement (other than routine claims for benefits payable under any such Benefit Plan or Employment Agreement) that would reasonably be expected to result in a material liability to the Company or any of its Subsidiaries.

(e) All Benefit Plans that are intended by their terms to be qualified under Section 401(a) of the Code have been determined by the IRS to be so qualified, or a timely application for such determination is now pending or is not yet required to be filed and, to the Knowledge of the Company, no event has occurred that would reasonably be expected to materially and adversely affect the qualification of such plans. Neither the Company nor any of its Subsidiaries has any material liability or obligation under any welfare plan or agreement to provide benefits after termination of employment to any employee or dependent other than as required by Section 4980B of the Code or applicable Law.

(f) Except as expressly provided under this Agreement and except as set forth on *Section 3.15(f)* of the Company Disclosure Letter, neither the entering into this Agreement nor the consummation of the transactions contemplated by this Agreement will (alone or in combination with any other event) (*i*) entitle any current or former officer, director, manager, employee or consultant of the Company or any Subsidiary or any independent contractor to severance pay or any other payment, (*ii*) accelerate the time of payment or vesting, result in any forgiveness of indebtedness or trigger any payment of funding (through a grantor trust or otherwise) of

compensation or benefits under, increase the amount payable pursuant to, any Benefit Plan, Employment Agreement or other arrangement, or (*iii*) result in any payment (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in Treasury Regulation section 1.280G-1) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (as defined in section 280G(b)(1) of the Code). Except as set forth on *Section 3.15(f)* of the Company Disclosure Letter, no person is entitled to receive any additional payment (including any tax gross-up or other payment) from the Company or any of its Subsidiaries as a result of the imposition of any excise taxes required by section 4999 of the Code or any taxes required by section 409A of the Code.

(g) Each non-U.S. Benefit Plan has been maintained in material compliance with its terms and with the requirements prescribed by any and all applicable statutes, orders, rules, and regulations (including any special provisions relating to qualified plans where such non-U.S. Benefit Plan was intended to so qualify) and has been maintained in good standing with applicable regulatory authorities. No non-U.S. Benefit Plan is a defined benefit plan (within the meaning of Section 3(35) of ERISA, whether or not subject to ERISA).

3.16. *Intellectual Property.*

(a) *Section 3.16(a)* of the Company Disclosure Letter contains a true, complete and correct list of all registered trademarks, copyrights, patents and domain names and applications for the foregoing (" *Registered Intellectual Property* "), and material unregistered Intellectual Property, in each case that is owned by the Company or any of its Subsidiaries. To the Knowledge of the Company, each item of Registered Intellectual Property is in good standing with the Governmental Entity with which it is registered or pending. To the Knowledge of the Company, the Company and its Subsidiaries own, or are validly licensed or otherwise have the right to use all Intellectual Property reasonably necessary for the conduct of the business of the Company and its Subsidiaries as currently conducted. No claims are pending or, to the Knowledge of the Company, threatened, (*i*) challenging the ownership, enforceability or validity of any Company Intellectual Property, or (*ii*) alleging that the Company or any of its Subsidiaries is violating, misappropriating or infringing the rights of any Person with regard to any Intellectual Property other than claims that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect. To the Knowledge of the Company, no Person is violating, misappropriating or infringing any of the Company Intellectual Property. To the Knowledge of the Company, the operation of the business of the Company and its Subsidiaries as currently conducted does not violate, misappropriate or infringe the Intellectual Property of any other Person. Except for actions that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries take and have taken commercially reasonable actions to maintain and preserve the Company Intellectual Property. To the Knowledge of the Company, except as would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby shall impair or alter any of the Company's or its Subsidiaries' rights in any Company Intellectual Property.

(b) The Company and its Subsidiaries own the Company Intellectual Property free from any Liens, other than Permitted Liens. To the Knowledge of the Company, except for matters that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries have, at all times, complied with their own policies and procedures relating to data privacy and security. To the Knowledge of the Company, except for matters that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, computer services or other

information technology assets of the Company or of any of its Subsidiaries that are material to each of their respective businesses do not contain any viruses, malicious code or other faults that, in each case, present a substantial risk that a Person would obtain unauthorized access to them. To the Knowledge of the Company, since December 31, 2009, except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, there have been no (*A*) failures of computer services or other information technology assets that have caused disruptions that are material to the Company or any of its Subsidiaries or customers, or (*B*) security breaches relating to, violations of any security policy regarding or any unauthorized access of any data, computer services or other information technology assets used in the business of the Company or any of its Subsidiaries.

3.17. *Material Contracts.*

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by any Contract, arrangement, commitment or understanding that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K under the Securities Act) that has not been filed or incorporated by reference in the Company SEC Documents. Except as set forth in *Section 3.17(a)* of the Company Disclosure Letter, (*i*) neither the Company nor any of its Subsidiaries is in breach of or default under, with or without notice or lapse of time or both, in any material respect, the terms of any Material Contract (as defined below), (*ii*) to the Knowledge of the Company, no other party to any Material Contract is in breach of or default under, with or without notice or lapse of time or both, in any material respect, the terms of any such Material Contract, (*iii*) each Material Contract is a valid and binding obligation of the Company or its Subsidiary that is a party thereto and is in full force and effect (except as such enforceability (*x*) may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally and (*y*) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law), and (*iv*) neither the Company nor any of its Subsidiaries has received any written notice or claim of default under any Material Contract or any written notice of an intention to terminate, not renew or challenge the validity or enforceability of any Material Contract.

(b) For purposes of this agreement, the term " *Material Contract* " means any of the following Contracts (together with all exhibits and schedules thereto) to which the Company or any of its Subsidiaries is a party as of the date hereof (in each case, other than a Benefit Plan or an Employment Agreement):

(i) Any limited liability company agreement, joint venture or other similar agreement or arrangement relating to the formation, creation, operation, management or control of any limited liability company, partnership or joint venture, other than any such limited liability company or partnership that is a wholly-owned Subsidiary of the Company;

(ii) Any Contract (other than among Opco and consolidated Subsidiaries of Opco) relating to (*A*) indebtedness for borrowed money (whether incurred, assumed, guaranteed or secured by any asset), including any note, bond, debenture or other evidence of indebtedness issued by the Company or any of its Subsidiaries other than (1) the Existing ABL Facility and the Existing Notes Indenture and (2) capital leases of Opco and its subsidiaries not in excess of $2,500,000 in the aggregate and that are entered into in the ordinary course of business consistent with past practice, or (*B*) any interest rate, currency or commodity derivatives or hedging transactions;

(iii) Any Contract required to be filed as an exhibit to the Company's Annual Report on Form 10-K pursuant to Item 601 (b)10 of Regulation S-K under the Securities Act or required to be disclosed by the Company in a Current Report on Form 8-K;

(iv) Any Contract that (*A*) limits or purports to limit the right of the Company or any of its Subsidiaries or Affiliates to engage or compete in any line of business or to compete with any Person or operate in any location, (*B*) contains exclusivity obligations or similar restrictions binding on and material to the Company or any of its Subsidiaries or that would be binding on Parent or any of its Affiliates (other than the Company or any of its Subsidiaries) after the Closing, or (*C*) grants a most-favored nation status to any Person other than the Company or any of its Subsidiaries, in a manner that is material to the business of the Company and its Subsidiaries, taken as a whole, as conducted on the date hereof;

(v) Any Contract that (*A*) prohibits the pledging of the capital stock of the Company or any Subsidiary of the Company, or prohibits the issuance of guarantees by any Subsidiary of the Company, or (*B*) restricts the making of Restricted Payments by Opco other than as set forth in the Existing ABL Facility and the Existing Notes Indenture;

(vi) Any Contract or series of related Contracts, including any option agreement containing ongoing performance obligations of the Company or any of its Subsidiaries and relating to the acquisition or disposition of any business, capital stock or all or substantially all of assets of any other Person or any material real property (whether by merger, sale of stock, sale of assets or otherwise) other than any Contract entered into in the ordinary course of business consistent with past practice and that is not otherwise material to the business of the Company and its Subsidiaries, taken as a whole, as conducted on the date hereof;

(vii) Any Contract pursuant to which the Company or any of its Subsidiaries has continuing indemnification, "earn-out" or other contingent payment obligations, in each case that would reasonably be expected to result in payments, individually or in the aggregate, in excess of $500,000 other than indemnification arrangements arising pursuant to Contracts that are entered into in the ordinary course of business consistent with past practice (except for Contracts relating to an acquisition of any business, capital stock or all or substantially all of assets of any other Person or any material real property);

(viii) Any Contract under which (*A*) any Person (other than the Company or any of its Subsidiaries) has directly or indirectly guaranteed any liabilities or obligations of the Company or any of its Subsidiaries, or (*B*) the Company or any of its Subsidiaries has directly or indirectly guaranteed any liabilities or obligations of any Person (other than the Company or any of its Subsidiaries), in each case other than endorsements for purpose of collection in the ordinary course of business;

(ix) Any Real Estate Lease pursuant to which the Company or any of its Subsidiaries incur annual expenses in excess of $500,000;

(x) Any Contract requiring any capital commitment or capital expenditure (or series of capital expenditures) by the Company or any of its Subsidiaries in an amount that individually or in the aggregate is greater than $5,000,000;

(xi) Any Contract for the purchase by or from or the provision by or to the Company or any of its Subsidiaries of materials, supplies, goods, services, equipment or other assets (including any Contract relating to the distribution or marketing of any of the foregoing by the Company or any of its Subsidiaries), including any such Contract with a Governmental Entity, that is not terminable without material penalty on ninety (90) days' notice by the Company or any of its Subsidiaries which generates and is reasonably likely to generate, annual revenue for the Company and its Subsidiaries of $2,000,000 or more, or pursuant to which the Company and its Subsidiaries incur, or are reasonably likely to incur, annual expenses in excess of $2,500,000 or more.

A true, complete and correct list of the Material Contracts is set forth in *Section 3.17(b)* of the Company Disclosure Letter. The Company has made available to Parent true, complete and correct copies of all of the Material Contracts, including any amendments thereto.

3.18. *Properties.*

(a) *Real Property.* The Company or one of its Subsidiaries has (*i*) good and valid fee simple title to each parcel of real property owned by the Company or any of the Company's Subsidiaries (together with all improvements and fixtures located thereon or attached or appurtenant thereto, and all easements, licenses, rights and appurtenances relating to the foregoing, the " *Owned Real Property* "), and (*ii*) valid leasehold estates in all Leased Real Property, in each case free and clear of any Lien, other than Permitted Liens and as would not, individually or in the aggregate, have or reasonably be expected to have a Company Material Adverse Effect. Except as provided in *Section 3.18(a)* of the Seller Disclosure Letter, neither the Company nor any of its Subsidiaries is a lessor, sublessor or grantor under any lease, sublease or other similar written instrument which generates, or is reasonably likely to generate, annual revenue for the Company and its Subsidiaries of $500,000 or more that grants to any other Person any material right to the possession, lease, occupancy or enjoyment of any material Owned Real Property, Leased Real Property or material portion thereof. *Section 3.18(a)* of the Company Disclosure Letter contains a true, complete and correct list of all Owned Real Property.

(b) *Personal Property.* Except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, the Company and its Subsidiaries have good and marketable title to, or valid and enforceable rights to use under existing franchises, easements or licenses, or valid and enforceable leasehold interests in, all of its tangible personal properties and assets necessary to carry on their businesses as is now being conducted, free and clear of all Liens, except for Permitted Liens.

3.19. *Environmental Laws.* Except as set forth on *Section 3.19* of the Company Disclosure Letter, (a) except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, *(i)* the Company and its Subsidiaries have been and are in compliance with all Environmental Laws and are in possession of, and in compliance with, all Environmental Permits necessary for the conduct and operation of the business; *(ii)* all such Environmental Permits are in full force and effect; and no action is pending, or to the Knowledge of the Company, threatened, to suspend, modify, amend or challenge any Environmental Permit; *(iii)* to the Knowledge of the Company, there is not now and has not been any Hazardous Substance used, generated, treated, released, or otherwise existing at, on, under or emanating from any Facility except as would not reasonably be expected, individually or in the aggregate, to result in liabilities under, applicable Environmental Laws; *(iv)* the Company and its Subsidiaries have not received any notice of alleged, actual or potential responsibility for, or any inquiry or investigation regarding, any release or threatened release of Hazardous Substances or alleged violation of, or non-compliance with, any Environmental Law, including with respect to any Hazardous Substance located at any real property formerly owned, leased or operated by the Company or any of its Subsidiaries (or any of their predecessors) (" *Former Facilities* ") or transported or disposed off-site by or on behalf of the Company or any of its Subsidiaries, and, to the Knowledge of the Company, no such notice is threatened; (*v*) there are no Actions pending, or, to the Knowledge of the Company, threatened against or regarding the Company or any of its Subsidiaries arising under Environmental Laws; (*vi*) neither the Company nor any of its Subsidiaries is or has been the subject of any claims alleging any damages arising from the use of or exposure to any asbestos or asbestos containing products manufactured, used, distributed, or sold on or prior to the Closing by the Company or the Subsidiaries (or any of their predecessors); and (*vii*) to the Knowledge of the Company, there are no past or present conditions, events, circumstances, facts, activities, practices, incidents, actions, omissions or plans that would reasonably be expected to (*A*) interfere with or prevent continued compliance by

the Company or its Subsidiaries with Environmental Laws and the requirements of Environmental Permits or (*B*) give rise to any liability or other obligation under any Environmental Laws; (*b*) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will require any investigation or remediation activities or notice to or consent of any Governmental Entity or third parties pursuant to any Environmental Law, including with respect to the New Jersey Industrial Site Recovery Act; and (*c*) the Company has delivered, or made available to Parent, copies of any material environmental assessments, reports, audits, studies, analyses, tests or monitoring possessed by or otherwise reasonably available to the Company or its Subsidiaries pertaining to compliance with, or liability under, Environmental Laws relating to the Facilities, the Former Facilities or the Company or its Subsidiaries. This *Section 3.19* contains the sole representations and warranties made by the Company with respect to matters arising under Environmental Laws.

3.20. *Insurance Policies.* Except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, (*a*) all insurance policies maintained by the Company and its Subsidiaries are in full force and effect and all premiums due and payable thereon have been paid, (*b*) neither the Company nor any of its Subsidiaries is in breach or default of any of its insurance policies, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action which, with notice or the lapse of time, would constitute such a breach or default or permit termination or modification of any of such policies, (*c*) there is no claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies and there has been no written threat of termination of, alteration in coverage, or premium increase with respect to any such policies, and (*d*) the Company has not received any written notice of termination, cancellation, or non-renewal with respect to any such policy.

3.21. *Labor and Employment Matters.* Neither the Company nor any of its Subsidiaries (a) has, in the United States, agreed to recognize any labor union or labor organization, nor has any labor union or labor organization, in the United States, been certified as the exclusive bargaining representative of any employees of the Company or any of its Subsidiaries, (b) is a party to or otherwise bound by, or currently negotiating, any collective bargaining agreement or other Contract with a labor union or labor organization in the United States, or (c) as of the date hereof is the subject of any material proceeding asserting that the Company or any of its Subsidiaries has committed an unfair labor practice or seeking to compel it to bargain with any labor union or labor organization, nor, to the Knowledge of the Company is any such proceeding threatened. Except for matters that, individually or in the aggregate, have not had or would not reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries are in compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety and health requirements, plant closings, wages and hours, withholding of taxes, Form I-9 matters, employment discrimination, disability rights or benefits, equal opportunity, labor relations, employee leave issues and unemployment insurance and related matters, and (ii) to the Knowledge of the Company, none of the Company or any of its Subsidiaries has classified an individual as an "independent contractor" or of similar status who, according to a Benefit Plan or applicable Law, should have been classified as an employee or of similar status.

3.22. *Related Party Transactions.* No present or former director, officer or Affiliate (other than any Subsidiary of the Company) of the Company or any of its Subsidiaries (each of the foregoing, a " *Related Party* ") (*a*) is, or since December 31, 2010, has been, a party to any transaction, Contract or understanding with or binding upon the Company or any of its Subsidiaries or any of their respective properties or assets (other than employment agreements), nor are there any of the foregoing currently proposed to the Company's audit committee, or (*b*) has any interest in any property owned by the Company or any of its Subsidiaries, in each case, that is of a type that would be required to be

disclosed in the Company SEC Documents pursuant to Item 404 of Regulation S-K (a " *Related Party Transaction* ") that has not been so disclosed. Any Related Party Transaction as of the time it was entered into and as of the time of any amendment or renewal thereof contained such terms and conditions as were at least as favorable to the Company or any of its Subsidiaries as would have been obtainable by the Company or any such Subsidiary in a similar transaction with an unaffiliated third Person. No Related Party owns, directly or indirectly, on an individual or joint basis, any interest in, or serves as an officer or director or in another similar capacity of, any supplier or other independent contractor of the Company or any of its Subsidiaries, or any organization which has any Contract with the Company or any of its Subsidiaries.

3.23. *Government Contracts.* Except as set forth on *Section 3.23* of the Company Disclosure Letter, since December 31, 2009: (i) to the Knowledge of the Company, none of the Company's personnel has been debarred or suspended from doing business with any Governmental Entity; (ii) to the Knowledge of the Company, there have not been any, and there exist no, (1) material outstanding claims against the Company arising under or relating to any Government Contract or Government Bid; (2) criminal allegations under the False Statements Act (18 U.S.C. § 1001) or the False Claims Act (18 U.S.C. § 287) or comparable state laws; and (3) material disputes (x) between the Company and any Governmental Entity under the Contract Disputes Act, or any other federal or state law or (y) between the Company and any prime contractor, subcontractor or vendor arising under or relating to any Government Contract or Government Bid; and (iii) to the Knowledge of the Company, neither the Company nor any of its personnel has been under administrative, civil or criminal investigation, or indictment by any Governmental Entity with respect to any alleged irregularity, misstatement or omission arising under or relating to any Government Contract or Government Bid, and the Company has not conducted or initiated any internal investigation or made a disclosure to any Governmental Entity, with respect to any alleged irregularity, misstatement or omission arising under or relating to a Government Contract or Government Bid.

3.24. *Vote Required.* Except for the Stockholder Approval, no other vote or consent of the holders of any Shares is required by any Takeover Statute (including Section 203 of DGCL) or by the certificate of incorporation or bylaws of the Company to approve and adopt the Merger, this Agreement or the transactions contemplated hereby.

3.25. *Regulated Business.* Neither the Company nor any of its Subsidiaries is engaged in any banking, investment management, telecommunications or public utility business.

3.26. *Opinion of Financial Advisor*. The Company Board has received the opinion of Barclays, financial advisor to the Company Board, to the effect that, as of the date hereof, the Per Share Merger Consideration is fair to the Company's stockholders from a financial point of view. The Company will make available to Parent solely for informational purposes a correct and complete copy of the written opinion of Barclays as soon as practicable after the receipt thereof.

3.27. *Brokers.* No broker, investment banker, financial advisor or other Person, other than Barclays, the fees and expenses of which will be paid by the Company, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. Correct and complete copies of all agreements between the Company and Barclays concerning this Agreement and the transactions contemplated hereby, including any fee arrangements, have been previously provided to Parent.

3.28. *Exclusivity of Representations*. The representations and warranties made by the Company in this *Article III* are the exclusive representations and warranties made by the Company. The Company hereby disclaims any other express or implied representations or warranties with respect to itself.

ARTICLE IV

Representations and Warranties of Parent and Merger Sub

Except as set forth in the corresponding sections or subsections of the disclosure letter delivered to the Company by Parent concurrently with the execution and delivery of this Agreement (the " *Parent Disclosure Letter* ") (it being acknowledged and agreed that disclosure of any item in any section or subsection of the Parent Disclosure Letter shall be deemed disclosure with respect to any other section or subsection only to the extent that the relevance of such disclosure to such other section or subsection is reasonably apparent on the face of such disclosure), Parent and Merger Sub each hereby represent and warrant to the Company as follows:

4.1. *Organization.* Parent and Merger Sub are each a corporation, in each case, duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and having all powers and all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted. Each of Parent and Merger Sub is duly qualified to do business as a foreign organization and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the consummation of the Merger.

4.2. *Authority.* Each of Parent and Merger Sub has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the Merger and the other transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation by each of Parent and Merger Sub of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary actions on the part of each of Parent and Merger Sub. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and (assuming the valid authorization, execution and delivery of this Agreement by the Company) constitutes a valid and binding obligation of each of Parent and Merger Sub enforceable against each of them in accordance with its terms, except that such enforceability (*a*) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally and (*b*) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

4.3. *Consents and Approvals; No Violations.* Except for filings, permits, authorizations, consents and approvals set forth in *Section 4.3* of the Parent Disclosure Letter, as may result from any facts or circumstances related to the Company or its Subsidiaries or as may be required under, and other applicable requirements of, the Exchange Act, the HSR Act, Regulatory Laws, the DGCL, the rules and regulations of the NYSE, state securities Laws, neither the execution, delivery or performance of this Agreement by Parent and Merger Sub nor the consummation by Parent and Merger Sub of the transactions contemplated hereby will (*a*) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or by-laws, or similar organizational documents, of Parent or Merger Sub, (*b*) require Parent or Merger Sub to make any notice to, or filing with, or obtain any permit, authorization, consent or approval of, any Governmental Entity, (*c*) assuming compliance with the matters referred to in clause (*b*), contravene, conflict with or result in a violation or breach of any provision of any applicable Law, (*d*) require any consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, could become a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit under, any of the terms, conditions or provisions of any Contract not otherwise terminable by the other party thereto on 180 days' or less notice to which Parent or Merger Sub is entitled under any provision of any agreement or other instrument binding upon Parent or Merger Sub, or (*e*) result in the creation or imposition of any Lien on any asset of Parent or Merger Sub, with such exceptions, in the case of each of clauses (b) through

(e), as would not be reasonably expected, individually or in the aggregate, to prevent or materially delay or impede the consummation of the Merger or any of the other transactions contemplated hereby.

