

Exhibit E

New Stockholders Agreement



STOCKHOLDERS AGREEMENT¹

Dated as of [●], 2011

among

ORCHARD BRANDS CORPORATION

and

THE STOCKHOLDERS NAMED HEREIN

¹ This agreement remains subject to potential modifications to be mutually agreed by the parties upon implementation of the management equity program.

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SCHEDULE

Schedule I
Schedule II

Stockholders
Initial Directors

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (this “*Agreement*”) is made as of [●], 2011, among (i) Orchard Brands Corporation, a Delaware corporation (the “*Company*”); (ii) each holder of Class A Common Stock signatory hereto, and each other holder of Class A Common Stock who may hereafter become bound by the terms of this Agreement (the “*Class A Stockholders*”); and (iii) each holder of Class B Common Stock signatory hereto, and each other holder of Class B Common Stock who may hereafter become bound by the terms of this Agreement (the “*Class B Stockholders*” and, together with the Class A Stockholders, the “*Stockholders*”).

W I T N E S S E T H:

WHEREAS, on January 19, 2011, Appleseed’s Intermediate Holdings, LLC (“*AIH*”) and its domestic subsidiaries, Appleseed’s Acquisition, Inc., Appleseed’s Holdings, Inc., Arizona Mail Order Company, Inc., Bedford Fair Apparel, Inc., Blair Credit Services Corporation, Blair Factoring Company, Blair Holdings, Inc., Blair International Holdings, Inc., Blair LLC