4.4. *Capitalization; Ownership of Common Stock.*

(a) As of the date of this Agreement, the authorized capital stock of Merger Sub consists solely of 5,000 shares of common stock, par value $0.01 per share. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent. Merger Sub has no outstanding option, warrant, right or any other agreement pursuant to which any Person other than Parent may acquire any equity security of Merger Sub. Merger Sub has no Subsidiaries.

(b) As of the date of this Agreement, no shares of Common Stock or securities that are convertible, exchangeable or exercisable into Common Stock are beneficially owned (as defined by Rule 13d-3 under the Exchange Act) by Parent or Merger Sub and neither Parent nor Merger Sub holds any rights to acquire or vote any shares of Common Stock except pursuant to this Agreement.

4.5. *Information Supplied.* None of the information supplied or to be supplied by Parent or Merger Sub or any of their Representatives specifically for inclusion or incorporation by reference in the Proxy Statement will, at the time the Proxy Statement is first mailed to the Company's stockholders or at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by Parent or Merger Sub with respect to statements made or incorporated by reference therein based on information supplied by the Company or any of its Representatives.

4.6. *Litigation.* As of the date hereof, there is no Action pending or, to the Knowledge of Parent, threatened in writing against Parent or any of its Subsidiaries (including Merger Sub), including any Action that would reasonably be expected, individually or in the aggregate, to prevent or materially impair or delay the consummation of the Merger or any of the other transactions contemplated by this Agreement. None of Parent or any of its Subsidiaries (including Merger Sub) is subject to or bound by any Order that would reasonably be expected, individually or in the aggregate, to prevent or materially delay or impede the consummation of the Merger or any of the other transactions contemplated by this Agreement.

4.7. *Operations of Merger Sub.* Merger Sub has been formed solely for the purpose of the Merger, Merger Sub has not conducted any business prior to the date hereof and Merger Sub has no, and prior to the Effective Time will not have any, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement, including the Financing.

4.8. *Financing.*

(a) Parent has delivered to the Company true, complete and correct copies of (*i*) executed commitment letters, dated as of the date hereof, among Parent and each of the Guarantors and GS Investors (the " *Equity Commitment Letters* "), pursuant to which the Guarantors and GS Investors have committed, subject to the terms and conditions thereof, to invest in Parent the cash amounts and, in the case of P2 Capital Master Fund I, L.P., cash amounts and a certain specified number of shares of Common Stock, in each case, as set forth therein (the " *Equity Financing* "), and (*ii*) the executed commitment letter, dated as of the date hereof, among Goldman Sachs Lending Partners LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and Merger Sub (the " *Debt Commitment Letter* ", together with the Equity Commitment

Letters, the " *Financing Letters* "), pursuant to which the counterparties thereto have committed, subject to the terms and conditions thereof, to lend the amounts set forth therein (the " *Debt Financing* " and, together with the Equity Financing, the " *Financing* ").

(b) Assuming the accuracy of the representations and warranties of the Company in this Agreement as of the Closing Date and the performance by the Company of its obligations hereunder, the amount of funds to be provided pursuant to the Financing Letters, if funded in accordance with the terms of the Financing Letters, including the combination of funds expected to be available for borrowing under the New ABL Facility and any Available Cash of the Company and its subsidiaries as of the Closing Date, will be sufficient to (*i*) pay the aggregate Per Share Merger Consideration to all holders of Shares (other than any Share owned by the Company or by Parent or Merger Sub), including the amounts payable pursuant to *Section 2.8* , (*ii*) repay the principal and interest on all indebtedness outstanding under the Existing ABL Facility and to pay any amounts required to be paid to holders of the Existing Notes pursuant to the Consent, the Exit Consent Tender Offer or the Change of Control Offer (each as defined in the Debt Commitment Letter), (*iii*) pay any and all fees and expenses required to be paid at the Closing by Parent, Merger Sub or the Surviving Corporation, in connection with the Merger and the Financing and (*iv*) any other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement (collectively, the amounts described in clauses (*i*) through (*iv*), the " *Financing Uses* ").

(c) As of the date hereof, the Financing Letters are in full force and effect. Other than as set forth in the Financing Letters and any fee letter (a " *Fee Letter* " and, together with the Debt Commitment Letter, the " *Debt Financing Letters* "), a copy of which has been provided to the Company prior to the date hereof (except that only the fee amounts, consent fees, price caps (including price caps in any securities demand provisions) and economic "flex" provisions set forth therein have been redacted), there are no conditions precedent related to the funding of the full net amount of the Financing that would, or would reasonably be expected to, (*i*) impair the validity of the Financing Letters, (*ii*) reduce the aggregate amount of the Financing, (*iii*) prevent or materially delay the Closing, (*iv*) cause either of the Financing Letters to be ineffective or (*v*) otherwise result in the Financing not being available on a timely basis in order to consummate the transactions contemplated by this Agreement. As of the date hereof, Parent has not amended, modified, supplemented or waived any of the conditions or contingencies to funding contained in the Financing Letters (including definitive agreements related thereto) or any other provision of, or remedies under, the Financing Letters (including definitive agreements related thereto). As of the date hereof, neither the Guarantors, the GS Investors nor any Financing Source has notified Parent or Merger Sub of its intention to terminate either of the Financing Letters or not to provide the Financing. There are no conditions precedent or other contingencies related to the funding of the full amount of the Financing or the conditions precedent thereto, other than as set forth in the Financing Letters (the " *Disclosed Conditions* "). Other than the Disclosed Conditions, no Financing Source or other Person has any right to impose, and none of the Guarantors, the GS Investors, Parent, Merger Sub, the Company or any subsidiary obligor have any obligation to accept, any condition precedent to such funding nor any reduction to the aggregate amount available under the Financing Letters on the Closing Date or, in the case of the Opco Bridge Facility, the amount available thereunder to fund payments under any Exit Consent Tender Offer or any Change of Control Offer, as applicable (nor any term or condition which would have the effect of reducing the aggregate amount available under the Financing Letters on the Closing Date or, in the case of the Opco Bridge Facility, the amount available thereunder to fund payments under any Exit Consent Tender Offer or any Change of Control Offer, as applicable). Neither Parent nor Merger Sub has any reason to believe that it will be unable to satisfy on a timely basis any conditions to the funding of the full amount of the Financing, or that the Financing will not be available to Parent or Merger Sub on the Closing Date (subject in each case to all other parties to

the Financing Letters and this Agreement complying in all material respects with their applicable obligations thereunder and hereunder). As of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of Parent or Merger Sub or, to the Knowledge of Parent, any of the other parties thereto, under the Financing Letters, other than any such default or breach that has been waived by the Guarantors, the GS Investors, Merger Sub or the Financing Sources, as the case may be, or otherwise cured in a timely manner by Parent or Merger Sub to the reasonable satisfaction of the Guarantors, the GS Investors, or the Financing Sources, as the case may be. As of the date hereof, neither Parent nor Merger Sub nor any Affiliate thereof is a party to any side letters or other Contracts related to and that could affect the availability of the Financing other than the Financing Letters and any Fee Letter, in each case, delivered to the Company prior to the date hereof. As of the date hereof, Parent and Merger Sub have fully paid, or caused to be fully paid, any and all commitment or other fees which are due and payable on or prior to the date hereof pursuant to the terms of the Financing Letters and the Fee Letter.

(d) Neither Parent, Merger Sub nor any of their Affiliates has (i) retained any financial advisor on a basis exclusive to Parent and/or Merger Sub and/or any such Affiliate, or (ii) entered into an exclusivity, lock-up or other similar agreement, arrangement or understanding with any bank or investment bank or other potential provider of debt or equity financing that would prevent or hinder such provider from providing or seeking to provide such financing to any third party in connection with a transaction relating to the Company or its Subsidiaries, in the case of clauses (i) and (ii), in connection with the Merger or the other transactions contemplated by this Agreement. Neither Parent, Merger Sub nor any of their Affiliates has caused or induced any Person to take any action that, if taken by Parent and/or Merger Sub, would be a breach of, or would cause to be untrue, any of the representations in this *Section 4.8(d)* .

4.9. *Solvency.* Assuming (i) satisfaction of the conditions to Parent's and Merger Sub's obligation to consummate the Merger and (ii) accuracy of the representations and warranties of the Company set forth in *Article III* as of the Effective Time, on and as of the Closing Date, and after giving effect to the transactions contemplated by this Agreement, Parent, the Surviving Corporation and the Surviving Corporation's Subsidiaries, taken as a whole, will be Solvent.

4.10. *Limited Guaranties.* Concurrently with the execution of this Agreement, the Guarantors have delivered to the Company the duly executed Limited Guaranties. Each of the Limited Guaranties is in full force and effect and is the valid, binding and enforceable obligation of the Guarantor party thereto, except that such enforceability (*a*) may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally and (*b*) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at law). As of the date hereof, no event has occurred, which, with or without notice, lapse of time or both, would constitute a default on the part of any Guarantor under the Limited Guaranty provided by such Guarantor.

4.11. *No Regulatory Impediment.* To the Knowledge of Parent, there is no material fact relating to Parent or any of its Affiliates' respective businesses, operations, financial condition or legal status, including any officer's, director's or current employee's status, that would reasonably be expected to impair the ability of the parties to this Agreement to obtain, on a timely basis, any authorization, consent, Order, declaration or approval of any Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement.

4.12. *Absence of Certain Arrangements.* Other than this Agreement, those other agreements contemplated hereby and as set forth in *Section 4.12* of the Parent Disclosure Letter, there are no contracts, undertakings, commitments, agreements or obligations or understandings between Parent or Merger Sub or any of their respective Affiliates, on the one hand, and any member of the Company's

management or the Company Board or any of their respective Affiliates, or any stockholder, on the other hand, (i) relating to the transactions contemplated by this Agreement or the operations of the Surviving Corporation after the Effective Time or (ii) that would in any way prevent, restrict, impede or affect adversely the ability of the Company or any of the Company's directors or stockholders to entertain, negotiate or participate in any Acquisition Proposal made before or following the Requisite Company Vote in accordance with *Section 5.3* .

4.13. *Brokers.* No agent, broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub for which the Company could have any liability.

4.14. *Exclusivity of Representations.* The representations and warranties made by Parent and Merger Sub in this *Article IV* are the exclusive representations and warranties made by Parent and Merger Sub. Each of Parent and Merger Sub hereby disclaims any other express or implied representations or warranties with respect to itself.

4.15. *No Other Company Representations or Warranties.*

(a) Parent acknowledges that it and its Representatives have received access to such books and records, Facilities, equipment, contracts and other assets of the Company which it and its Representatives have desired or required to review, and that it and its Representatives have had full opportunity to meet with the management of the Company and to discuss the business and assets of the Company.

(b) Parent acknowledges that neither the Company nor any person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company furnished or made available to Parent and its Representatives except as expressly set forth in *Article III* (which includes the Company Disclosure Letter), and neither the Company nor any other Person shall be subject to any liability to Parent or any other person resulting from the Company's making available to Parent or Parent's use of such information, including the presentation materials delivered to Parent, as subsequently updated, supplemented or amended, or any information, documents or material made available to Parent in the due diligence materials provided to Parent (including in any management presentations, information or descriptive memorandum, certain "data rooms" maintained by the Company, supplemental information or other materials or information with respect to any of the above) or in any other form in connection with the transactions contemplated by this Agreement. Without limiting the foregoing, except as expressly set forth in this Agreement, the Company makes no representation or warranty to Parent with respect to the Company or its Subsidiaries or Affiliates or their business, operations, technology, assets, liabilities, results of operations, financial condition, prospects, projections, budgets, estimates or operational metrics, or as to the accuracy or completeness of any of the information (including any statement, document or agreement delivered pursuant to this Agreement and any financial statements and any projections, estimates or other forward-looking information) provided (including in any management presentations, information or descriptive memorandum, certain "data rooms" maintained by the Company, supplemental information or other materials or information with respect to any of the above) or otherwise made available to Parent or any of its Affiliates, stockholders or Representatives and that, to the fullest extent permitted by applicable Law, none of the Company, its Subsidiaries or Affiliates or any of its or their respective stockholders, controlling persons or Representatives shall have any liability or responsibility whatsoever to Parent, its Affiliates, stockholders or Representatives on any basis (including in contract or tort, at law or in equity, under federal or state securities Laws or otherwise) based upon any information provided or made available, or statements made (or any omissions therefrom), to Parent, its Subsidiaries or Affiliates, stockholders or Representatives,

except as and only to the extent expressly set forth in this Agreement (or, as to Affiliates of Parent who are Financing Sources, as set forth in agreements and documents governing the Financing).

ARTICLE V

Covenants

5.1. *Conduct of Business by the Company Pending the Merger.* Except (*1*) with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed (except with respect to *Sections 5.1(a)(i)* through *(iii)* and *5.1(g)(B)* , for which consent may be withheld in Parent's sole discretion)), (*2*) as required by applicable Law, (*3*) as expressly contemplated by this Agreement or (*4*) as otherwise set forth in *Section 5.1* of the Company Disclosure Letter, during the period from the date hereof until the Effective Time (or such earlier date on which this Agreement may be terminated) the Company shall, and shall cause each of its Subsidiaries to, carry on its business in all material respects in the ordinary course consistent with past practice. To the extent consistent with the foregoing and except as otherwise consented to in writing by Parent, the Company and its Subsidiaries shall use their respective reasonable best efforts to preserve their assets and properties in good repair and condition, preserve their business organizations intact, maintain existing relations and goodwill with Governmental Entities, alliances, customers, suppliers, employees and business associates and manage its working capital (including the timing of collection of accounts receivable, the payment of accounts payable and the management of inventory) in the ordinary course of business consistent with past practice and, in each case, in all material respects. Without limiting the generality of the foregoing, and except as (*i*) required by applicable Law, (*ii*) expressly contemplated by this Agreement or (*iii*) otherwise set forth in *Section 5.1* of the Company Disclosure Letter, during such period, the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed (except with respect to *Sections 5.1(a)(i)* through *(iii)* and *5.1(g)(B)* , for which consent may be withheld in Parent's sole discretion)):

(a) (*i*) declare, set aside or pay any dividends on, or make other distributions in respect of, any of its capital stock or equity interests, except for dividends by a wholly-owned Subsidiary of the Company to its parent, (*ii*) permit Opco to make, or permit Opco to commit or become liable to make, any Restricted Payment that would at any time prior to the Closing reduce the aggregate amount available for Restricted Payments under Specified RP Baskets below the amount set forth in *Section 3.10(a)* of the Company Disclosure Letter, (*iii*) take any affirmative action resulting in any Default (as defined in the Existing Notes Indenture) that is not cured prior to the Effective Time, *provided* , that, for the avoidance of doubt, the sufferance of any judgment or decree that results in any Default shall not be deemed an action of the Company for purposes hereof; *provided , further* , that the Company shall use reasonable best efforts to cure any Default prior to the Effective Time, or (*iv*) other than in the case of wholly-owned Subsidiaries, split, combine or reclassify any of its capital stock or equity interests or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or equity interests or redeem, purchase or otherwise acquire or offer to redeem any of its capital stock or equity interests;

(b) authorize for issuance, issue, deliver, sell, pledge, grant, transfer or otherwise encumber any shares of its capital stock or equity interests, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares or interests, voting securities or convertible securities, other than (*i*) the issuance of Shares pursuant to Company Stock Options and RSUs outstanding as of the date hereof previously issued under the Company Stock Incentive Plans, and (*ii*) the issuance of any shares of capital stock or equity interests to the Company or any wholly-owned Subsidiary of the Company;

(c) amend the certificate of incorporation or bylaws of the Company or other similar organizational documents of any of its Subsidiaries;

(d) other than transactions that would be permissible under clause (e) below, acquire (by merger, consolidation, purchase of stock or assets or otherwise), or agree to so acquire any entity, business or assets that constitute a business or division of any Person, or all or a substantial portion of the assets of any Person (or business or division thereof), in each case, for consideration in excess of $500,000 individually or $1,000,000 in the aggregate;

(e) make or agree to make any capital expenditure in an amount that in the aggregate exceeds $4,000,000, other than any capital expenditure (or series of related capital expenditures) consistent in all material respects, with the 2012 capital expenditure budget of the Company in effect on the date of this Agreement (a correct and complete copy of which has been previously provided to Parent);

(f) other than in the ordinary course of business, transfer, assign, sell, lease, license, encumber or otherwise dispose of (by merger, consolidation, sale of stock or assets or otherwise), or agree to transfer, assign, sell, lease, license, encumber or otherwise dispose of, any entity, business or assets having a current value in excess of $500,000 in the aggregate;

(g) (A) create, incur, assume, suffer to exist or otherwise be liable with respect to any indebtedness for borrowed money or guarantee thereof, other than (x) under any Material Contract listed in *Section 3.17(b)(ii)* of the Company Disclosure Letter and (y) capital leases incurred after the date hereof in the ordinary course of business consistent with past practice in an aggregate amount not to exceed $2,500,000 at any one time outstanding, or (B) create, incur, assume or suffer to exist any express contractual restriction on the ability of Opco to make Restricted Payments to the Company other than as set forth in the Existing Notes Indenture and the Existing ABL Facility;

(h) other than in the ordinary course of business (including, for the avoidance of doubt, in connection with a capital expenditure permitted to be made pursuant to *Section 5.1(e)*), enter into, materially amend, materially modify or terminate, or grant any material waiver under, any Material Contract or any Contract that would constitute a Material Contract if entered into prior to the date hereof (other than the expiration or renewal of any Material Contract in accordance with its terms);

(i) enter into, amend, modify or terminate, or grant any waiver under, any Related Party Transaction, other than in the ordinary course of business on terms, taken as a whole, no less favorable to the Company or its Subsidiary (as applicable) than terms that would be obtained from an unaffiliated third party;

(j) other than in the ordinary course of business, make any loans, advances or capital contributions to, or investments in, any other Person (other than the Company or any Subsidiary of the Company) in excess of $1,000,000 in the aggregate;

(k) except as may be required by GAAP or applicable Law, make any material change in its principles, practices, procedures and methods of financial or Tax accounting;

(l) merge or consolidate the Company or any of its Subsidiaries with and into any other Person, other than, in the case of any Subsidiary of the Company, to effect any acquisition permitted by clause (d) or any disposition permitted by clause (f) and other than transactions among Subsidiaries;

(m) except as permitted pursuant to *Section 5.1(l)* , adopt or enter into a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries;

(n) settle, release, waive or compromise any pending or threatened suit, action, claim, arbitration, mediation, inquiry, proceeding or investigation of or against the Company or any of its Subsidiaries (*i*) requiring payment by the Company of an amount in excess of $1,000,000 in the aggregate, (*ii*) entailing the incurrence of any obligation or liability of the Company in excess of such amount, including costs or revenue reductions or obligations that would impose any material restrictions on the business or operations of the Company or its Subsidiaries, *or* (*iii*) that imposes any non-monetary relief, in each case other than in the ordinary course of business consistent with past practice;

(o) other than in the ordinary course of business, enter into any Contract or other binding obligation of the Company or any of its Subsidiaries containing (*i*) any restriction on the ability of the Company or any of its Subsidiaries to conduct its business as it is presently being conducted or currently contemplated to be conducted after the Merger, (*ii*) any provisions granting "most favored nation" status, or (*iii*) a non-competition provision restricting the Company or its Subsidiaries, in each case that is material to the Company and its Subsidiaries, taken as a whole;

(p) (*i*) increase the compensation (including contingent compensation entitles, such as severance pay) of any current or former director, officer, employee or consultant of the Company or any Subsidiaries, except for increases in base salary or wages, annual bonus targets, hourly wage rate and benefits (including in connection with promotions or other changes in job status) for non-officer employees in the ordinary course of business consistent with past practice, (*ii*) adopt any new employee benefit plan or arrangement or amend, modify or terminate any existing Benefit Plan or Employment Agreement, in each case for the benefit of any current or former director, officer, employee or consultant of the Company or any Subsidiary, other than (x) to avoid the imposition of any excise tax under Section 4999 of the Code *or* (y) as permitted in clause (*i*) hereof, (iii) enter into any employment, severance, retention, incentive or special pay agreement or arrangement with any employees of the Company or its Subsidiaries, except as permitted in clause (*i*) hereof, (*iv*) make any new equity awards to any director, officer, employee or consultant of the Company or any of its Subsidiaries, (*v*) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment, compensation or benefits under, any Benefit Plan or Employment Agreement, *or* (*vi*) enter into any collective bargaining agreements; *except* , in the case of each of clauses (*i*) through (*vi*), to the extent required by applicable Law, applicable Tax qualification requirements, this Agreement, or any Benefit Plan, Employment Agreement or other agreement in effect on the date of this Agreement.

(q) (*i*) make any material Tax election or take any material position on a Tax Return filed on or after the date of this Agreement or adopt any material method therein that is inconsistent with material elections made, positions taken or methods used in preparing or filing similar returns in prior periods, (*ii*) enter into any settlement or compromise of any material Tax liability, (*iii*) file any amended Tax Return that would result in a material change in Tax liability, taxable income or loss, (*iv*) change any annual Tax accounting period, (*v*) enter into any closing agreement relating to any material Tax liability, (*vi*) give or request any waiver of a statute of limitation with respect to any material Tax Return, or (*vii)* fail to take into account in determining the amount of any estimated payment of U.S. federal, state, or local income taxes due following June 15, 2012 the deductible or amortizable expenses that the Company reasonably expects will be incurred if the Merger is consummated in accordance with the terms hereof prior to the Termination Date to the extent that the Company determines, in its reasonable discretion, that it is able to take such amounts into account in compliance with Law; or

(r) authorize, agree or commit to do any of the foregoing.

5.2. *Conduct of Business of Parent.* Parent shall not, and shall not permit any Specified Parent Affiliate to, without the prior written consent of the Company (such consent not to be unreasonably

withheld, delayed or conditioned) take or agree to take any action that could reasonably be expected to (a) delay or prevent the consummation of the transactions contemplated by this Agreement, or (b) materially interfere with Parent's ability to make available to the Paying Agent immediately prior to the Effective Time funds sufficient for the satisfaction of all of Parent's and Merger Sub's obligations under this Agreement, including the payment of the Per Share Merger Consideration and the payment of all associated Costs.

5.3. *Solicitation.*

(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the Solicitation Period End-Date, the Company and its Representatives shall have the right, directly or indirectly, to (i) solicit, initiate, facilitate or encourage any inquiries regarding, or the making of any proposal or offer that constitutes, an Acquisition Proposal, including by way of providing access to the officers, employees, agents, properties, books and records of the Company and its Subsidiaries and access to non-public information pursuant to one or more Acceptable Confidentiality Agreements; *provided* , that the Company shall promptly (and in any event within 24 hours) provide or make available to Parent any written material non-public information concerning the Company or any of its Subsidiaries that is provided or made available to any Person and that was not previously provided or made available to Parent; *and* (ii) continue, enter into and maintain discussions or negotiations with respect to Acquisition Proposals or other proposals that could lead to Acquisition Proposals, or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations. For purposes of this Agreement, " *Solicitation Period End-Date* " means 11:59 p.m. (EST) on the date that is thirty (30) days after the date of this Agreement. Parent shall not, and shall cause each of Merger Sub and any Specified Parent Affiliate not to, actively interfere with or prevent the participation of any Person, including any officer or director of the Company or any of its Subsidiaries and any bank, investment bank or other potential provider of debt or equity financing, in negotiations and discussions permitted by this *Section 5.3(a)* .

(b) Except as expressly permitted by *Section 5.3(c)* , (x) the Company shall, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause its Representatives to, on the Solicitation Period End-Date, immediately cease any existing solicitations, discussions or negotiations with any Persons (other than, prior to the Cut-Off Date, any Excluded Party) that may be ongoing with respect to any Acquisition Proposals or any proposal reasonably likely to result in an Acquisition Proposal (and the Company shall request that all copies of all non-public information it or its Subsidiaries or their respective Representatives have distributed or made available since the date hereof to Persons (other than, prior to the Cut-Off Date, any Excluded Party) in connection with their consideration of any Acquisition Proposal (other than with respect to Parent and its Affiliates), be promptly destroyed or returned to the Company (subject to the exceptions set forth in any applicable confidentiality agreement)) and cause any physical or virtual data room to no longer be accessible to or by any Person other than Parent and its Affiliates and, prior to the Cut-Off Date, any Excluded Party; and (y) from the Solicitation Period End-Date until the earlier to occur of the Effective Time or the termination of this Agreement pursuant to *Article VII* , the Company and its Subsidiaries shall not, and the Company shall use its reasonable best efforts to cause its Representatives not to, directly or indirectly, (*i*) initiate, solicit or knowingly encourage, facilitate or assist any inquiries or the making of any proposal or offer that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal, (*ii*) engage in, continue or otherwise participate in any discussions or negotiations regarding any proposal or offer that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal, or provide any non-public information or data to any Person relating to the Company or any of its Subsidiaries, or afford to any Person access to the business, properties, assets or personnel of the Company or any of its Subsidiaries, (*iii*) enter into any other acquisition agreement, merger agreement or similar

definitive agreement, letter of intent or agreement in principle with respect thereto or any other agreement relating to an Acquisition Proposal (an " *Alternative Acquisition Agreement* "), or (*iv*) otherwise knowingly facilitate any effort or attempt to make an Acquisition Proposal, other than, in each case, to request information from the Person making any such proposal or offer for the sole purpose of the Company Board informing itself about the proposal or offer that has been made and the Person that made it or to notify any Person of the Company's obligations under this *Section 5.3* . Notwithstanding the foregoing, the Company may continue to take any of the actions described in clauses (*i*), (*ii*), (*iii*) and (*iv*) above from and after the Solicitation Period End-Date with respect to any Excluded Party until the earlier of (x) the date that is fifteen (15) days following the Solicitation Period End-Date, and (y) the date on which the Company certifies to Parent that it is not engaged in discussions with any Excluded Party (the " *Cut-Off Date* "); provided, that the Cut Off Date shall be extended until the second Business Day following the expiration of any Negotiation Period relating to a Superior Proposal made by an Excluded Party for which the Company delivered a notice of termination under *Section 7.3(a)* prior to the original Cut-Off Date (but only with respect to any such Excluded Party). " *Excluded Party* " means any Person, group of Persons or group that includes any Person (so long as such Person and the other members of such group, if any, who were members of such group immediately prior to the Solicitation Period End-Date constitute at least 50% of the equity financing of such group at all times following the Solicitation Period End-Date and prior to the termination of this Agreement) (including, with respect thereto, their Representatives) from whom the Company or any of its Representatives has received prior to the Solicitation Period End-Date a written Acquisition Proposal that the Company Board determines in its good faith judgment prior to the Solicitation Period End-Date, after consultation with its independent financial advisor and outside counsel, is bona fide and is, or would reasonably be expected to result in, a Superior Proposal. Within two (2) Business Days following the Solicitation Period End-Date, the Company shall deliver to Parent a list of all Excluded Parties.

(c) From and after the date of this Agreement, the Company shall promptly notify Parent orally (and then in writing within 24 hours) after it or any of its Subsidiaries has received any request for discussions or negotiations, any request for access to the properties or books and records of the Company or any of its Subsidiaries of which the Company or any of its Subsidiaries or any of their respective Representatives is or has become aware, or any request for information relating to the Company or any of its Subsidiaries, in each case, in connection with an Acquisition Proposal or any proposal, inquiry, offer or request relating to or constituting an Acquisition Proposal or a potential Acquisition Proposal or any amendments to the financial or material terms of the foregoing. Such notice to Parent shall indicate the identity of the Person making such proposal or request and the material terms and conditions of such proposal, if any. Following the Solicitation Period End Date, the Company shall keep Parent reasonably informed on a current basis (and in any event within 24 hours) of the status of any material developments, discussions or negotiations regarding any such Acquisition Proposal or any change to the financial or material terms of any such Acquisition Proposal, including by providing a copy, if applicable, of any written requests, proposals or offers, including proposed agreements, regarding any such Acquisition Proposal within twenty-four (24) hours after the receipt thereof. Notwithstanding *Section 5.3(b)* but without limiting the actions permitted by *Sections 5.3(a)* and *5.3(b)* and subject to complying with *Section 5.3(b)* (including the right to maintain discussions and negotiations with Excluded Parties), if, prior to the time the Stockholder Approval is obtained, the Company receives a bona fide written Acquisition Proposal from any Person that did not result from a breach of any provision of this *Section 5.3* and that the Company Board concludes in good faith, after consultation with its independent financial advisor and outside legal counsel, constitutes a Superior Proposal or would reasonably be expected to result in a Superior Proposal, (*x*) the Company and its Representatives may provide access and non-public information with regard to the Company and its Subsidiaries in

response to a request therefor by such Person if the Company receives from such Person (or has received from such Person) an executed Acceptable Confidentiality Agreement (a copy of which the Company shall promptly (but in any event, within 24 hours) provide to Parent following execution thereof), *provided* that the Company shall promptly (but in any event, within 24 hours) make available to Parent and Merger Sub any non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously made available to Parent or Merger Sub, and (*y*) the Company and its Representatives may engage or participate in any discussions or negotiations with such Person, in each case, *provided* that the Company Board concludes in good faith, after consultation with its outside legal counsel, that failure to take such action described in the foregoing clauses (x) or (y) would be inconsistent with its fiduciary duties to the stockholders of the Company under applicable Law.

(d) Except as set forth in this *Section 5.3(d)* , neither the Company Board nor any committee thereof shall withhold, withdraw, qualify, change, amend or modify (or publicly propose or resolve to withhold, withdraw, qualify, change, amend or modify), in any manner adverse to Parent, the Company Recommendation with respect to the Merger, make any public statement in connection with the Company Recommendation or in reference to an Acquisition Proposal that is inconsistent with the Company Recommendation and in any manner adverse to Parent, or fail to include the Company Recommendation in the Proxy Statement (any of the foregoing, a " *Change of Recommendation* "), or adopt, approve or recommend or otherwise declare advisable (publicly or otherwise), or propose to adopt, approve or recommend (publicly or otherwise) an Acquisition Proposal, or cause or permit the Company to enter into any Alternative Acquisition Agreement, or fail to make or reaffirm the Company Recommendation within five (5) Business Days following Parent's written request to do so following receipt of an Acquisition Proposal. Notwithstanding anything to the contrary set forth in this Agreement, prior to the time the Stockholder Approval is obtained, the Company Board may effect a Change of Recommendation (and, in the case of the following clause (y), terminate this Agreement pursuant to *Section 7.3(a)* and enter into an Alternative Acquisition Agreement) if (*x*) an event, fact, development or occurrence affecting the business, assets or operations of the Company (but not relating to an Acquisition Proposal) that was neither known nor reasonably foreseeable to the Company Board as of the date of this Agreement becomes known to the Company Board (an " *Intervening Event* "), or (*y*) if the Company receives an Acquisition Proposal that is a binding, written offer capable of acceptance that the Company Board concludes in good faith, after consultation with its independent financial advisor and outside counsel, constitutes a Superior Proposal, *provided* that, in order to effect a Change of Recommendation under either clause (x) or (y) or terminate this Agreement to enter into a definitive agreement with respect to a Superior Proposal:

(i) the Company Board concludes in good faith, after consultation with its independent financial advisor and outside counsel, that failure to do so would be inconsistent with its fiduciary obligations under applicable Law and the Company shall have complied with its obligations under this *Section 5.3* ;

(ii) the Company shall have provided prior written notice to Parent, at least five (5) Business Days in advance of making such Change of Recommendation or such termination (such period, the " *Negotiation Period* "), advising Parent of the intention to effect a Change of Recommendation or terminate this Agreement pursuant to *Section 7.3(a)* , which notice shall specify in detail the basis for the Change of Recommendation or termination and, in the case of a Superior Proposal, the identity of the party making such Superior Proposal and the material terms thereof and include copies of the final forms of all relevant documents relating to such Superior Proposal;

(iii) during the Negotiation Period, the Company shall have, and shall have caused its Representatives to, negotiate with Parent in good faith with respect to changes to the terms

and conditions of this Agreement or the transactions contemplated hereby (or as to other proposals made by Parent); and

(iv) after so negotiating with Parent and Merger Sub during the Negotiation Period, the Company Board shall have considered in good faith any and all changes to this Agreement and the transactions contemplated hereby offered by Parent (or other proposals made by Parent), and shall have concluded, after consultation with its independent financial advisor and outside legal counsel, (*A*) in the event the Company Board's determination pursuant to clause (d)(i) above is in response to a Superior Proposal, that such Superior Proposal would continue to constitute a Superior Proposal even if such changes or other proposals were to be given effect, *provided* that, if any material amendment or revision is made to the Acquisition Proposal that the Company Board has determined to be a Superior Proposal, the Company shall be required to deliver a new written notice to Parent with respect to each successive such amendment or revision and to comply with the requirements of this *Section 5.3* (including *Section 5.3(e)*) with respect to such new written notice and the Negotiation Period shall recommence, or (*B*) in the event the Company Board's determination pursuant to clause (d)(i) above is in response to an Intervening Event, that such changes would not obviate the need for a Change of Recommendation in response to such Intervening Event.

(e) Nothing contained in this *Section 5.3* shall be deemed to prohibit the Company or the Company Board or any committee thereof from (*i*) complying with its disclosure obligations under U.S. federal or state Law with regard to an Acquisition Proposal, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act, or (*ii*) making any "stop-look-and-listen" communication to the stockholders of the Company pursuant to Rule 14d-9(f) under the Exchange Act; *provided* that any such disclosure (other than a "stop, look and listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) that has the substantive effect of withholding, withdrawing, modifying or qualifying in any manner adverse to the Company Recommendation shall be deemed to for all purposes of this Agreement to be a Change of Recommendation unless the Company Board expressly publicly reaffirms the Company Recommendation within two (2) Business Days following any request by Parent.

(f) No Change of Recommendation shall change the approval of the Company Board for purposes of Section 251(b) of the DGCL or any Takeover Statute.

(g) The Company acknowledges and agrees that any violation of the restrictions set forth in this *Section 5.3* by any Representatives of the Company or any Subsidiary of the Company or their respective Representatives shall be deemed to be a breach of this *Section 5.3* by the Company.

5.4. *Proxy Statement.*

(a) As promptly as reasonably practicable, and in any event within twenty (20) Business Days, after the date of this Agreement, the Company shall prepare and file with the SEC a preliminary proxy statement relating to the Stockholders Meeting (together with any amendments thereof or supplements thereto, the " *Proxy Statement* "). Unless there is a Change of Recommendation in accordance with *Section 5.3* , the Proxy Statement shall include the recommendation of the Company Board that the stockholders of the Company vote in favor of the adoption of this Agreement in accordance with the DGCL (the " *Company Recommendation* "). The Company agrees that at the date of first mailing to stockholders of the Company and at the time of the Stockholders Meeting, (*i*) the Proxy Statement will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder and (*ii*) none of the information supplied by it or any of its Subsidiaries for inclusion or incorporation by reference in the Proxy Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements

therein, in light of the circumstances under which they were made, not misleading; *provided* , that no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein to the extent based on information supplied by or on behalf of Parent or Merger Sub or any Affiliate of Parent or Merger Sub in connection with the preparation of the Proxy Statement for inclusion or incorporation by reference therein. Parent agrees to provide or cause to be provided all information with respect to itself, its Subsidiaries and its Representatives as may be reasonably requested by the Company for inclusion in the Proxy Statement, and that, at the date of first mailing to stockholders of the Company and at the time of the Stockholders Meeting, none of the information supplied by it or any of its Subsidiaries for inclusion or incorporation by reference in the Proxy Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided* , that no representation or warranty is made by either Parent or Merger Sub with respect to statements made or incorporated by reference therein to the extent based on information supplied by the Company or any Affiliate of the Company in connection with the preparation of the Proxy Statement for inclusion or incorporation by reference therein.

(b) The Company shall promptly, following its or its legal counsel's receipt thereof, inform Parent of any and all comments (written or oral) of the SEC with respect to the Proxy Statement and of any request by the SEC for any amendment or supplement thereto or for additional information, and the Company shall promptly provide to Parent copies of all correspondence between the Company and/or any of its Representatives and the SEC with respect to the Proxy Statement. The Company and Parent shall each use its reasonable best efforts to promptly provide responses to the SEC with respect to all comments received on the Proxy Statement from the SEC and to make any amendments or filings as may be necessary in connection therewith. Each of the Company and Parent agrees to promptly correct any information provided by it for use in the Proxy Statement if and to the extent such information shall have become false or misleading in any material respect or as otherwise required by applicable Law, and the Company further agrees to cause the Proxy Statement, as so corrected (if applicable), to be filed with the SEC and, if any such correction is made following the mailing of the Proxy Statement as provided in this *Section 5.4(b)* , mailed (or, to the extent permitted by Law, made available) to the stockholders of the Company, in each case as and to the extent required by the Exchange Act. The Company shall cause the definitive Proxy Statement to be mailed promptly after the date the SEC staff advises that it has no further comments thereon or that the Company may commence mailing the Proxy Statement.

(c) Subject to applicable Law, prior to filing or mailing the Proxy Statement or filing any other required filings (or, in each case, any amendment or supplement thereto) or responding to any comments of the SEC with respect thereto, the Company shall provide Parent with a reasonable opportunity to review and comment on such document or response and shall include in such document or response comments reasonably proposed by Parent.

5.5. *Stockholders Meeting.*

(a) Subject to *Section 5.4(a)* , following the clearance of the Proxy Statement by the SEC, the Company will take, in accordance with applicable Law and its certificate of incorporation and bylaws, all reasonable action necessary to convene a special meeting of the stockholders of the Company (the " *Stockholders Meeting* ") within thirty (30) days after the date of mailing of the Proxy Statement (with the record date and meeting date of the Stockholders Meeting to be selected with the reasonable consent of Parent) to consider and vote upon the adoption of this Agreement. Subject to *Section 5.3(d)* , the Company Board shall recommend adoption of this Agreement by its stockholders at the Stockholders Meeting and shall use its reasonable best efforts to solicit such adoption of this Agreement, and the Company shall use its reasonable best efforts to solicit from

its stockholders proxies in favor of the adoption of this Agreement and secure any approval of its stockholders that is required by the DGCL and any other applicable Law to effect the Merger; *provided* , that the Company may postpone, recess or adjourn the Stockholders Meeting: (a) with the consent of Parent, (b) for the absence of a quorum or (c) to allow reasonable additional time for the filing and distribution of any supplemental or amended disclosure which the Company Board has determined in good faith (after consultation with its outside legal counsel) is necessary or advisable under applicable Laws and for such supplemental or amended disclosure to be disseminated to and reviewed by the Company's stockholders prior to the Stockholders Meeting.

5.6. *Reasonable Best Efforts; Filings; Other Actions.*

(a) Upon the terms and subject to the conditions set forth in this Agreement, the Company and Parent shall, the Company shall cause its Subsidiaries to, and Parent shall, with respect to clause (*iii*) below, cause each ultimate parent of Parent required to make any filing under the HSR Act or any other applicable Regulatory Law in connection with the Merger to, each use their reasonable best efforts to *promptly* (*i*) take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other in doing all things reasonably necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement, including the Merger, (*ii*) obtain from any Governmental Entities and any third parties any actions, non-actions, clearances, waivers, consents, approvals, permits or orders required to be obtained by the Company, Parent or any of their respective Subsidiaries in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (*iii*) make all registrations, filings, notifications or submissions which are necessary or advisable, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under (*A*) any applicable federal or state securities Laws, (*B*) the HSR Act and any other applicable Regulatory Law, and (*C*) any other applicable Law, and in the case of the notification and report form under the HSR Act, in no event later than ten (10) Business Days from the execution of this Agreement. The Company and Parent will each request early termination of the waiting period with respect to the Merger under the HSR Act and Regulatory Law. The Company and Parent (and their Subsidiaries, respectively) shall not consent, discuss or commit to any extension of any waiting period under the HSR Act or any other applicable Regulatory Law or to any agreement not to consummate the Merger without the consent of such other party, as applicable, in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, all obligations of the Company, Parent and Merger Sub to obtain the Financing or any other financing for the transactions contemplated hereby shall be governed exclusively by *Sections 5.13* , and not this *Section 5.6* .

(b) The Company, Parent and Merger Sub shall each use its reasonable best efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated hereby under any Regulatory Law. Notwithstanding the foregoing or any other provision of this Agreement, nothing contained in this Agreement shall require or obligate Parent or any of its Affiliates to, and the Company shall not, without the prior written consent of Parent: (*i*) commence any litigation with any Governmental Entity in connection with any Regulatory Law; (*ii*) pay or commit to pay any material amount of cash or other consideration, or incur or commit to incur any material liability or other obligation, in connection with obtaining any authorization, consent, order, registration or approval; or (*iii*) agree or otherwise be required to sell, divest, dispose of, license, hold separate, or take or commit to take any action that limits in any respect its freedom of action with respect to, or its ability to retain, any businesses, products, rights, services, licenses, or assets of Parent, the Company, or any of their respective Subsidiaries, or any interest or interests therein, if any such action would reasonably be expected to have a material adverse effect on the business of the Company and its Subsidiaries, as a whole.

(c) Each of the Company, Parent and Merger Sub shall (*i*) subject to any restrictions under any applicable Law, to the extent practicable, promptly notify each other of any communication to that party from any Governmental Entity with respect to this Agreement and the transactions and other agreements contemplated hereby and permit the other party to review in advance any proposed written communication to any Governmental Entity, (*ii*) respond as promptly as reasonably practicable to any inquiries received from, and supply as promptly as reasonably practicable any additional information or documentation that may be requested by, the Antitrust Division of the U.S. Department of Justice, the Federal Trade Commission, or any other Governmental Entity in respect of any registrations, declarations and filings, (iii) unless required by applicable Law, not agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry with respect to this Agreement and the transactions and other agreements contemplated hereby unless it consults with the other party in advance and, to the extent not prohibited by such Governmental Entity, gives the other party the opportunity to attend and participate thereat, in each case to the extent practicable, (*iv*) subject to any restrictions under any applicable Law, furnish the other party with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and any Governmental Entity or members of its staff on the other hand, with respect to this Agreement and the transactions and other agreements contemplated hereby (excluding any sensitive information with respect to any individual who is an officer, director, employee or equity holder in Parent or any of its Affiliates and any documents and communications which are subject to preexisting confidentiality agreements, the attorney client privilege or work product doctrine), *and* (*v*) furnish the other party with such necessary information and reasonable assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registrations, or submissions of information to any Governmental Entities in connection with this Agreement and the transactions and other agreements contemplated hereby and thereby, including any filings necessary or appropriate under the provisions of any Regulatory Law.

(d) The Company shall keep Parent and Merger Sub informed, on a current basis, of any events, discussions, notices or changes with respect to any Tax (other than ordinary course communications which could not reasonably be expected to be material to the Company), criminal or regulatory investigation or other Action involving the Company or any of its Subsidiaries, and shall reasonably cooperate with Parent and Merger Sub and their respective Affiliates in an effort to avoid or mitigate any cost or regulatory consequences to them that might arise from such investigation or Action (including by reviewing written submissions in advance, attending meetings with authorities and coordinating and providing assistance in meeting with regulators); *provided* that the Company shall not be obligated to incur any Cost, liability or obligation prior to the Closing.

(e) Subject to compliance with applicable Law, the Company shall take such actions as are necessary to cause the Persons designated by Parent (in writing no later than three (3) Business Days prior to the Closing Date) to be elected to serve as the sole directors of Opco, effective as of immediately prior to the Effective Time, to enable such Persons, in their capacities as directors of Opco, to cause Available Cash of the Subsidiaries of the Company (determined as of immediately prior to the Effective Time) not needed for operations or reserves to be distributed as a dividend to the Company immediately prior to the Effective Time for use by Parent to pay, in part, the aggregate Per Share Merger Consideration, *provided* that Parent will immediately cause the resignation of such directors from the board of directors of Opco if the Effective Time does not occur following the declaration of such dividend.

5.7. *Access and Reports.*

(a) Subject to applicable Law, from and after the date of this Agreement to the Effective Time, upon reasonable notice, the Company shall, and shall cause each of its Subsidiaries to, (*i*) afford to Parent, Merger Sub and each of their Representatives, reasonable access, during normal business hours, to its officers, employees, properties, offices and other facilities, books, contracts and records and (*ii*) furnish or cause to be furnished such information concerning the business, properties, Contracts, assets, liabilities, personnel and other aspects of the Company and its Subsidiaries as Parent Merger Sub or their Representatives may reasonably request; *provided* that (*x*) no investigation pursuant to this *Section 5.7* shall affect or be deemed to modify any representation or warranty made by the Company herein, (*y*) the foregoing shall not require the Company or any of its Subsidiaries (*A*) to permit any inspection, or to disclose any information that would violate any of its obligations with respect to confidentiality so long as the Company shall have used reasonable best efforts to obtain the consent of such third party to allow such inspection or disclosure or (*B*) to disclose any information of the Company or any of its Subsidiaries that would waive the protection of attorney-client privilege if the Company shall have used reasonable best efforts to disclose such information in a way that would not waive such privilege, and (z) notwithstanding anything to the contrary contained herein, including *Section 5.14* , customer lists, SKU costing information and supplier program information listed in *Section 5.7(a)* of the Company Disclosure Letter shall only be available for review at the offices of the Company by Parent, Merger Sub and their Representatives (and financing sources and their Representatives, to the extent they are entitled to access to such information pursuant to *Section 5.14*) and shall not be removed, copied or duplicated by any such Person.

(b) The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, (*i*) of any notice or other communication received by such party from any Governmental Entity in connection with the transactions contemplated by this Agreement or from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the Surviving Corporation or Parent, (*ii*) of any Actions commenced or, to such party's knowledge, threatened against, relating to or otherwise affecting such party or any of its Affiliates in connection with, arising from or relating to this Agreement or the transactions contemplated by this Agreement (" *Transaction Litigation* ") or (*iii*) if such party becomes aware of any facts or circumstances that such party believes do, or with the passage of time are reasonably likely to, constitute a breach of this Agreement by the other party or the occurrence or non-occurrence, of any event that, individually or in the aggregate, would reasonably be expected to cause any condition to the obligations of any party hereto to effect the Merger or any of the other transactions contemplated by this Agreement not to be satisfied; *provided* that the delivery of any notice pursuant to this *Section 5.7(b)* shall not cure any breach of any representation, warranty or covenant in this Agreement or otherwise limit or affect the remedies available hereunder to any party hereto.

5.8. *Publicity; Communications.*

(a) The initial press release to be issued with respect to the transactions contemplated by this Agreement, including the Merger, shall be a joint press release by the Company and Parent and thereafter the Company and Parent each shall consult with each other prior to issuing any press releases or otherwise making public announcements (including conference calls with investors and analysts) with respect to the Merger or any of the other transactions contemplated by this Agreement and prior to making any filings with any third party and/or any Governmental Entity or the NYSE with respect thereto, except as may be required by Law or by obligations pursuant to any listing agreement with the NYSE (in which case, such party shall use all reasonable efforts to consult with the other parties before issuing such press release or making such public

announcement or filing); *provided* , that Parent's consent shall not be required, and the Company shall not be required to consult with Parent in connection with, or provide Parent an opportunity to review or comment upon, any press release or other public statement or comment to be issued or made with respect to any Acquisition Proposal so long as the Company is in compliance with *Section 5.3* at the time of any such press release or other public statement or comment. Notwithstanding the foregoing, without the prior consent of the other parties, the Company (*i*) may communicate with customers, vendors, suppliers, financial analysts, investors and media representatives in a manner consistent with its past practice in compliance with applicable Law and (*ii*) may disseminate the information included in a press release or other document previously approved for external distribution by Parent.

(b) Upon Parent's written request, (*i*) the Company and Parent shall promptly prepare a mutually acceptable joint written presentation to RiskMetrics Group recommending this Agreement and the transactions contemplated hereby, including the Merger, and (*ii*) the Company shall request a meeting with RiskMetrics Group for purposes of obtaining its recommendation of the adoption of this Agreement by the Company's stockholders.

(c) Before any Merger Communication of the Company or any of its "participants" (as defined in Item 4 of Schedule 14A of the Exchange Act) is first (*i*) disseminated to any investor, analyst, member of the media, employee, client, customer or other third party or otherwise made accessible on the website of the Company or such participant (whether in written, video or oral form via webcast, hyperlink or otherwise), or (*ii*) utilized by any executive officer, key employee or advisor of the Company or any such participant as a script in discussions or meetings with any such third parties, the Company shall (or shall cause any such participant to) provide such Merger Communication to Parent and allow Parent a reasonable opportunity to comment thereon, and shall consult in good faith with Parent for purposes of determining whether that communication constitutes "soliciting material" that is required to be filed by Rule 14a-6(b) or Rule 14a-12(b) of the Exchange Act. The Company shall (or shall cause any such participant to) give reasonable and good faith consideration to any comments made by Parent on any such Merger Communication.

5.9. *Employee Benefits.*

(a) For a period of one year following the Closing Date (the " *Continuation Period* "), the Surviving Corporation shall provide all employees of the Company and its Subsidiaries (including employees who are not actively at work on account of illness, disability or leave of absence) who continue in employment with the Surviving Corporation or its Subsidiaries following the Effective Time (the " *Affected Employees* "), with compensation and benefits which are substantially comparable in the aggregate to the compensation and benefits provided to such Affected Employees as of the date of this Agreement (other than equity compensation incentives and any compensation or benefits triggered in whole or in part by the consummation of the transactions contemplated hereby).

(b) Effective as of the Effective Time, Parent shall cause the Surviving Corporation to honor the Benefit Plans and Employment Agreements (including all severance, change-in-control and similar plans and agreements), and to perform the obligations of the Company and its Subsidiaries thereunder in accordance with the terms and conditions thereof. Notwithstanding the foregoing or *Section 5.9(a)* , Parent shall, or shall cause the Surviving Corporation to, provide each Affected Employee who suffers a termination of employment during the Continuation Period under circumstances that would have given the Affected Employee a right to severance payments and benefits under the Company's severance policy or individual employment, severance or separation agreement or other arrangement in effect immediately prior to the Effective Time (each, a " *Company Severance Plan* ") with severance payments and benefits no less favorable than those that would have been provided to such Affected Employee under the applicable Company Severance

Plan, as calculated using the same salary or hourly wage rate or other compensation, as applicable, provided to such Affected Employee immediately prior to the Effective Time, except as Parent or the Surviving Corporation, as applicable, and such Employee may otherwise agree in writing. Nothing contained in this *Section 5.9* shall be deemed to grant any Affected Employee any right to continued employment after the Effective Time.

(c) Parent will cause any employee benefit plans of Parent and its Subsidiaries (other than the Surviving Corporation and its Subsidiaries) in which the Affected Employees are entitled to participate after the Closing Date to take into account for purposes of eligibility and vesting (but not benefit accruals), service by such employees as if such service were with Parent or its Subsidiaries, to the same extent such service was credited under an analogous Benefit Plan (including with respect to service with predecessor or acquired entities or any other entities for which the Company and its Subsidiaries have given credit for prior service), except that service credit shall also be provided for purposes of calculating paid time off and entitlements to severance pay.

(d) To the extent permitted under applicable Law, with respect to any employee benefit plans maintained by Parent and its Subsidiaries for the benefit of the Affected Employees following the Closing Date, Parent will cause the Surviving Corporation and its Subsidiaries to (*i*) with respect to any such employee benefit plan providing medical, dental, pharmaceutical and/or vision benefits to any Affected Employee, cause there to be waived any eligibility requirements or pre-existing condition limitations or waiting period requirements to the same extent waived under analogous Benefit Plans prior to the Closing Date and (*ii*) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, any eligible expenses paid by such employees during the calendar year in which Effective Time occurs under analogous Benefit Plans.

(e) With respect to any accrued but unused vacation time to which any Affected Employee is entitled pursuant to the vacation policy or individual agreement or other arrangement applicable to such Affected Employee immediately prior to the Effective Time, (the " *Vacation Policy* "), Parent shall, or shall cause the Surviving Corporation to, (i) allow such Affected Employee to use such accrued vacation and (ii) if any Affected Employee's employment terminates during the Continuation Period, pay the Affected Employee, in cash, an amount equal to the value of the accrued vacation time to the same extent that the Affected Employee would have received a cash payment therefor under the Vacation Policy or the applicable Company Severance Plan as in effect on the date of this Agreement.

(f) Nothing contained in this *Section 5.9* , express or implied (*i*) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement or (*ii*) is intended to confer upon any Person (including any current or former officers, employees, directors or consultants of the Company or any of its Subsidiaries, or dependents or beneficiaries of such current or former officers, employees, directors or consultants) any rights as a third-party beneficiary of this Agreement.

5.10. *Expenses.* Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense. Parent shall, or shall cause the Surviving Corporation to, pay all charges and expenses, including those of the Paying Agent, in connection with the transactions contemplated in *Article II* .

5.11. *Indemnification; Directors' and Officers' Insurance.*

(a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, indemnify and hold harmless, to the fullest extent permitted under applicable Law, each present and former director and officer of the Company (collectively, the " *Indemnified*

Parties ") against any costs or expenses (including reasonable attorneys' fees and expenses), judgments, fines, losses, claims, damages or liabilities (collectively, " *Costs* ") incurred in connection with any Action, whether civil, criminal, administrative or investigative, arising out of or related to such Indemnified Parties' service as a director or officer of the Company or any of its Subsidiaries or services performed by such persons at the request of the Company or its Subsidiaries at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including in connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated by this Agreement or otherwise). Parent shall, and shall cause the Surviving Corporation to, advance costs and expenses (including attorneys' fees) as incurred by any Indemnified Party promptly after receipt by Parent of a written request for such advance to the fullest extent permitted under applicable Law; *provided* that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification (it being understood and agreed that the Surviving Corporation shall not require the posting of any bond or any other security for such undertaking).

(b) Prior to the Effective Time, the Company shall obtain and fully pay the premium for the extension of (*i*) the directors' and officers' liability coverage of the Company's existing directors' and officers' insurance policies, and (*ii*) the Company's existing fiduciary liability insurance policies, in each case for a claims reporting or discovery period of at least six years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time (collectively, " *D&O Insurance* ") with terms, conditions, retentions, coverage limits and limits of liability that are not materially less favorable than the coverage provided under the Company's existing policies in effect on the date hereof with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of the Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). If the Company and the Surviving Corporation for any reason fail to obtain such "tail" insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect for a period of at least six years from and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions and limits of liability that are at least as favorable as the coverage provided in the Company's existing policies as of the date hereof, or the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, use reasonable best efforts to purchase comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable as the coverage provided under the Company's existing policies as of the date hereof. Notwithstanding the foregoing, (*i*) in no event shall the Company or the Surviving Corporation be required to expend for any such policies pursuant to this *Section 5.11(b)* an annual premium amount in excess of 300% of the annual premiums currently paid by the Company for such insurance, and (*ii*) if the annual premiums of such insurance coverage exceed such amount, the Company or the Surviving Corporation shall obtain a policy with the greatest coverage available for a cost not exceeding such amount.

(c) If the Surviving Corporation or any of its successors or assigns shall (*i*) consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (*ii*) transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in this *Section 5.11* .

(d) The provisions of this *Section 5.11* are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties.

(e) The rights of the Indemnified Parties under this *Section 5.11* shall be in addition to any rights such Indemnified Parties may have under the certificate of incorporation or bylaws or comparable governing documents of the Company or any of its Subsidiaries, or under any applicable Contracts or Laws. All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the certificate of incorporation or bylaws of the Company or of any Subsidiary of the Company or any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries shall survive the Merger and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

5.12. *Rule 16b-3.* Prior to the Effective Time, the Company shall (and shall be permitted to) take all steps reasonably necessary to cause the transactions contemplated hereby and any other dispositions of equity securities of the Company including any Company equity awards pursuant to *Section 2.8* in connection with this Agreement by each individual who is subject to the reporting requirements of Section 16 (a) of the Exchange Act to be exempt under Rule 16b-3 promulgated under the Exchange Act.

5.13. *Financing.*

(a) Subject to the terms and conditions of this Agreement (including *Section 5.13(e)*), each of Parent and Merger Sub shall use its reasonable best efforts (taking into account the anticipated timing of the Marketing Period and the Termination Date) to obtain the proceeds of the Financing as soon as reasonably practicable on the terms and conditions, taken as a whole (including the "flex" provisions) described in the Financing Letters, including using its reasonable best efforts to (*i*) comply with its obligations under the Financing Letters, (*ii*) negotiate and enter into definitive agreements with respect to the Financing Letters on terms and conditions (as such terms may be modified or adjusted in accordance with the terms of, and within the limits of the flex provisions contained in any Fee Letter) no less favorable to Parent and Merger Sub than those contained in the Financing Letters, (*iii*) satisfy on a timely basis all conditions applicable to Parent and Merger Sub contained in the Financing Letters (including definitive agreements related thereto), including the payment of any commitment, engagement or placement fees required as a condition to the Financing and (*iv*) consummate the Financing at or prior to the Closing Date, subject to the satisfaction or waiver of the conditions contained herein. Notwithstanding anything to the contrary in the immediately preceding sentence, each of Parent and Merger Sub shall use its reasonable best efforts to take, and shall use its reasonable best efforts to cause each of its Affiliates to take, all actions necessary to maintain in effect, and enforce its rights under, the Financing Letters (including any definitive agreements relating thereto); *provided* that each of Parent and Merger Sub may (*i*) amend, replace or modify the Debt Financing Letters to add or replace lenders, lead arrangers, bookrunners, syndication agents or similar entities, and (*ii*) subject to the limitations set forth in this *Section 5.13* , otherwise amend or modify, grant any waiver of any provision or remedy under, or increase the amount of indebtedness or otherwise replace the Debt Financing Letters or one or more facilities. Parent and Merger Sub shall promptly deliver to the Company copies of any such replacement, amendment, supplement, modification or waiver. Parent and Merger Sub shall not, without the prior written consent of the Company, enter into any amendment or modification to, replacement of, or grant any waiver of any provision or remedy under, or exercise its right to terminate any commitment under, the Financing Letters, if such amendment, modification, replacement, waiver or termination would or would reasonably be expected to (A) reduce the aggregate amount of the Debt Financing such that the aggregate funds that would be available to Parent and Merger Sub at the Closing (taking into account other sources of funding that would be

available to them, including any equity financing or Available Cash) would not be sufficient to satisfy the Financing Uses, unless the Equity Financing is increased by a corresponding amount or (B) impose new or additional conditions or otherwise expand, amend or modify any of the conditions to the receipt of the Debt Financing in a manner that would reasonably be expected to (*x*) adversely affect the ability or likelihood of Parent or Merger Sub to timely consummate the transactions contemplated by this Agreement, or (*y*) make the timely funding of the Debt Financing or satisfaction of the conditions to obtaining the Financing less likely to occur. Any reference in this Agreement to (*I*) "Financing" shall include the financing contemplated by the Financing Letters as amended or modified in compliance with this *Section 5.13* and (*II*) "Financing Letters" or "Debt Commitment Letter" shall include such documents as amended or modified in compliance with this *Section 5.13(a)* .

(b) Parent shall keep the Company reasonably informed of the status of its efforts to arrange the Financing and provide to the Company copies of all executed definitive documents related to the Debt Financing. Without limiting the generality of the foregoing, Parent shall give the Company prompt notice (x) of any material breach or default by any party to any of the Financing Letters or definitive agreements related to the Financing of which Parent or Merger Sub or any of their Affiliates becomes aware, (y) of the receipt of (A) any written notice or (B) other written communication, in each case from any financing source with respect to any (1) material breach of any of Parent's or Merger Sub's obligations under the Financing Letters or default, termination or repudiation by any party to any of the Financing Letters or other agreements related to the Financing or any provisions of the Financing Letters or other agreements related to the Financing, or (2) material dispute or disagreement between or among any parties to any of the Financing Letters or other agreements related to the Financing with respect to the obligation to fund the Financing or the amount of the Financing to be funded at the Closing Date, and (z) if at any time for any reason Parent or Merger Sub believes in good faith that it will not be able to obtain all or any portion of the Financing on the terms and conditions, in the manner or from the sources contemplated by any of the Financing Letters or other agreements related to the Financing. As soon as reasonably practicable, after the Company delivers to Parent a written request, Parent shall provide any information reasonably requested by the Company in writing relating to any circumstance referred to in clause (x), (y) or (z) of the immediately preceding sentence.

(c) If any portion of the Debt Financing becomes unavailable on the terms and conditions (including any "flex" provisions) contemplated in the Debt Commitment Letter (other than due to the failure of a condition to the consummation of the Debt Financing resulting from a breach of any representation, warranty, covenant or agreement of the Company set forth in this Agreement), Parent shall use its reasonable best efforts to arrange to obtain alternative financing from alternative sources (the " *Alternative Debt Financing* ") in an amount such that the aggregate funds that would be available to Parent and Merger Sub at the Closing (taking into account other sources of funds available to them, including any additional equity financing or Available Cash) will be sufficient to satisfy the Financing Uses, and to obtain a new financing commitment letter (including any associated engagement letter relating to any offering of equity or debt securities or other indebtedness in connection with the transactions contemplated hereby) with respect to such Alternative Debt Financing (collectively, the " *New Debt Commitment Letter* ") and any new related fee letters (the " *New Fee Letter* "), which shall replace the existing Debt Commitment Letter and related Fee Letters, respectively, in whole or in part, and copies of which shall be promptly provided to the Company; provided that Parent and Merger Sub shall not be required to arrange or obtain any such Alternative Financing on terms and conditions (including any "flex" provisions) that are less favorable to Parent and Merger Sub than those terms and conditions contained in the Debt Financing Letters. Notwithstanding the foregoing, no New Debt Commitment Letter or New Fee Letter may expand upon the conditions precedent or contingencies to the funding on the Closing Date of the Financing as set forth in the Financing Letters in effect on the date hereof or

which would reasonably be expected to adversely affect the ability or likelihood of Parent or Merger Sub to timely consummate the transactions contemplated by this Agreement. In the event any New Debt Commitment Letter is obtained, (*i*) any reference in this Agreement to the " *Financing* " or the " *Debt Financing* " shall mean the debt financing contemplated by the Debt Commitment Letter as modified pursuant to clause (ii) below, and (*ii*) any reference in this Agreement to the " *Financing Letters* " or the " *Debt Commitment Letter* " shall be deemed to include the Debt Commitment Letter and any Fee Letter to the extent not superseded by a New Debt Commitment Letter or New Fee Letter, as the case may be, at the time in question and any New Debt Commitment Letter or New Fee Letter to the extent then in effect.

(d) Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this *Section 5.13* shall require, and in no event shall the reasonable best efforts of Parent or Merger Sub be deemed or construed to require, Parent or Merger Sub to (i) commence any litigation or similar enforcement action against the Financing Sources to enforce Parent's or Merger Sub's rights under the Debt Financing Letters, (ii) to pay any fees in excess of those contemplated in the Debt Financing Letters (whether to secure waiver of any conditions contained therein or otherwise), (iii) amend or waive any of the terms or conditions hereof, (iv) consummate the Closing at any time prior to the date determined in accordance with *Section 1.2* , or (v) seek the Equity Financing from any source other than those counterparty thereto (or permitted assignee of any such counterparty), or in an amount in excess of that contemplated by, the Equity Commitment Letters.

(e) In the event that (x) all or any portion of the Financing contemplated to be raised in lieu of the Holdco Bridge Facility or, if the Consent does not become effective, the Opco Bridge Facility contemplated under the Debt Financing Letters has not been consummated prior to the third Business Day immediately following the final day of the Marketing Period, (y) all conditions (except for those conditions that by their terms are to be satisfied by actions at the Closing) to the obligations of the parties to effect the Merger contained in *Article VI* shall have been satisfied or waived and the Closing is required to occur pursuant to *Section 1.2* and (z) the bridge facilities and asset based revolving loan facility contemplated by the Debt Financing Letters are available on the terms and conditions described in the Debt Financing Letters, then Parent and Merger Sub shall draw down on such bridge financing and, to the extent available, the asset based revolving loan facility, in an amount sufficient and to the extent necessary, when combined with Available Cash and other sources of funds available to Parent and Merger Sub, to satisfy the Financing Uses.

5.14. *Financing Cooperation.*

(a) Prior to the Effective Time, the Company shall, and shall cause each of its Subsidiaries and each of its and their respective officers and employees to, and shall use its reasonable best efforts to cause the non-employee Representatives of the Company and each of its Subsidiaries to, use its reasonable best efforts to provide to Parent such customary cooperation reasonably requested by Parent to cause the conditions and covenants in the Debt Financing Letters to be satisfied or otherwise that is customary and necessary, proper, advisable or desirable, or reasonably requested by Parent, in connection with the Debt Financing, including the issuance of the Holdco Notes by the Company or a direct or indirect parent company of the Company at the Closing (or by Merger Sub or a direct or indirect parent company of Merger Sub prior to the Closing, with the proceeds thereof funded into escrow prior to the Closing as contemplated by the Debt Financing Letters), in each case, with reasonable prior notice and at reasonable times, including cooperation that consists of using reasonable best efforts in respect of:

(i) participating in a reasonable number of meetings (including customary one-on-one meetings with the parties acting as lead arrangers or agents for, and prospective lenders and purchasers of, the Debt Financing or any high-yield securities or loans being issued in lieu of

any portion of the Debt Financing (" *High Yield Securities* ") and senior management and Representatives, with appropriate seniority and expertise, of the Company), presentations, road shows, due diligence sessions, drafting sessions and sessions with rating agencies that are customary for financings of a type similar to the Debt Financing or such High Yield Securities;

(ii) (*A*) furnishing Parent and the Financing Sources as promptly as practicable (and no later than the Solicitation Period End Date, if requested by Parent to facilitate an issuance of Holdco Notes prior to the Closing Date) with financial and other pertinent information regarding the Company and its Subsidiaries as may be reasonably requested by the Parent, including (i) audited consolidated balance sheets and related statements of income, equity and cash flows and related notes of the Company, in each case prepared in accordance with GAAP for the three (3) most recently completed fiscal years ended at least 90 days before the Applicable Financing Closing Date, and, for each fiscal quarter after the date hereof ended at least 45 days prior to the Applicable Financing Closing Date and for the comparable quarter of the prior fiscal year, unaudited consolidated balance sheets of the Company as of the end of such fiscal quarter and the related unaudited statements of income, equity and cash flows and related notes, in each case prepared in accordance with GAAP and using the same accounting principles, policies, methods, practices, procedures, classifications, categories, estimates, judgments and assumptions as were used in preparing the audited financial statements contained in the Company SEC Documents, (ii) information regarding the Company of the type and form customarily included in an offering memorandum for private placements of debt securities under Rule 144A promulgated under the Securities Act (which, for the avoidance of doubt, shall not include financial statements or information required by Rules 3-09, 3-10 or 3-16 of Regulation S-X or Compensation Discussion and Analysis required by Regulation S-K Item 402(b)) but shall include customary disclosure of certain guarantor and non-guarantor information, including financial statements and pro forma financial information (including as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least 45 days before the Applicable Financing Closing Date, prepared after giving effect to the transactions contemplated hereby and the Financing as if such transactions and the Financing had occurred as of such date (in the case of the balance sheets) or at the beginning of such period (in the case of other financial statements), in each case prepared in accordance with GAAP), financial data, audit reports and business and other financial information of the type and form that would be required by Regulation S-X (other than such other information not required to be delivered pursuant the Financing Letters) and Regulation S-K promulgated under the Securities Act for a registered public offering of debt securities (including for the preparation of pro forma financial statements), or that would otherwise be necessary to receive from the independent accountants that audited the Audited Financial Statements (and any other accountant to the extent financial statements audited or reviewed by such accountants are or would be included in such offering memoranda), customary "comfort" (including "negative assurance" comfort), together with drafts of customary comfort letters that such independent accountants are prepared to deliver upon "pricing" of any High-Yield Securities, with respect to the financial information to be included in such offering memorandum which, with respect to any interim financial statements shall have been reviewed by such independent accountants as provided in AU 722, and consents of such independent accountants to use of their reports in any materials related to the Debt Financing or High-Yield Securities; *provided* , that Parent shall be responsible for, and the Company's obligations are subject to, timely provision of any post-Closing pro forma cost savings, synergies, capitalization, ownership or other pro forma adjustments desired to be incorporated into any pro forma financial information reasonably requested by Parent to be delivered by the Company (excluding any information that would

customarily be prepared with the cooperation of the Company), (*B*) assisting in a commercially reasonable manner with the preparation of customary materials for rating agency presentations, lender presentations, high yield road show presentations or memoranda, syndication memoranda, offering documents, private placement memoranda, bank information memoranda, prospectuses and other marketing materials or documents, including business and financial projections reasonably requested by Parent or the Financing Sources, in each case in connection with the Debt Financing or High-Yield Securities, and (*C*) assisting in a commercially reasonable manner Parent and the Financing Sources in obtaining as promptly as practicable field audits and appraisals satisfactory to the Financing Sources of the customer accounts receivable and inventory of the Company suitable to be pledged as collateral for the New ABL Facility to be established pursuant to the Debt Commitment Letters (all such information required to be delivered or prepared by the Company pursuant to *Section 5.14(a)(ii)(A)* , together with any replacements or restatements thereof and supplements thereto, if any such information would go stale or otherwise be unusable under customary practices for such purposes, the " *Required Information* ", and all such information required to be delivered or prepared pursuant to *Section 5.14(a)(ii)(A)* , the " *Specified Required Information* ") (it being understood that notwithstanding the foregoing, if at any time the Company shall in good faith reasonably believe that it has provided all Specified Required Information as required by *Section 5.14(a)(ii)(A)* and such Required Information is Compliant, the Company may deliver to Parent written notice to that effect (stating the date it believes such Specified Required Information was provided), in which case the Company shall be deemed to have complied with this *Section 5.14(a)(ii)* with respect to the Specified Required Information unless (1) Parent in good faith reasonably believes the Company has not provided all Specified Required Information and, within five (5) Business Days after delivery of such notice by the Company, delivers a written notice to the Company to that effect, stating with specificity, to the extent reasonably practicable, which items of Specified Required Information have not been provided or (2) the Required Information ceases to be Compliant before the termination of the Marketing Period);

(iii) executing and delivering authorization letters authorizing the distribution of information to prospective lenders or investors and containing a representation that the public side versions of such documents, if any, do not include material non-public information regarding the Company or its Subsidiaries or securities;

(iv) executing and delivering any securities purchase agreement, credit agreement, indenture, supplemental indenture, note, guarantee, pledge and security document, currency or interest hedging arrangement, other definitive financing document, representation letter to auditors and any other certificate or document and back-up therefor and for legal opinions as may be reasonably requested by Parent or the Financing Sources or their respective counsel, obtaining and delivering a solvency certificate of the chief financial officer of the Company and any Subsidiary of the Company that is a borrower or guarantor under any of the Debt Financing or High-Yield Securities, consents of accountants for use of their reports in any materials relating to the Debt Financing or High-Yield Securities, and other certificates, legal opinions or documents required to satisfy the conditions in the Debt Financing Letters or as may otherwise be reasonably requested by Parent or the Financing Sources or their respective counsel, and otherwise reasonably facilitating the pledging of collateral;

(v) obtaining accountants' comfort letters, corporate and facilities ratings, consents, landlord waivers and estoppels, non-disturbance agreements, legal opinions, surveys and title insurance (including providing reasonable access to Parent and its Representatives to all owned real property and leased real property), engineering reports, environmental and other inspections and other documentation and items relating to the Debt Financing or High-Yield

Securities as may be reasonably requested by Parent and to arrange discussions among Parent, Merger Sub and the Financing Sources and prospective Financing Sources with other parties to or beneficiaries of Material Contracts, Company Leases and Liens;

(vi) taking all actions reasonably necessary to (*A*) permit the Financing Sources to evaluate the Company's and its Subsidiaries' current assets, inventory, cash management and accounting systems, policies and procedures relating thereto for the purpose of establishing collateral arrangements and (*B*) establish bank and other accounts and blocked account agreements and lock box arrangements in connection with the foregoing, provided that such accounts, agreements and arrangements will not become active or take effect until the Effective Time;

(vii) granting the Financing Sources, with reasonable prior notice and at reasonable times, access to the Company and Company Subsidiaries' respective properties, assets, and cash management and accounting systems (including cooperating in and facilitating the completion of field examinations, collateral audits, asset appraisals, surveys, Phase I environmental site assessments and engineering/property condition reports) as would be reasonably necessary for the completion of the Debt Financing or High-Yield Securities;

(viii) reasonably facilitating the pledging or the reaffirmation of the pledge of collateral (including obtaining and delivering of pay-off letters and Lien terminations, in each case, in form and substance reasonably satisfactory to Parent, and other cooperation in connection with the repayment or other retirement of existing indebtedness and the release and termination of any and all related Liens);

(ix) taking all corporate actions, subject to the occurrence of the Applicable Financing Closing Date reasonably requested by Parent or any Financing Source to (*A*) permit the consummation of the Debt Financing or issuance of such High-Yield Securities, (*B*) the distribution or payment of Available Cash on hand of Opco and its Subsidiaries and the proceeds of the Debt Financing or High-Yield Securities, if any, obtained by any Subsidiary of the Company to the Surviving Corporation and its Subsidiaries to fund the Per Share Merger Consideration and other Financing Uses, and (*D*) cause the direct borrowing or incurrence of all of the proceeds of the Debt Financing, including any replacement high-yield debt financing, by the Surviving Corporation or any Subsidiary of the Company concurrently with or immediately following the Effective Time;

(x) furnishing Parent and the Financing Sources promptly with all documentation and other information which any lender providing or arranging Debt Financing or the issuance of the High Yield Securities has determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act; and

(xi) otherwise cooperating customarily and reasonably with the marketing efforts of Parent and the Financing Sources for any of the Financing as necessary or reasonably requested by Parent or the Financing Sources.

provided , that (u) the Company shall not be required to make any representation, warranties or certifications as to which, after the Company's use of reasonable best efforts to cause such representation, warranty or certification to be true, the Company has in its good faith determined that such representation, warranty or certification is not true, (*w*) the Company shall not be required to become subject to any obligations or liabilities with respect to such agreements or documents prior to the Closing other than as set forth in *Section 5.14* of the Company Disclosure Letter, (*x*) nothing shall obligate the Company or any of its Subsidiaries to provide, or cause to be provided, any legal opinion by its counsel, or to provide any information or take any action to the

extent it would result in a violation of Law or loss of any privilege, and (*y*) Parent shall, promptly upon request by the Company, reimburse the Company and its Subsidiaries for all reasonable out-of pocket costs and expenses (including attorneys' fees) incurred by the Company or its Subsidiaries in connection with such cooperation. The Company and its Representatives shall be given a reasonable opportunity to review and comment on any financing documents and any materials that are to be presented during any meetings conducted in connection with the Financing, and Parent shall give due consideration to all reasonable additions, deletions or changes suggested thereto by the Company and its Representatives.

(b) The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Financing; *provided* that such logos are used solely in a manner that is not intended to or is not reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries.

(c) The Company shall or shall cause its Subsidiaries to supplement any Required Information on a reasonably current basis to the extent that any such information, to the Knowledge of the Company, contains any material misstatement of fact or omits to state any material fact necessary to make such information not materially misleading.

(d) All non-public or other confidential information provided by the Company or any of its Representatives pursuant to this Agreement shall be kept confidential in accordance with the Confidentiality Agreements; *provided* that Parent and Merger Sub shall be permitted to disclose such information to any Financing Sources or prospective Financing Sources and other financial institutions and investors that are or may become parties to the Financing Letters and to any underwriters, initial purchasers or placement agents in connection with the Debt Financing, or to their respective counsel and auditors, in each case, to the extent subject to customary confidentiality arrangements for use by any of them of such information in connection with the Debt Financing, and to Moody's Investors Service and Standard & Poor's Rating Agency in connection with obtaining ratings of the Debt Financing.

(e) Parent and Merger Sub acknowledge and agree that the Company and its Affiliates and their respective Representatives shall not, except as set forth in this Agreement, have any liability to any person under or in connection with, the arrangement of the Financing or any Alternative Debt Financing that Parent or Merger Sub may raise in connection with the transactions contemplated by this Agreement. Parent and Merger Sub shall (x) promptly, upon request by the Company, reimburse the Company for all Costs incurred by the Company or any of its Subsidiaries in connection with the cooperation of the Company and its Subsidiaries contemplated by this *Section 5.14* and (y) shall indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all Costs incurred by them in connection with the arrangement of the Financing or any Alternative Debt Financing and any information utilized in connection therewith.

(f) Notwithstanding anything to the contrary contained in this Agreement, the condition set forth in *Section 6.2(b)* , as it applies to the Company's obligations under *Section 5.14* , shall be deemed satisfied if the Company's breach(es) of its obligations under *Section 5.14* did not contribute in any material respect to the failure to obtain the Financing or Alternative Debt Financing.

5.15. *Existing Notes.*

(a) The Company shall use its reasonable best efforts to commence, as promptly as practicable on or after the date hereof and following receipt of written instructions from Parent, a consent solicitation with respect to modifications (1) to facilitate the Consent (as contemplated by the Debt Commitment Letters) in connection with an Exit Consent Tender Offer (as contemplated

by the Debt Commitment Letters) or (2) as may otherwise be reasonably determined by Parent (and reasonably satisfactory to the Company) for the purpose of facilitating the transactions contemplated hereby (each, a " *Consent Solicitation* "). Any Consent Solicitation will contain such customary terms and conditions as are reasonably determined by Parent; provided that (i) this Agreement shall not have been terminated in accordance with its terms and (ii) in connection with such Consent Solicitation, either the Company shall have received from Parent all necessary and appropriate documentation in connection with the Consent Solicitation, including the consent solicitation statement, consent forms and other related documents (collectively, the " *Solicitation Documents* "), which shall be subject to comment by and shall be in form and substance reasonably satisfactory to, the Company and its counsel, or, at Parent's request, the Company shall prepare, or cause to be prepared, such Solicitation Documents, as described in *Section 5.15(c)* below. The Company shall waive any of the conditions relating to any Consent Solicitation, as applicable, as may be reasonably requested by Parent in writing and shall not, without the written consent of Parent, waive any condition to any Consent Solicitation or make any changes to any Consent Solicitation other than as agreed between Parent and the Company. The Company shall use its reasonable best efforts to promptly make any change to the terms and conditions of any Consent Solicitation reasonably requested by Parent to the extent in compliance with applicable Law. Notwithstanding the foregoing, the Existing Notes Indenture shall revert to the form in effect prior to the effectiveness of any proposed amendments and be of no further effect if the Closing does not occur.

(b) The Company agrees that, promptly following the receipt of the requisite consents for the amendments proposed in the Consent Solicitation, the Company shall cause each of its Subsidiaries that is party to the Existing Notes Indenture as is necessary to execute a customary supplemental indenture to the Existing Notes Indenture, which supplemental indenture shall become effective upon execution and implement the proposed amendments set forth in the Solicitation Documents and shall become operative upon (but not prior to) the Effective Time. Concurrent with the Effective Time, Parent shall cause the Company to pay for consents validly delivered and not revoked in accordance with the Consent Solicitation, it being understood that all such payments shall be subject to *Section 5.15 (i)* if such payments are made.

(c) Parent and the Company shall, and shall cause their respective Subsidiaries to, reasonably cooperate with each other in the preparation of the Solicitation Documents and other customary documentation. Any Solicitation Documents (including all amendments or supplements thereto) and all mailings to the holders of the Existing Notes in connection with any Consent Solicitation shall be subject to the prior review of, and comment by, the Company and Parent (and their respective counsel) and shall be reasonably acceptable in form and substance to each of them. If at any time prior to the completion of a Consent Solicitation any information in the Solicitation Documents should be discovered by the Company and its Subsidiaries, on the one hand, or Parent, on the other, which should be set forth in an amendment or supplement to the Solicitation Documents, as applicable, so that they shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of circumstances under which they are made, not misleading, the party that discovers such information shall promptly notify the other party in writing, and an appropriate amendment or supplement describing such information shall be disseminated by or on behalf of the Company to the holders of the Existing Notes. Notwithstanding anything to the contrary in this *Section 5.15* , the Company shall comply in all material respects with any applicable Law (including regulations of the SEC) in connection with a Consent Solicitation. To the extent that the provisions of any applicable Law (or regulations of the SEC) conflict with this *Section 5.15* , the Company shall comply with the applicable Law (or regulation of the SEC) and shall not be deemed to have breached its obligations hereunder by such compliance.

(d) In connection with any Consent Solicitation, Parent may select one or more solicitation agents, information agents (in each case reasonably acceptable to the Company, *provided* that the parties listed in *Section 5.15(d)* of the Parent Disclosure Letter shall be deemed acceptable) and other agents to provide assistance in connection therewith and the Company shall use reasonable best efforts to, and shall use reasonable best efforts to cause its Subsidiaries to, enter into usual and customary agreements (including usual and customary indemnities) with such parties so selected and on terms and conditions reasonably acceptable to Parent and the Company. Parent shall provide, or cause to be provided, the requisite amount of funds to the Company for all payments to holders of Existing Notes in respect of any consents validly delivered and not revoked in accordance with the Consent Solicitation.

(e) Following the Closing, if requisite consents in the Consent Solicitation have not been obtained, any Exit Consent Tender Offer has not been consummated and a Change of Control (as defined in the Existing Notes Indenture) has occurred, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) comply with the requirements under the Existing Notes Indenture relating to an offer to purchase or redeem the outstanding Existing Notes as a result of the consummation of the transactions contemplated hereby.

(f) Notwithstanding anything to the contrary herein, it is expressly agreed by the parties hereto that (i) the failure to obtain the consent of the holders of the Existing Notes in connection with any Consent Solicitation shall not be deemed to be a breach by the Company under this Agreement so long as the Company has complied in all material respects with its obligations pursuant to this *Section 5.15* .

(g) The Company shall use its reasonable best efforts to commence, as promptly as practicable following receipt of written instruction from Parent, one or more offers to purchase the Existing Notes (an " *Offer* "); *provided* , that the Company is first reasonably satisfied that Parent will have available funds at the closing to pay all required amounts (including fees and expenses) in connection with the Offer; *provided* , *further* , that such Offer shall state that consent fees, premiums, interest and principal in connection with the Offer shall be paid solely by Parent and that none of the Company or any of its Subsidiaries shall have any liability or obligation with respect thereto. At the election of Parent, the Offer will (*i*) comply with the provisions of Section 4.07 of the Existing Notes Indenture and/or (*ii*) contain such customary terms and conditions as are reasonably determined by Parent (and reasonably satisfactory to the Company) (which may include an Exit Consent Tender Offer as contemplated by the Debt Financing Letters, in which case the foregoing clauses (a) through (d) shall apply with respect to any consent solicitation process included with such Offer); *provided* that (*A*) this Agreement shall have not been terminated in accordance with *Sections 7.1* through *7.4* and (*B*) either the Company shall have received from Parent all necessary and appropriate documentation in connection with the Offer, including an offer to purchase or change of control notice, as applicable, letters of transmittal and other related documents (collectively, the " *Offer Documents* "), which shall be in form and substance reasonably satisfactory to the Company and its counsel, or, at Parent's request, the Company shall prepare, or cause to be prepared, such Offer Documents. Subject to the terms of Section 4.07 of the Existing Notes Indenture, if applicable, the Offer shall be conducted in accordance with this *Section 5.15* , mutatis mutandis, and shall comply in all respects with applicable Law. The consummation of any Offer shall be subject to the occurrence of the Closing. Parent shall (1) as soon as reasonably practicable after obtaining ratings with respect to the Existing Notes from Moody's Investors Service or Standard & Poor's Rating Agency, instruct the Company to commence a Consent Solicitation, (2) no later than the commencement of the Marketing Period instruct the Company to commence (x) an Offer complying with the requirements of Section 4.07 of the Existing Notes Indenture if the requisite consents to an amendment to the Existing Notes Indenture eliminating the requirement to make the Change of Control Offer have not then been obtained and (y) an Exit Consent Tender Offer if an Exit Consent Tender Offer is to be commenced prior to Closing, and

(3) provide, or cause to be provided, the requisite amount of funds to the Company for all payments to holders of Existing Notes in respect of any Existing Notes purchased.

(h) In connection with any Offer, Parent may select one or more dealer managers and other agents (in each case which shall be reasonably acceptable to the Company) to provide assistance in connection therewith and the Company shall use reasonable best efforts to, and shall use reasonable best efforts to cause its Subsidiaries to, enter into usual and customary agreements (including usual and customary indemnities) with such parties so selected, and on terms and conditions reasonably acceptable to Parent and the Company, Parent shall provide, or cause to be provided, the requisite amount of funds to the Company for all payments to holders of Existing Notes in respect of any notes validly tendered and not withdrawn in accordance with the Offer Documents.

(i) Parent and Merger Sub shall (x) promptly, upon request by the Company, reimburse the Company for all Costs incurred by the Company or any of its Subsidiaries in connection with any Consent Solicitation, the Solicitation Documents, any Offer and the Offer Documents and (y) indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all Costs in connection with the Consent Solicitation and/or the Offer; *provided* , *however* , that for purposes of both clauses (x) and (y), Parent shall not have any obligation to reimburse or indemnify and hold harmless any such party or person to the extent that any damages incurred thereby result from disclosure of an untrue statement of a material fact supplied by such party or person for inclusion in the Solicitation Documents or included in any Company SEC Report that is incorporated by reference in the Solicitation Documents that is determined to have contained an untrue statement of a material fact or an omission of any material fact required to be stated therein or necessary in order to make the statements therein, in light of circumstances under which they are made, not misleading.

5.16. *Transaction Litigation.* The Company and Parent shall give each other the opportunity to participate in the defense, settlement and/or prosecution of any Transaction Litigation; *provided* that (*a*) neither the Company nor any Company Subsidiary or Representative of the Company shall compromise, settle, come to an arrangement regarding or agree to compromise, settle or come to an arrangement regarding any Transaction Litigation or consent to the same unless Parent shall have consented in writing and (*b*) after receipt of Stockholder Approval, the Company shall, if requested by Parent, use its reasonable best efforts to settle any unresolved Transaction Litigation in accordance with Parent's direction.

5.17. *State Takeover Statutes.* The Company and the Company Board shall, if any Takeover Statute becomes applicable to this Agreement or the transactions contemplated by this Agreement, use reasonable best efforts to ensure that the transactions provided for in this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such Takeover Statute on this Agreement or the transactions provided for in this Agreement.

ARTICLE VI

Conditions

6.1. *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligation of each party to effect the Merger and the other transactions contemplated hereby is subject to the satisfaction or waiver in writing by Parent and the Company at or prior to the Effective Time of each of the following conditions:

(a) *Stockholder Approval.* This Agreement shall have been duly adopted by holders of Shares constituting the Requisite Company Vote in accordance with applicable Law and the certificate of incorporation and bylaws of the Company (the " *Stockholder Approval* ").

(b) *Regulatory Consents.* Any applicable waiting periods (including any extensions thereof) under the HSR Act shall have expired or been terminated.

(c) *Orders.* No court or other Governmental Entity of competent jurisdiction shall have enacted, adopted, issued, promulgated, enforced or entered any Order or Law (whether temporary, preliminary or permanent) that is in effect or pending, and restrains, enjoins or otherwise prohibits the consummation of the Merger or the other material transactions contemplated hereby.

6.2. *Conditions to Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to effect the Merger and the other transactions contemplated hereby are also subject to the satisfaction or waiver in writing by Parent at or prior to the Effective Time of the following conditions:

(a) *Representations and Warranties.* (*i*) Other than the representations and warranties set forth in *Sections 3.1* , *3.3* , *3.4* , *3.8 (c)* (insofar as it relates to the covenant set forth in *Section 5.1(g)(B)*), *3.10* , *3.24* , *3.27* and *3.28* , the representations and warranties of the Company contained in this Agreement shall be true and correct in all respects when made and as of the Closing as if made at such time (or, to the extent such representations and warranties speak as of a specified date, they need only be true and correct in all respects as of such specified date) interpreted without giving effect to the words "materially" or "material" or to any qualifications based on such terms or based on the defined term "Company Material Adverse Effect," except where the failure of such representations and warranties to be true and correct, in the aggregate, has not had, or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (*ii*) the representations and warranties set forth in *Section 3.3* shall be true and correct when made and as of the Closing as if made at such time (or, to the extent such representations and warranties speak as of a specified date, they need only be true and correct in all respects as of such specified date), except for inaccuracies that are, in the aggregate, de minimis; (*iii*) the representations and warranties set forth in *Section 3.8(c)* (insofar as it relates to the covenant set forth in *Section 5.1(g)(B)*) shall be true and correct in all material respects when made and as of the Closing as if made at such time; (*iv*) the representations and warranties set forth in *Sections 3.1* , *3.4* , *3.10* , *3.24* , *3.27* and *3.28* shall be true and correct in all respects when made and as of the Closing as the time when made (in the case of *Section 3.10* and otherwise, as if made at such time).

(b) *Performance of Obligations.* The Company shall have performed or complied with, as applicable, (i) all of its obligations, agreements and covenants contained in *Sections 5.1(a)(i)* through *(iii)* and *5.1(g)(B)* , and (ii) in all material respects all of its other obligations, agreements and covenants contained in this Agreement that are required to be performed or complied with by it at or prior to the Closing pursuant to the terms hereof.

(c) *No Company Material Adverse Effect.* Since the date of this Agreement, there shall not have occurred any fact, circumstance, change, event, occurrence or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) *Closing Date Certificate.* The Company shall have delivered to Parent, a true and correct certificate of the chief financial officer of the Company stating that the amount of Available Cash as of the Closing Date is not less than $50,000,000.

(e) *Officer's Certificate.* Parent and Merger Sub shall have received a certificate signed by an executive officer of the Company, dated the Closing Date, to the effect that the conditions set forth in *Sections 6.2(a)* , *6.2(b)* and *6.2(c)* have been satisfied or waived.

6.3. *Conditions to Obligation of the Company.* The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) *Representations and Warranties.* (*i*) Other than the representations and warranties set forth in *Sections 4.1* , *4.2* , *4.4* , *4.12* and *4.13* the representations and warranties of Parent and Merger Sub contained in *Article IV* shall be true and correct in all respects when made and as of the Closing as if made at such time (or, to the extent such representations and warranties speak as of a specified date, they need only be true and correct in all respects as of such specified date) interpreted without giving effect to the words "materially" or "material" or to any qualifications based on such terms or based on the defined term "Parent Material Adverse Effect," except where the failure of such representations and warranties to be true and correct has not had, or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; (*ii*) the representations and warranties set forth in *Section 4.4* shall be true and correct when made and as of the Closing as if made at such time (or, to the extent such representations and warranties speak as of a specified date, they need only be true and correct in all respects as of such specified date), except for inaccuracies that are, in the aggregate, de minimis; (*iii*) the representations and warranties set forth in *Section 4.12* shall be true and correct in all material respects when made and as of the Closing as if made at such time; and (*iv*) the representations and warranties set forth in *Sections 4.1* , *4.2* and *4.13* shall be true and correct in all respects when made and as of the Closing as if made at such time.

(b) *Performance of Obligations.* Each of Parent and Merger shall have performed or complied with, as applicable, in all material respects all of its obligations, agreements and covenants contained in this Agreement that are required to be performed or complied by it at or prior to the Closing pursuant to the terms hereof.

(c) *Officer's Certificate.* The Company shall have received a certificate signed by an executive officer of Parent, dated the Closing Date, to the effect that the conditions set forth in *Section 6.3(a)* and *Section 6.3(b)* have been satisfied or waived.

6.4. *Frustration of Closing Conditions.* None of the Company, Parent or Merger Sub may rely, either as a basis for not consummating the Merger or for terminating this Agreement, on the failure of any condition set forth in *Sections 6.1* , *6.2* or *6.3* , as the case may be, to be satisfied if such failure was caused by such party's material breach of any representation, warranty, covenant or agreement in this Agreement.

ARTICLE VII

Termination

7.1. *Termination by Mutual Consent.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the Stockholder Approval is obtained, by mutual written consent of the Company and Parent by action of their respective boards of directors.

7.2. *Termination by Either Parent or the Company.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by either Parent or the Company if:

(a) the Merger shall not have been consummated by November 29, 2012 (the " *Termination Date* "), whether such date is before or after the Stockholder Approval is obtained; *provided* that the right to terminate this Agreement pursuant to this *Section 7.2(a)* shall not be available to any party whose material breach of any representation, warranty, covenant or agreement in this Agreement has been the primary cause of the failure of the Merger to occur by the Termination Date;

(b) the Stockholders Meeting shall have been held and completed and the Stockholder Approval shall not have been obtained at such Stockholders Meeting or at any adjournment, postponement or recess thereof; or

(c) any Governmental Entity has denied approval of the Merger and such denial has become final and non-appealable or any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable, *provided* , *that* the party seeking to terminate this Agreement pursuant to this paragraph (c) shall have used its reasonable best efforts to contest, appeal and remove such denial or Order in accordance with *Section 5.6* .

7.3. *Termination by the Company*. This Agreement may be terminated and the Merger may be abandoned by the Company:

(a) at any time prior to the Stockholder Approval is obtained, in order to accept a Superior Proposal in accordance with *Section 5.3* ; *provided* , that the Company shall have (*i*) simultaneously with such termination entered into the associated Alternative Acquisition Agreement, (*ii*) otherwise complied in all material respects with all provisions of *Section 5.3* , and (*iii*) simultaneously with such termination paid all amounts due to Parent and Merger Sub pursuant to *Section 7.5* ;

(b) if there has been a breach of any representation, warranty, covenant or agreement made by Parent or Merger Sub in this Agreement, which breach (*i*) would give rise to the failure of a condition set forth in *Section 6.3(a)* or *Section 6.3(b)* and (*ii*) (*x*) cannot be cured by Parent or Merger Sub prior to the Termination Date or (*y*) if capable of being cured, such breach shall not have been cured within the earlier of (A) thirty (30) calendar days following receipt of written notice from the Company of such breach and (B) one (1) Business Day prior to the earlier of the Termination Date and the date on which the Agreement may otherwise be terminated by Parent in accordance with *Article VII* ; *provided* that the Company shall not have the right to terminate this Agreement pursuant to this *Section 7.3(b)* if it is then in material breach of any of its representations, warranties, covenants or other agreements hereunder, which breach would give rise to the failure of a condition set forth in *Section 6.2(a)* or *6.2(b)* ; or

(c) if (*i*) all of the conditions set forth in *Sections 6.1* and *6.2* have been satisfied (other than conditions that, by their nature, are to be satisfied at the Closing and which were, at the time of termination, capable of being satisfied at such time, or the failure of which to be satisfied, is caused by a breach by Parent or Merger Sub of its representations, warranties, covenants or agreements contained in this Agreement), (*ii*) the Company has notified Parent in writing that the Company is ready, willing and able to consummate the Closing and all of the conditions set forth in *Section 6.3* have been satisfied or that the Company is willing to waive any unsatisfied conditions in *Section 6.3* for the purpose of consummating the Closing, and (*iii*) Parent and Merger Sub have failed to consummate the Closing on the date the Closing is required to have occurred pursuant to *Section 1.2* .

7.4. *Termination by Parent.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by Parent if:

(a) (*i*) the Company Board or any committee thereof makes a Change of Recommendation, (ii) a tender offer or exchange offer for the outstanding Shares is commenced, or a proposal is made to the Company or publically announced, that would, in each case, if consummated, constitute an Acquisition Proposal and the Company Board or any committee thereof shall have failed to recommend against acceptance of such tender offer, exchange offer or proposal to its stockholders (including, for these purposes, by taking any position contemplated by Rule 14e-2 of the Exchange Act other than recommending rejection of such tender offer, exchange offer or proposal or making any "stop-look-and-listen" communication to the stockholders of the Company pursuant to Rule 14d-9(f) under the Exchange Act) within ten (10) Business Days after Parent's written request to do so following the commencement of such tender offer or exchange offer or

making of such proposal or the Company Board or any committee thereof recommends that the stockholders of the Company tender their Shares in such tender or exchange offer, (iii) the Company or the Company Board or any committee thereof shall have (*x*) approved, adopted, recommended, or declared advisable any Acquisition Proposal or (*y*) approved or recommended, or entered into or allowed the Company or any of its Subsidiaries to enter into, an Alternative Acquisition Agreement or (iv) the Company Board or any committee thereof formally resolves to take or publicly announces an intention to take any of the foregoing actions; or

(b) there has been a breach of any representation, warranty, covenant or agreement made by the Company in this Agreement or any such representation or warranty shall have become untrue after the date of this Agreement, which breach or failure to be true (*i*) would give rise to the failure of a condition set forth in *Section 6.2(a)* or *Section 6.2(b)* and (*ii*) (*x*) cannot be cured by the Company by the Termination Date or (*y*) if capable of being cured, shall not have been cured within the earlier of (A) thirty (30) calendar days following receipt of written notice from the Parent of such breach or failure and (B) one (1) Business Day prior to the earlier of the Termination Date and the date on which the Agreement may otherwise be terminated by the Company in accordance with *Article VII* ; *provided* that Parent shall not have the right to terminate this Agreement pursuant to this *Section 7.4(b)* if it or Merger Sub is then in material breach of any of their representations, warranties, covenants or other agreements hereunder, which breach would give rise to the failure of a condition set forth in *Section 6.3(a)* or *6.3(b)* .

7.5. *Effect of Termination and Abandonment.*

(a) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this *Article VII* , this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or of any member of the Parent Group or the Company Group); *provided* , that (*i*) no such termination shall relieve any party hereto of any liability to pay the Termination Fee or the Excluded Party Fee, as applicable, or the Parent Fee or to reimburse expenses in accordance with this *Section 7.5* or relieve any party hereto for any liability incurred or suffered as a result of fraud and (*ii*) the provisions listed in the first sentence of *Section 8.1* shall survive the termination of this Agreement.

(b) In the event that:

(i) (*x*) this Agreement is terminated pursuant to *Sections 7.2(a)* , *7.2(b)* or *7.4(b)* (other than as provided in *Section 7.5 (b)(iv)*), (*y*) any Person shall have delivered to the Company or publicly disclosed an Acquisition Proposal prior to the Stockholders Meeting and (*z*) within 12 months of such termination, the Company enters into a definitive agreement with respect to any Acquisition Proposal or consummates the transactions contemplated by an Acquisition Proposal (whether the Acquisition Proposal made prior to the Stockholders Meeting or a different Acquisition Proposal), then the Company shall, on the date such definitive agreement is entered or such Acquisition Proposal is consummated (whichever is earlier), pay or cause to be paid an amount equal to $29,900,000 (the " *Termination Fee* ") to the Termination Fee Parties and reimburse Parent for all of its Reimbursable Expenses by wire transfer of same day funds to one or more accounts designated by Parent; *provided* that for purposes of clause (*z*) above the references to "20%" in the definition of "Acquisition Proposal" shall be deemed to be references to "50%";

(ii) this Agreement is terminated by the Company pursuant to *Section 7.3(a)* , the Company shall pay the Termination Fee to the Termination Fee Parties prior to such termination and shall reimburse Parent for all of its Reimbursable Expenses, *provided* , that if such termination occurs prior to the Cut-Off Date on account of a Superior Proposal made by a Person that is an Excluded Party, then the Company shall pay to the Termination Fee Parties an amount equal to $13,900,000 (the " *Excluded Party Fee* ") and shall reimburse Parent

for all of its Reimbursable Expenses, in each case by wire transfer of same day funds to one or more accounts designated by Parent;

(iii) this Agreement is terminated by Parent pursuant to *Section 7.4(a)* , the Company shall pay the Termination Fee to the Termination Fee Parties and shall reimburse Parent for all of its Reimbursable Expenses, promptly, but in any event within two (2) Business Days, after the date of such termination; *provided* , that if such termination pursuant to *Section 7.4(a)* occurs prior to the Cut-Off Date on account of a Superior Proposal made by a Person that is an Excluded Party, then the Company shall pay to the Termination Fee Parties the Excluded Party Fee and shall reimburse Parent for all of its Reimbursable Expenses, in each case by wire transfer of same day funds to one or more accounts designated by Parent;

(iv) this Agreement is terminated by Parent pursuant to *Section 7.4(b)* as a result of any material breach by the Company of the covenants contained in *Section 5.3* , the Company shall pay the Termination Fee to the Termination Fee Parties and shall reimburse Parent for all of its Reimbursable Expenses, promptly, but in any event within two (2) Business Days, after the date of such termination, by wire transfer of same day funds to one or more accounts designated by Parent; or

(v) this Agreement is terminated by the Company pursuant to *Section 7.2(a)* , *7.2(b)* or *7.3(b)* , at any time at which Parent was entitled to terminate this Agreement pursuant to *Section 7.4(a)* or *7.4(b)* (in the later case, as a result of any material breach by the Company of the covenants contained in *Section 5.3*), the Company shall pay the Termination Fee to the Termination Fee Parties and shall reimburse Parent for all of its Reimbursable Expenses, promptly, but in any event within two (2) Business Days, after the date of such termination, by wire transfer of same day funds to one or more accounts designated by Parent.

For the avoidance of doubt, in no event shall the Company be required to pay the Excluded Party Fee or Termination Fee on more than one occasion. For purposes of this Agreement, any payment of the Termination Fee or Excluded Party Fee to the Termination Fee Parties hereunder shall be payable to Parent to the extent that Parent has any unreimbursed expenses and any remaining amounts shall be payable 50% to Goldman, Sachs & Co. and 50% to P2 Capital Partners, LLC.

(c) In the event that:

(i) this Agreement is terminated by the Company pursuant to *Sections 7.3(b)* , at any time at which Parent was not entitled to terminate this Agreement pursuant to *Section 7.4(a)* or *7.4(b)* (in the later case, as a result of any material breach by the Company of the covenants contained in *Section 5.3*), or *7.3(c)* , then Parent shall promptly, but in no event later than two (2) Business Days, after the date of such termination, pay or cause to be paid to the Company or its designees an amount equal the Parent Fee, by wire transfer of same day funds; or

(ii) if this Agreement is terminated by the Company or Parent pursuant to *Section 7.2(a)* and the Company would have been entitled to terminate this Agreement pursuant to *Sections 7.3(b)* or *7.3(c)* but for such termination pursuant to *Section 7.2 (a)* , then Parent shall promptly, but in no event later than two (2) Business Days, after the date of such termination, pay or cause to be paid to the Company or its designees the Parent Fee, by wire transfer of same day funds.

For the avoidance of doubt, in no event shall Parent be required to pay the Parent Fee on more than one occasion. The Company shall have the right to assign its right to receive the Parent Fee to one or more Persons in its sole discretion.

(d) Parent and the Company acknowledge that (*i*) the fees and other provisions of this *Section 7.5* are an integral part of the transactions contemplated by this Agreement, (*ii*) without these agreements, Parent and the Company would not enter into this Agreement and (*iii*) any

amount payable pursuant to this *Section 7.5* does not constitute a penalty; accordingly if the Company or Parent, as applicable, fails to promptly pay the amounts due pursuant to *Sections 7.5(b)* or *(c)* (or any portion thereof), and, in order to obtain such payment, the other party commences a suit that results in a judgment against the other party hereto for the Termination Fee, Excluded Party Fee or Parent Fee (or portion thereof) as applicable, the Company or Parent, as applicable, shall pay to the other party hereto its reasonable out-of pocket costs and expenses in connection with such suit, together with interest on the amount of such fee from the date such payment was required to be made to the date of payment at the prime rate as published in the *Wall Street Journal* on the date such payment was required to be made.

(e) Notwithstanding anything to the contrary in this Agreement, in the event the Company fails to effect the Closing in accordance with Section 1.2 of this Agreement or otherwise breaches this Agreement or fails to perform hereunder, then, except for an order of specific performance as and only to the extent expressly permitted by *Section 8.7* , Parent's and Merger Sub's sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) (other than in connection with fraud for which all applicable legal and equitable remedies shall be available to Parent and Merger Sub) against any member of the Company Group in respect of this Agreement, any Contract executed in connection herewith and the transactions contemplated hereby and thereby shall be to terminate this Agreement in accordance with this *Article VII* and collect, if due, (i) the Termination Fee or the Excluded Party Fee, as applicable, (ii) reimbursement of the Reimbursable Expenses and (iii) any interest and other amounts payable pursuant to *Section 7.5 (d)* , and upon payment of such amounts in accordance with this *Section 7.5* , except in connection with an order of specific performance as and only to the extent expressly permitted by *Section 8.7* , and (A) no member of the Company Group shall have any further liability or obligation relating to or arising out of this Agreement, any Contract executed in connection herewith or the transactions contemplated hereby or thereby, (B) neither Parent nor any other member of the Parent Group shall be entitled to bring or maintain any claim, action or proceeding against the Company or any member of the Company Group arising out of or in connection with this Agreement, any Contract executed in connection herewith, any of the transactions contemplated hereby or thereby (or the abandonment or termination thereof) or any matters forming the basis for such termination, and (C) Parent shall use its reasonable best efforts to cause any legal proceedings pending in connection with this Agreement, any Contract executed in connection herewith or any of the transactions contemplated hereby or thereby, to the extent maintained by Parent, Merger Sub or another member of the Parent Group against the Company, its Subsidiaries or any member of the Company Group, to be dismissed with prejudice promptly following the payment of any such amounts. For the avoidance of doubt, (x) the amounts the Termination Fee Parties are entitled to collect, if due, that are specified in clauses (i), (ii) and (iii) of this Section 7.5(e) are intended to serve as a cap on the maximum aggregate liability of the Company, its Subsidiaries and any member of the Company Group under this Agreement in the event the Company fails to effect the Closing in accordance with Section 1.2 of this Agreement or otherwise breaches this Agreement or fails to perform hereunder and under no circumstances shall the Termination Fee Parties be entitled to collect, if due, more than the amounts specified in such clauses or to collect, if due, any such amounts, including the Termination Fee or the Excluded Party Fee, as applicable, and reimbursement of the Reimbursable Expenses on more than one occasion and (y) under no circumstances shall the Termination Fee Parties, Parent or Merger Sub be permitted or entitled to receive both a grant of specific performance of the obligation to close contemplated by *Section 8.7* and any money damages, including all or any portion of the Termination Fee or the Excluded Party Fee, as applicable, and the Reimbursable Expenses.

(f) Notwithstanding anything to the contrary in this Agreement, in the event Parent and Merger Sub fail to effect the Closing in accordance with Section 1.2 of this Agreement or otherwise breach this Agreement or fail to perform hereunder, then, except for an order of specific

performance as and only to the extent expressly permitted by *Section 8.7* , the Company's sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) (other than in connection with fraud for which all applicable legal and equitable remedies shall be available to the Company) against any member of the Parent Group in respect of this Agreement, any Contract executed in connection herewith (including the Equity Commitment Letters and the Limited Guarantees, but excluding the Confidentiality Agreements) and the transactions contemplated hereby and thereby shall be to terminate this Agreement in accordance with this *Article VII* and collect, if due, (i) the Parent Fee, (ii) any interest and other amounts payable pursuant to *Section 7.5(d)* and (iii) any reimbursement obligations under *Sections 5.14(a)* and *(e)* and *5.15(i)* from Parent, and upon payment of such amounts in accordance with this *Section 7.5* and *Sections 5.14(a)* and *(e)* and *5.15(i)* , except in connection with an order of specific performance as and only to the extent expressly permitted by *Section 8.7* , and (A) no member of the Parent Group shall have any further Liability or obligation relating to or arising out of this Agreement, any Contract executed in connection herewith (including the Equity Commitment Letters and the Limited Guarantees, but excluding the Confidentiality Agreements) or any of the transactions contemplated hereby or thereby, (B) neither the Company nor any other member of the Company Group shall be entitled to bring or maintain any claim, action or proceeding against Parent, Merger Sub or any other member of the Parent Group arising out of or in connection with this Agreement, any Contract executed in connection herewith (including the Equity Commitment Letters and the Limited Guarantees, but excluding the Confidentiality Agreements) or any of the transactions contemplated hereby or thereby (or the abandonment or termination thereof) or any matters forming the basis for such termination, and (C) the Company shall use its reasonable best efforts to cause any legal proceedings pending in connection with this Agreement, any Contract executed in connection herewith (including the Equity Commitment Letters and the Limited Guarantees, but excluding the Confidentiality Agreements) or any of the transactions contemplated hereby or thereby, to the extent maintained by the Company or another member of the Company Group against Parent, Merger Sub or any other member of the Parent Group to be dismissed with prejudice promptly following the payment of any such amounts. For the avoidance of doubt, (x) the amounts the Company is entitled to collect, if due, that are specified in clauses (i), (ii) and (iii) of this Section 7.5(f) are intended to serve as a cap on the maximum aggregate liability of Parent, Merger Sub and any member of the Parent Group under this Agreement in the event Parent and Merger Sub fail to effect the Closing in accordance with Section 1.2 of this Agreement or otherwise breach this Agreement or fail to perform hereunder and under no circumstances shall the Company be entitled to collect, if due, more than the amounts specified in such clauses or to collect, if due, any such amounts including the Parent Fee, on more than one occasion and (y) under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance of the obligation to close contemplated by *Section 8.7* and any money damages, including all or any portion of the Parent Fee.

ARTICLE VIII

General Provisions

8.1. *Survival*. None of the representations, warranties or covenants contained in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time; *provided* , that this *Article VIII* and the agreements of the Company, Parent and Merger Sub contained in *Article II* and *Sections 5.9* , *5.10* , *5.11* , and *5.13(d)* shall survive the consummation of the Merger; and that this *Article VIII* and *Sections 5.8* , *5.10* , *5.11* , *5.13(d)* and *7.5* shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement. This *Section 8.1* shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

8.2. *Modification or Amendment.* Subject to the provisions of the applicable Laws, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by the duly authorized officers of each of the respective parties; *provided* that following approval of this Agreement by the Company's stockholders, there shall be no amendment of or change to the provisions of this Agreement which, pursuant to applicable Law, would require further approval by the Company's stockholders without receipt of such approval.

8.3. *Waiver; Extension.* The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party (without the approval of the stockholders of the Company) in whole or in part to the extent permitted by applicable Laws. At any time prior to the Effective Time, the parties may (*a*) waive or extend the time for the performance of any of the obligations or other acts of the other parties, or (*b*) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

8.4. *Counterparts.* This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

8.5. *Governing Law and Venue; Waiver of Jury Trial.*

(a) This Agreement and all Actions (whether at law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to principles of conflicts of law. Each party hereto agrees that it shall bring any Action between the parties or involving any member of the Company Group or Parent Group (other than the Financing Sources) arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement exclusively in the Court of Chancery of the State of Delaware (unless the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, in which case, in any state or federal court within the State of Delaware) (together with the appellate courts thereof, the " *Chosen Courts* "), and solely with respect to any such Action (*i*) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (*ii*) waives any objection to laying venue in any such Action in the Chosen Courts, (*iii*) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto or any member of the Company Group or Parent Group (other than the Financing Sources) and (*iv*) agrees that service of process upon such party in any such Action shall be effective if notice is given in accordance with *Section 8.6* of this Agreement. Notwithstanding the foregoing, each of the parties hereto agrees that (*x*) the Financing Letters and all Actions (whether at law, in contract or in tort) that may be based upon, arise out of or relate to the Financing Letters, or the negotiation, execution or performance thereof, shall, except as otherwise expressly provided therein, be governed by and construed in accordance with the Laws of the State of New York without regard to principles of conflicts of law, and (*y*) such party shall not bring or support any Action of any kind or description, whether in law or in equity, against any of the Financing Sources in any way relating to this Agreement or any of the transactions contemplated hereby (including the Financing), including but not limited to any dispute arising out of or relating to the Debt Financing or the performance thereof, in any forum other than the Supreme Court of the State of New York, County of New York, or if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York (and the appellate courts thereof). The provisions of this *Section 8.5* shall be enforceable by each Financing Source, its Affiliates and their respective successors and permitted assigns. In no event

shall Parent, Guarantors, the GS Investors or any of their respective Affiliates other than GSLP and Goldman Sachs & Co., Inc., be considered a Financing Source or an Affiliate thereof for purposes of this *Section 8.5* .

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE FINANCING LETTERS OR AGAINST THE FINANCING SOURCES. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (*i*) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (*ii*) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATION OF THIS WAIVER, (*iii*) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (*iv*) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS *SECTION 8.5* .

8.6. *Notices*. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (*a*) if personally delivered, on the date of delivery, (*b*) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (*c*) if deposited in the United States mail, first-class postage prepaid, on the fifth Business Day following the date of such deposit, or (*d*) if delivered by facsimile transmission, upon confirmation of successful transmission, (*i*) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, on the date of such transmission, and (*ii*) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party, on the date of such transmission or is transmitted on a day that is not a Business Day. All notices, demands and other communications hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent or Merger Sub, to :

c/o GS Capital Partners VI Fund, L.P.
200 West Street
New York, NY 10282-2198
Attention: Bradley Gross
Fax: 212-357-5505

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

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
Attention: Robert C. Schwenkel
David L. Shaw
Fax: 212-859-4000

If to the Company, to:

Interline Brands, Inc.
701 San Marco Boulevard
Jacksonville, Florida 32207
Attention: Michael J. Grebe
Michael Agliata
Fax: 856-533-1566

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attention: Robert B. Schumer
Paul D. Ginsberg
Fax: 212-757-3990

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

8.7. *Specific Performance.*

(a) The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. The parties acknowledge and agree that, prior to the valid termination of this Agreement pursuant to *Article VII* , the parties hereto shall be entitled, in addition to any other remedy to which they are entitled at law or in equity, to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the Chosen Courts, except as provided in *Section 8.7(b)* .

(b) Notwithstanding *Section 8.7(a)* , it is acknowledged and agreed that the Company shall be entitled to seek specific performance of Parent's obligation pursuant to the terms of this Agreement to cause the Equity Financing to be funded to fund the Merger and to consummate the Merger only in the event that each of the following conditions has been satisfied: (i) all of the conditions in *Sections 6.1* , *6.2* and *6.3* shall have been satisfied (other than those conditions that, by their terms, are to be satisfied at the Closing or the failure of which to be satisfied, is caused by a material breach by Parent or Merger Sub of its representations, warranties, covenants or agreements contained in this Agreement), (*ii*) the third Business Day immediately following the final day of the Marketing Period shall have occurred, (*iii*) the Debt Financing has been funded or will be funded at the Closing if the Equity Financing is funded at the Closing, (*iv*) Parent and Merger Sub fail to complete the Closing in accordance with *Section 1.2* , and (*v*) the Company has confirmed in a written notice to Parent that if specific performance is granted and the Equity Financing and Debt Financing are funded, then the Closing will occur, and that it is willing to waive any unsatisfied conditions in *Section 6.3* (but solely for purposes of consummating the Merger). For the avoidance of doubt, in no event shall the Company be entitled to enforce or seek to enforce specifically Parent's obligations to cause the Equity Financing to be funded or to complete the Merger if the Debt Financing has not been funded (or will not be funded at the Closing if the Equity Financing is funded at the Closing).

(c) Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (*i*) there is adequate remedy at law or (*ii*) an award of specific performance is not an appropriate remedy for any reason at law or equity, other than on the basis

that such remedy is not expressly available pursuant to the terms of this Agreement. Any party seeking an injunction or injunctions to prevent breaches of this Agreement when expressly available pursuant to the terms of this Agreement and to enforce specifically the terms and provisions of this Agreement when expressly available pursuant to the terms of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

(d) While the Company may pursue both a grant of specific performance as and only to the extent permitted by this *Section 8.7* and the payment of the Parent Fee as provided by *Section 7.5(c)* , under no circumstances shall the Company be permitted or entitled to receive both such grant of specific performance and payment of the Parent Fee.

8.8. *Entire Agreement.* (*a*) This Agreement (including any exhibits hereto), (*b*) the Company Disclosure Letter, (*c*) the Parent Disclosure Letter, (d) the Limited Guaranties and (*e*) the letter agreement, dated March 19, 2012, between the Company and GS Capital Partners and the letter agreement, dated March 22, 2012, between the Company and P2 Capital Partners, LLC (each, a " *Confidentiality Agreement* ") constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof.

8.9. *No Third Party Beneficiaries.* Except for *Sections 5.11, 5.13(d), 7.5* and *8.5* (each of which provisions is intended to be for the benefit of the Persons referred to therein, and may be enforced by any such Person), each of Parent and the Company hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein. The parties hereto further agree that the rights of third party beneficiaries under *Section 5.11* shall not arise unless and until the Effective Time occurs. Notwithstanding the foregoing, each party to the Debt Commitment Letter (and its respective Representatives) shall be express third party beneficiaries with respect to *Section 7.5(g)* and *Section 8.5* .

8.10. *Definitions; Construction.*

(a) *Definitions.* As used herein:

" *Acceptable Confidentiality Agreement* " means a confidentiality agreement that contains terms that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreements (except with regard to standstill provisions); *provided* that an Acceptable Confidentiality Agreement shall not include any provision having the effect of prohibiting the Company from satisfying its obligations under this Agreement; provided, further, that the parties hereto hereby agree that the form of Acceptable Confidentiality Agreement attached to Section 8.10(a) of the Company Disclosure Letter shall constitute an Acceptable Confidentiality Agreement for all purposes hereof.

" *Acquisition Proposal* " means any proposal or offer relating to (*a*) a merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction involving the Company (or any Subsidiary or Subsidiaries of the Company whose business constitutes 20% or more of the net revenues, net income or assets (based on fair market value) of the Company and its Subsidiaries, taken as a whole), (*b*) the acquisition of 20% or more of the outstanding shares of any class of capital stock of the Company or 20% or more of the voting power represented by the outstanding voting securities of the Company, (*c*) a tender offer or exchange offer or other transaction which, if consummated, would result in a direct or indirect acquisition of 20% or more of the total voting

power of the capital stock of the Company or 20% or more of the voting power represented by the outstanding voting securities of the Company, (*d*) the acquisition in any manner, directly or indirectly, of 20% or more of the consolidated total assets (based on fair market value) of the Company and its Subsidiaries (or to which 20% or more of the Company's revenues or earnings on a consolidated basis are attributable) including, for this purpose, the outstanding assets and Equity Interests of the Subsidiaries of the Company, or (*e*) any other transaction having a similar effect to those described in clauses (*a*) through (*d*), and in each case other than the transactions contemplated by this Agreement.

" *Action* " means any claim, charge, complaint, dispute, demand, grievance, action, litigation, audit, investigation, review, inquiry, arbitration, suit in equity or at law, administrative, regulatory or quasi-judicial proceeding, or other proceeding of whatever kind or character.

" *Affiliate* " means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person, and for purposes of this definition, the term "control" (including the correlative terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power 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; provided, that with respect to the Parent and Merger Sub, the term "Affiliate" shall not include either of GSLP and Goldman Sachs & Co, Inc. in its capacity as a Financing Source pursuant to the Debt Financing Letters.

" *Applicable Financing Closing Date* " means, (i) the Closing Date, in the case of the New ABL Facility and the Opco Bridge Facility, and (ii) if the Holdco Notes are issued prior to the Closing Date, the date selected by Parent not earlier than 45 days after the date hereof, and otherwise, the Closing Date.

" *Available Cash* " means (i) the cash and cash equivalents of the Company and its domestic Subsidiaries that are not held outside of the United States, are not subject to any escrow or reserve requirements (e.g., settlement-related cash balances and merchant reserves), and can lawfully be dividended to the Company in compliance with Section 4.09 (a) of the Existing Notes Indenture and made available for use in funding the aggregate Per Share Merger Consideration and related fees and expenses without the incurrence of any Tax or violation of any contractual, legal or other restriction on the use thereof for such purpose, *less* (ii) the principal amount drawn under the Existing ABL Facility as of the Closing (excluding any undrawn amounts under outstanding letters of credit).

" *Benefit Plan* " means any "employee benefit plan," as defined in Section 3(3) of ERISA, whether or not subject to ERISA, and any employment, change in control, retention, bonus, defined benefit or defined contribution, pension, profit sharing, deferred compensation, stock ownership, stock purchase, stock option, stock appreciation, restricted stock, restricted stock unit, phantom stock or other equity-based management, retirement, vacation, severance, termination, disability, death benefit, hospitalization, medical, dental, or other employee benefit plan, program, scheme, policy, agreement or arrangement as to which the Company or any of its Subsidiaries sponsors, maintains, contributes to or is obligated to contribute to, or has or may have any liability, for the benefit of any current or former officer, employee, consultant or director of the Company or any of its Subsidiaries.

" *Business Day* " means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York.

" *Buyers Access* " means Buyers Access LLC, a Delaware limited liability company.

" *Common Stock* " means the common stock of the Company, par value $0.01 per share.

" *Company Group* " means (i) the Company, its Subsidiaries, (ii) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, assignees of the Company or any of its Subsidiaries, or (iii) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, assignees of any of the foregoing.

" *Company Intellectual Property* " means Intellectual Property owned by the Company and its Subsidiaries and material to the business and operations of the Company and its Subsidiaries taken as a whole.

" *Company Material Adverse Effect* " means any fact, development, condition, matter, state of facts, circumstance, change, event, occurrence or effect that (*a*) has, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, business, properties, assets or results of operations of the Company and its Subsidiaries taken as a whole; *provided* that none of the following, and no effect arising out of or resulting from the following, shall constitute or be taken into account in determining whether a " *Company Material Adverse Effect* " has occurred or may, would or could occur:

(i) any facts, circumstances, changes, events, occurrences or effects generally affecting (*A*) the industries in which the Company and its Subsidiaries operate or (*B*) the economy, social or political conditions, credit or financial or capital markets (including disruptions thereof) in the United States or elsewhere in the world, including changes in interest, currency or exchange rates or the price of any security, commodity or market index, or

(ii) any facts, circumstances, changes, events, occurrences or effects, to the extent arising out of, resulting from or attributable to (*A*) any changes in legal or regulatory conditions, including changes in applicable Law or generally accepted accounting principles or requirements, or any changes in the interpretation or enforcement thereof, (*B*) compliance by the Company and its Subsidiaries with the terms of this Agreement, including the failure to take any action restricted by this Agreement, (*C*) the public announcement of this Agreement and the transactions contemplated hereby including any loss of, or adverse change in, the relationship of the Company or any Subsidiary with any Person with whom they transact business with (*provided* that this clause (*C*) shall be disregarded for purposes of any representations and warranties set forth in *Section 3.5*), (*D*) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (*E*) any change resulting or arising from the identity of, or any facts or circumstances relating to, Parent, Merger Sub or their respective Affiliates, (*F*) any decrease of the ratings or the ratings outlook for the Company or any of its Subsidiaries by any applicable rating agency and the consequences of such ratings or outlook decrease, (*G*) any decline in the market price, or change in trading volume, of any capital stock of the Company, (*H*) the existence, occurrence or continuation of any force majeure events, including any earthquakes, floods, hurricanes, tropical storms, fires or other natural disasters, (I) any actions taken, or not taken, with the written consent, written waiver or at the written request of Parent or any action taken to the extent expressly permitted or required by this Agreement, or (*J*) any failure to meet any internal or public projections, forecasts or estimates of revenue, earnings, cash flow or cash position;

provided that (*x*) facts, developments, conditions, matters, states of facts, circumstances, changes, events, occurrences or effects set forth in clauses (*a*)(i), (*a*)(*ii*)(*A*), (*a*)(*ii*)(*C*), (*a*)(*ii*)(*D*), (*a*)(*ii*)(*F*) and (*a*)(*ii*)(*H*) above may be taken into account in determining whether there has been or is a Company Material Adverse Effect to the extent (and only to the extent) such facts, developments,

conditions, matters, states of facts, circumstances, changes, events, occurrences or effects have a disproportionate adverse effect on the financial condition, business, properties, assets or results of operations of the Company and its Subsidiaries, taken as a whole, in relation to others in the industries in which the Company and its Subsidiaries operate, and (*y*) that the underlying cause of any decrease, decline, change or failure referred to in clauses (*a*)(*ii*)(*F*), (*a*)(*ii*)(*G*) and (*a*)(*ii*)(*J*) above may be taken into account in determining whether there has been or is a Company Material Adverse Effect; or (*b*) would, or would reasonably be expected to, prevent or materially delay the consummation of the Merger.

" *Compliant* " means, as of any time of determination, with respect to the Specified Required Information, that such Specified Required Information at such time (i) does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the Specified Required Information, in light of the circumstances under which the statements contained in the Specified Required Information are made, not misleading, and (ii) includes all Specified Required Information.

" *Contract* " means any note, bond, mortgage, indenture, lease, license, permit, concession, franchise, contract, agreement, commitment, arrangement or other instrument or obligation.

" *DGCL* " means the General Corporation Law of the State of Delaware, as amended.

" *Employment Agreement* " means any Contract of employment, service, compensation or severance between the Company or any of its Subsidiaries and any current or former employee, under which there are current or future obligations outstanding and that (*a*) would entitle such employee or former employee to severance payments (including payments for compliance with post-termination restrictive covenants) or severance benefits in excess of the payments or benefits such employee would be entitled to under the Company's severance policies, Benefit Plans, or applicable Law, (*b*) would entitle such employee or former employee to change in control payment or benefit upon, or as a result of, (*i*) the execution of this Agreement or (*ii*) consummation of the transactions contemplated by this Agreement (either alone or upon the occurrence of additional acts or events), (*c*) provides for a term of employment of longer than twelve months from the date of such Contract, (*d*) provides for a material retention or material retirement payment or benefit (other than under a tax-qualified plan) or (*e*) would entitle such employee or former employee to a bonus in excess of the bonus such employee or former employee would have been entitled to under the Company's applicable Benefit Plans that are bonus plans.

" *Environmental Laws* " means any and all applicable Laws which (*i*) regulate or relate to the protection or clean-up of the environment; the use, treatment, storage, transportation, handling, disposal or release of Hazardous Substances, the preservation or protection of waterways, groundwater, drinking water or air; or human health and safety as it relates to exposure to Hazardous Substances; or (*ii*) impose liability or responsibility with respect to any of the foregoing, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. 2601 et seq.) and the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) (Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006), or any other Law of similar effects.

" *Environmental Permits* " means any Permit required under applicable Environmental Laws.

" *Equity Interest* " means any share, capital stock, partnership, member or similar interest in any entity and any option, warrant, right or security convertible, exchangeable or exercisable therefor or other instrument or right the value of which is based on any of the foregoing.

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

" *ERISA Affiliate* " means a corporation which, at the time of reference, is or was a member of a controlled group of corporations with the Company and/or its Subsidiaries within the meaning of Code Section 414(b), a trade or business which is or was under common control with the Company and/or its Subsidiaries within the meaning of Code Section 414(c), or a member of an affiliated service group with the Company and/or its Subsidiaries within the meaning of Code Section 414(m) or (o).

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

" *Existing ABL Facility* " means the Credit Agreement, dated as of November 16, 2010, among Opco, as a borrower, the other loan parties party thereto, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the other parties thereto.

" *Existing Notes* " means the 7.00% senior subordinated notes due 2018 of Opco.

" *Existing Notes Indenture* " means the indenture, dated as of November 16, 2010, between Opco, as issuer, the guarantors named therein, and Wells Fargo Bank, National Association, as trustee, under which the Existing Notes are issued.

" *Facilities* " means all real property owned, leased, or operated by the Company or its Subsidiaries and any buildings, facilities, machinery, equipment, furniture, leasehold and other improvements, fixtures, vehicles, structures, any related capital items and other tangible property located on, in, under, or above the real property of the Company or its Subsidiaries.

" *FCPA* " means the U.S. Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 *et seq* ., as amended, modified, recodified or supplemented, together with all rules and regulations thereunder.

" *Financing Sources* " means the Persons (other than the Company or any of its Subsidiaries or any of their respective Affiliates (other than GSLP and Goldman Sachs & Co., Inc.) or controlling persons) that have committed to provide or have otherwise entered into agreements in connection with the Debt Financing (including any alternative debt financings) in connection with the transactions contemplated hereby, and any joinder agreements, indentures or credit agreements entered into pursuant thereto, including the parties named in *Section 4.8(a)* , together with their Affiliates, officers, directors, employees, agents and representatives involved in the Debt Financing and their successors and assigns.

" *GAAP* " means United States generally accepted accounting principles in effect from time to time, consistently applied.

" *Government Bid* " means any unexpired bid or proposal made to any Governmental Authority for which an award has not been issued, which, if accepted or awarded, would lead to a Government Contract.

" *Government Contracts* " means, with respect to or related to the business of the Company, any prime contract, subcontract, basic ordering agreement, letter contract, purchase order, delivery order, task order, teaming agreement, cooperative agreement, grant, loan or other Contract, or a legally binding commitment thereunder or relating thereto between the Company or any Affiliate of the Company and any (1) Governmental Entity, (2) prime contractor performing under a prime Contract with a Governmental Entity, or (3) subcontractor performing under a prime Contract with any Governmental Entity.

" *Governmental Entity* " means any federal, state, local, municipal or foreign government, any court, tribunal, administrative agency or commission or other governmental or quasi-governmental or other regulatory authority or agency, whether federal, state, local, municipal, foreign or supranational, or any arbitral body or the NYSE.

" *GS Capital Partners* " means GS Capital Partners VI Fund, L.P., a Delaware limited partnership.

" *GS Investors* " means, GS Capital Partners, GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., and GS Capital Partners VI GmbH & Co. KG.

" *GSLP* " means Goldman Sachs Lending Partners LLC.

" *Hazardous Substance* " means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Laws, including any quantity of asbestos, urea formaldehyde, polychlorinated biphenyls (PCBs), radon gas, toxic mold, and petroleum products or by-products.

" *Holdco Bridge Facility* " has the meaning ascribed to the term "Holdco Bridge Facility" in the Debt Commitment Letter.

" *Holdco Notes* " has the meaning ascribed to the term "Holdco Securities" in the Fee Letter.

" *HSR Act* " means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

" *Intellectual Property* " means all intellectual property rights of any type or nature recognized by law, however denominated throughout the world, arising out of or associated with: trademarks, trade names, service marks, service names, mark registrations and applications, trade dress, logos, slogans, assumed names, domain names, the goodwill in any of the foregoing; works of authorship, registered and unregistered copyrights, software, data, databases; technology, inventions (whether patentable or not), patents and patent applications; and trade secrets and confidential information.

" *Knowledge* " means (a) with respect to the Company, the actual knowledge of those persons set forth in *Section 8.10(a)* of the Company Disclosure Letter after reasonable inquiry and (b) with respect to Parent, the actual knowledge of those persons set forth in *Section 8.10(a)* of the Parent Disclosure Letter after reasonable inquiry.

" *Law* " means any Order or any federal, state, local, foreign, supranational or international law, statute, treaty, convention or ordinance, common law, or any rule, regulation, standard, directive, requirement, policy, license or permit of any Governmental Entity.

" *Leased Real Property* " means any interest in real property held by the Company or any of its Subsidiaries pursuant to a lease, sublease, license or other similar written agreement.

" *Lien* " means any mortgage, pledge, security interest, encumbrance, adverse claim, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

" *Marketing Period* " means, subject to the second to last sentence of this definition, the first period of twenty (20) consecutive calendar days commencing after the date hereof and throughout and at the end of which (*a*) Parent shall have received the Specified Required Information from the Company and the Specified Required Information shall be Compliant, (*b*) the conditions set forth in *Sections 6.1* and *6.2* are satisfied (except for *Section 6.1(a)* and those conditions that by their terms are to be satisfied by actions at the Closing, or the failure of which to be satisfied, is attributable to a breach by Parent or Merger Sub of its representations, warranties, covenants or agreements contained in this Agreement), (*c*) nothing has occurred and no condition exists that would reasonably be expected to cause any of the conditions set forth in *Sections 6.1* and *6.2* to fail to be satisfied, assuming the Closing were to be scheduled for any time during such twenty (20) consecutive calendar day period, and (*d*) either (1) if the Company is not engaged in

discussions with any Excluded Party, the Solicitation Period End Date shall have occurred or (2) if the Company is engaged in discussions with any Excluded Party, the Cut-Off Date shall have occurred; *provided* that: (*i*) if any financial information for any fiscal quarter included in the applicable Specified Required Information in use at such time becomes stale under Regulation S-X promulgated under the Securities Act, the Marketing Period shall not be deemed to have commenced unless and until the Company has furnished Parent with updated Specified Required Information, (*ii*) the Marketing Period shall not be deemed to have commenced if, after the date of this Agreement and prior to the completion of the Marketing Period, (*A*) Deloitte & Touche LLP shall have withdrawn its audit opinion with respect to any of the financial statements contained in the Company SEC Documents, in which case the Marketing Period shall not be deemed to commence unless and until, at the earliest, a new unqualified audit opinion is issued with respect to such financial statements by Deloitte & Touche LLP or another independent accounting firm reasonably acceptable to Parent, or (*B*) the Company shall have announced any intention to restate any historical financial statements of the Company or other financial information included in the Specified Required Information, or that any such restatement is under consideration or may be a possibility, in which case the Marketing Period shall not be deemed to commence unless and until, at the earliest such restatement has been completed and the applicable Specified Required Information has been amended or the Company has announced that it has concluded no such restatement shall be required in accordance with GAAP, (*iii*) any Specified Required Information is not Compliant at any time during such twenty (20) consecutive calendar days, (iv) if the Company shall have been delinquent in filing or furnishing any Company SEC Document, the Marketing Period shall not be deemed to have commenced unless and until, at the earliest, all such delinquencies have been cured, and (v) if the Company has received any material accounting comments from the staff of the SEC on its Annual Reports on Form 10-K or Quarterly Reports on Form 10-Q, as such may be amended, the Marketing Period shall not be deemed to have commenced unless and until, at the earliest, all such material accounting comments have been satisfactorily resolved with the SEC staff. Notwithstanding anything to the contrary herein, the Marketing Period shall not commence until the later of (x) on or after September 5, 2012 and (y) the date on which the Company has first mailed (or, to the extent permitted by law, made available) the Proxy Statement to the stockholders of the Company. For the avoidance of doubt, once the Marketing Period commences it shall not be affected by the request by Parent or Merger Sub of Specified Required Information made after the commencement of the Marketing Period (other than with respect to Specified Required Information requested prior to the commencement of the Marketing Period, a request made in compliance with Section 5.14 that such Specified Required Information be Compliant).

" *Merger Communication* " means, with respect to the Company, any document or other written communication prepared by or on behalf of the Company or any of its Subsidiaries, or any document or other material or information posted or made accessible on the website of the Company (whether in written, video or oral form via webcast, hyperlink or otherwise), that is related to any of the transactions contemplated by this Agreement and, if reviewed by a stockholder of the Company, would reasonably be deemed to constitute a "solicitation" of "proxies" (in each case, as defined in Rule 14a-1 of the Exchange Act) with respect to the Merger.

" *New ABL Facility* " has the meaning ascribed to the term "ABL Facility" in the Debt Commitment Letter.

" *NYSE* " means the New York Stock Exchange, Inc.

" *Opco* " means Interline Brands, Inc., a New Jersey corporation.

" *Opco Bridge Facility* " has the meaning ascribed to the term "Opco Bridge Facility" in the Debt Commitment Letter.

" *Order* " means any order, judgment, writ, stipulation, settlement, award, injunction, decree, consent decree, decision, ruling, subpoena, verdict, arbitration award or finding entered, issued, made or rendered by any arbitrator or Governmental Entity of competent jurisdiction.

" *Parent Fee* " means (A) $68,400,000, in circumstances in which a Parent Fee is payable pursuant to *Section 7.5(c)* and Parent or Merger Sub has committed a Willful and Material Breach of any of its representations or warranties, covenants, obligations or agreements contained in this Agreement; or (B) $51,300,000, in all other circumstances in which a Parent Fee is payable pursuant to *Section 7.5(c)* ; *provided* that Willful and Material Breach by Parent or Merger Sub shall not exist solely by reason of failure by Parent and Merger Sub to consummate the Merger if (x) all of the conditions set forth in *Section 6.1* and *6.2* have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing) and (y) Parent has satisfied its obligations under *Section 5.13* but the Debt Financing is not available pursuant to the terms thereof and would not be available upon the funding of the Equity Commitments.

" *Parent Group* " means (i) Parent, Merger Sub, the Guarantors, the GS Investors, (ii) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, assignees of Parent, Merger Sub or any Guarantor or GS Investor, (iii) any Financing Source, or any lead arranger, arranger, agent or Representative of or to Parent, Merger Sub or any Guarantor or GS Investor or (iv) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders, assignees of any of the foregoing.

" *Parent Material Adverse Effect* " means any fact, circumstance, change, event or occurrence, individually or in the aggregate, that would, or would be reasonably expected to, prevent or materially delay the performance by Parent or Merger Sub of its obligations under this Agreement or the consummation by Parent and Merger Sub of the transactions contemplated hereby, including the Merger, on a timely basis.

" *Permitted Liens* " means (*a*) zoning restrictions, easements, rights-of-way, restrictions, conditions, minor defects and irregularities in, and other similar exceptions to, title and/or other encumbrances on real property (*provided* that such liens and restrictions do not materially interfere with the use of such real property or the Company's or its Subsidiaries' operation of their respective businesses as currently operated or otherwise materially and adversely impair the Company's current business operations at such location), (*b*) pledges or deposits by the Company or any of its Subsidiaries under workmen's compensation Laws, unemployment insurance Laws or similar legislation, or good faith deposits in connection with bids, tenders, Contracts or leases to which such entity is a party, or deposits to secure public or statutory obligations of such entity or to secure surety or appeal bonds to which such entity is a party, or deposits as security for contested Taxes, in each case incurred or made in the ordinary course of business consistent with past practice, (*c*) Liens imposed by Law, including carriers', warehousemen's, landlords' and mechanics' liens, in each case incurred in the ordinary course of business consistent with past practice for sums not yet due or being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (*d*) statutory Liens for Taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (*e*) non-exclusive licenses granted to third parties in the ordinary course of business by the Company or its Subsidiaries, (*f*) Liens in favor of any lessor under the Real Estate Leases, or encumbering the interests of the lessors in the Leased Real Property, (*g*) Liens with respect to the Indebtedness of the Company or its Subsidiaries that is reflected in the Company SEC Documents, and (*h*) other Liens that do not materially interfere with the use, operation or transfer of, or any of the benefits of ownership of, the property of the Company and its Subsidiaries taken as a whole.

" *Person* " means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

" *Real Estate Leases* " means, collectively, each lease, sublease, license and other similar written agreement pursuant to which the Company or any of its Subsidiaries is granted the right to use or occupy, now or in the future, the Leased Real Property or any portion thereof, including any and all modifications, amendments and supplements thereto and any assignments thereof.

" *Record Holder* " means, with respect to any Shares, a Person who was, immediately prior to the Effective Time, the holder of record of such Shares.

" *Regulatory Law* " means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, any applicable foreign antitrust Laws and all other Laws that are designed or intended to prohibit, restrict or regulate (*a*) foreign investment, (*b*) foreign exchange or currency controls, or (*c*) actions having the purpose or effect of monopolization or restraint of trade or lessening of competition.

" *Reimbursable Expenses* " means all documented out-of-pocket expenses incurred by Parent and any of its Affiliates, as applicable, in connection with this Agreement and the transactions contemplated hereby (including, for the avoidance of doubt, any interest expense on any of the Debt Financing that is funded into escrow prior to the Closing Date and released as a result of the termination of this Agreement, net of any interest income on the escrowed proceeds of such Debt Financing and any non-reimbursable underwriting fee paid in connection therewith), in either case, up to a maximum aggregate amount of $5,000,000.

" *Representatives* " means, as to any Person, its directors, officers, employees, agents and representatives acting on such Person's behalf, including any such investment banker, financial advisor, attorney, accountant or other advisor, agent, representative, intermediary or Affiliate.

" *Restricted Payments* " has the meaning ascribed thereto under the Existing Notes Indenture.

" *SEC* " means the Securities and Exchange Commission.

" *Securities Act* " means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

" *Solvent* " means, when used with respect to any Person, that, on a consolidated basis as of any date of determination, (i) the amount of the present fair saleable value of the assets of such Person will, as of such date, exceed the amount of all Liabilities of such Person, as of such date, as such amounts are determined in accordance with applicable Law governing determinations of the insolvency of debtors, (ii) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the Liabilities of such Person on its debts as such debts become absolute and matured, (iii) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business and (iv) such Person will be able to pay its debts as they mature. For purposes of this definition, (A) "debt" means liability on a "claim" and (B) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured. The amount of Liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual or matured Liability.

" *Specified Parent Affiliates* " means, (a) the GS Investors, (b) the general partners of the GS Investors and (c) Merger Sub.

" *Subsidiary* " means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

" *Superior Proposal* " means a bona fide written Acquisition Proposal that is not solicited or received in violation of *Section 5.3* and that the Company Board has concluded in its good faith judgment, after consultation with its independent financial advisor and outside legal counsel, and taking into consideration all relevant factors, among other things, all of the terms and conditions of such Acquisition Proposal and this Agreement (in each case taking into account any changes to this Agreement or the transactions contemplated hereby (or any other proposals) made or proposed in writing by Parent prior to the time of determination), including financing, regulatory approvals, breakup fee and expense reimbursement provisions, (*a*) is reasonably likely to be consummated in accordance with its terms and (*b*) if consummated, would result in a transaction more favorable to the Company's stockholders from a financial point of view than the transactions contemplated by this Agreement (after taking into account the expected timing and risk and likelihood of consummation); *provided* that for purposes of the definition of "Superior Proposal," the references to "20%" in the definition of Acquisition Proposal shall be deemed to be references to "80%".

" *Takeover Statutes* " means any "moratorium," "control share acquisition," "fair price," "supermajority," "affiliate transactions" or "business combination statute or regulation" or similar state antitakeover Law.

" *Tax* " (including, with correlative meaning, the term " *Taxes* ") means all federal, state, local and foreign income, profits, franchise, gross receipts, environmental, customs duty, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, unclaimed property or escheat obligation, ad valorem, real or personal property, withholding, excise, production, value added, goods and services, transfer, license, occupation, premium, windfall profits, social security (or similar), registration, alternative or add-on minimum, estimated, occupancy and other taxes, duties, fees, governmental charges or other assessments of any nature whatsoever, whether disputed or not, together with all interest, penalties and additions imposed with respect to such amounts and any interest in respect of such penalties and additions, and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

" *Tax Return* " means all returns and reports (including elections, declarations, disclosures, schedules, claims for refund, statements, estimates, information returns and other similar documents) required to be supplied to a Governmental Entity relating to Taxes, including any attachments thereto and any amendments thereof.

" *Termination Fee Parties* " means (i) Parent, (ii) Goldman, Sachs & Co., and (iii) P2 Capital Partners, LLC.

" *Willful and Material Breach* " means a deliberate act or a deliberate failure to act, which act or failure to act constitutes in and of itself a material breach of this Agreement.

(b) *Construction.* The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Where a reference in this Agreement is made to a Section or Exhibit, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated.

Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Terms defined in the text of this Agreement as having a particular meaning have such meaning throughout this Agreement, except as otherwise indicated in this Agreement. The fact that any item of information is disclosed in a Disclosure Schedule to this Agreement shall not be construed to mean that such information is required to be disclosed by this Agreement. The mere listing (or inclusion of a copy) of a Contract or other document or item shall not be adequate to disclose an exception to a representation, warranty or covenant made in this Agreement, except to the extent such representation, warranty or covenant calls only for the listing (or inclusion of a copy) of such Contract or other document or other item itself. The phrase "made available," when used in reference to anything made available to Parent, Merger Sub or their Representatives, shall be deemed to include anything uploaded to and made available to Parent, Merger Sub and their Representatives in the on-line data room hosted by Intralinks on behalf of the Company in the on-line workspace captioned Project Bagpiper.

8.11. *Severability.* The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (*a*) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (*b*) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

8.12. *Assignment.* Except as provided in *Section 7.5(b)* and *7.5(c)* , neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties; *provided* that Parent and Merger Sub may assign this Agreement (in whole but not in part) to any Affiliate of Parent and/or to any Financing Sources for purposes of creating a security interest herein or otherwise assign as collateral in respect of the Financing. No assignment by any party hereto shall relieve such assigning party of any of its obligations hereunder. Subject to the foregoing, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns. Any purported assignment in violation of this *Section 8.12* shall be void.

8.13. *Headings.* The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

8.14. *Delivery by Facsimile or Electronic Transmission.* This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a ".pdf" format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or e-mail delivery of a ".pdf" format data file to deliver a signature to this Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation of a contract and each party hereto forever waives any such defense.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

INTERLINE BRANDS, INC.

By: /s/ MICHAEL AGLIATA

Name: Michael Agliata
Title: Vice President, General Counsel & Secretary

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

ISABELLE HOLDING COMPANY INC.

By: /s/ BRADLEY J. GROSS

Name: Bradley J. Gross
Title: Vice President

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

ISABELLE ACQUISITION SUB INC.

By: /s/ BRADLEY J. GROSS

Name: Bradley J. Gross
Title: Vice President

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Exhibit 2.1

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Exhibit 99.1

INTERLINE BRANDS ANNOUNCES AGREEMENT TO BE ACQUIRED BY GS CAPITAL PARTNERS AND P2 CAPITAL PARTNERS IN TRANSACTION VALUED AT $1.1 BILLION

JACKSONVILLE, Fla., May 29, 2012—Interline Brands, Inc. (NYSE:IBI) ("Interline" or the "Company"), a leading distributor and direct marketer of broad-line maintenance, repair and operations ("MRO") products, today announced that it has entered into a definitive agreement to be acquired by affiliates of GS Capital Partners LP ("GS Capital Partners") and P2 Capital Partners, LLC ("P2 Capital Partners") for $25.50 per share in cash. GS Capital Partners is one of the world's leading private equity investors. P2 Capital Partners, a shareholder of Interline, is a leading investment firm that applies a private equity approach to investing in the public market.

The transaction, which was unanimously approved by Interline's board of directors, is valued at approximately $1.1 billion, including the assumption of debt. The price of $25.50 per share represents a premium of approximately 42% relative to the Company's closing stock price on May 25, 2012, the last trading day before the announcement of the transaction, and a 31% premium relative to the Company's trailing 30-day average closing stock price.

"This agreement provides excellent value to shareholders. This is also an exciting new chapter for Interline, one that we believe will bring broad benefits to all of our stakeholders," said Michael J. Grebe, Interline's Chairman and Chief Executive Officer. "We remain laser-focused on our goals and capabilities, and look forward to working with partners that have proven track records of investments in the distribution sector, as well as financial and operational expertise in global markets. Moreover, Interline has operated successfully in both public and private settings in the past. As we now look forward, GS Capital Partners and P2 Capital Partners have a shared vision of our value creation opportunities and the actions needed to realize them."

Interline intends to maintain its corporate headquarters in Jacksonville, Florida, as well as its distribution and sales footprint.

In addition to equity from funds managed by GS Capital Partners and P2 Capital Partners, it is anticipated that certain members of Company management will invest a portion of their proceeds from the transaction. GS Capital Partners and P2 Capital Partners have also secured committed debt financing from Goldman Sachs and Bank of America.

Barclays is serving as financial advisor to Interline and has provided a fairness opinion in connection with the transaction. Paul, Weiss, Rifkind, Wharton & Garrison LLP is serving as legal advisor to the Company in connection with the transaction.

Goldman Sachs is acting as financial advisor to GS Capital Partners, and Fried, Frank, Harris, Shriver & Jacobson LLP is acting as legal advisor. Debevoise & Plimpton LLP is acting as legal advisor to P2 Capital Partners.

The transaction is subject to certain closing conditions, including the approval of Interline's shareholders and regulatory approvals, but is not subject to any condition with regard to the financing of the transaction.

The agreement permits Interline to solicit alternative proposals from third parties through June 28, 2012. The Interline board of directors, with the assistance of its advisors, will actively solicit acquisition proposals during this period. If there is not a superior offer, the transaction is expected to close by the end of the third quarter of 2012.

Interline will be submitting a current report on Form 8-K with the U.S. Securities and Exchange Commission containing a summary of terms and conditions of the proposed acquisition.

About Interline

Interline Brands, Inc. is a leading distributor and direct marketer with headquarters in Jacksonville, Florida. Interline provides broad-line MRO products to a diversified customer base of facilities maintenance professionals, professional contractors, and specialty distributors primarily throughout North America, Central America and the Caribbean. For more information, visit the Company's website at http://www.interlinebrands.com.

About GS Capital Partners LP

Since 1986, the Goldman Sachs Merchant Banking Division and its predecessor business areas have raised 16 private equity and principal debt investment funds aggregating over $82 billion of capital (including leverage). GS Capital Partners VI is the current private equity vehicle through which Goldman Sachs conducts its large, privately negotiated, corporate equity investment activities. A global leader in private corporate equity investing, GS Capital Partners is a family of funds with a focus on large, high quality companies with strong management and funding acquisition or expansion across a range of industries and geographies. Founded in 1869, Goldman Sachs is a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. For more information, please visit www.gs.com/pia.

About P2 Capital Partners, LLC

P2 Capital Partners, LLC is a New York-based investment firm that applies a private equity approach to investing in the public market. P2 manages a concentrated portfolio of significant ownership stakes in high quality public companies in which it is an active shareholder focused on creating long-term value in partnership with management. The firm will also lead private equity transactions within its public portfolio. P2's limited partners include leading public pension funds, corporate pension funds, endowments, foundations, insurance companies, and high net worth investors.

CAUTIONARY LANGUAGE CONCERNING FORWARD-LOOKING STATEMENTS

Statements herein regarding the proposed transaction between Isabelle Holding Company Inc. ("Parent"), Isabelle Acquisition Sub Inc. ("Merger Sub") and Interline Brands, Inc. (the "Company"), future financial and operating results, benefits and synergies of the transaction, future opportunities for the combined company and any other statements about future expectations constitute forward looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based upon current beliefs and expectations and are subject to significant risks and uncertainties. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward looking statements, including: the ability to obtain governmental approvals of the transaction on the proposed terms and schedule and the failure of the Company's shareholders to approve the transaction. Additional factors that may affect future results are contained in each company's filings with the Securities and Exchange Commission ("SEC"), including each company's Annual Report on Form 10-K for the year ended December 30, 2011, which are available at the SEC's Web site http://www.sec.gov. The information set forth herein speaks only as of the date hereof, and any intention or obligation to update any forward looking statements as a result of developments occurring after the date hereof is hereby disclaimed.

IMPORTANT ADDITIONAL INFORMATION WILL BE FILED WITH THE SEC

In connection with the proposed transaction, the Company plans to file with the SEC a Proxy Statement. **Investors and security holders of the Company are urged to read the Proxy Statement and any other relevant documents filed with the SEC when they are available because they will contain important information about the Company, the proposed transaction and related matters.** The final Proxy Statement will be mailed to shareholders of the Company. Investors and security holders of the Company will be able to obtain copies of the Proxy Statement, when they become available, as well as other filings with the SEC that will be incorporated by reference into such documents, containing information about the Company, without charge, at the SEC's Internet site (http://www.sec.gov). These documents may also be obtained for free from the Company by directing a request to the Company, Investor Relations, 701 San Marco Boulevard, Jacksonville, FL 32207 or at the Company's Investor Relations page on its corporate website at http://ir.interlinebrands.com.

PARTICIPANTS IN SOLICITATION

The Company and its respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the Company's shareholders in respect of the proposed transaction. Information regarding the Company's participants is available in the Company's Annual Report on Form 10-K for the year ended December 30, 2011 and the Company's proxy statement, dated March 23, 2012, for its 2012 Annual Meeting of Shareholders, which are filed with the SEC. Additional information regarding the interests of such participants will be included in the Proxy Statement to be filed with the SEC.

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INTERLINE BRANDS ANNOUNCES AGREEMENT TO BE ACQUIRED BY GS CAPITAL PARTNERS AND P2 CAPITAL PARTNERS IN TRANSACTION VALUED AT $1.1 BILLION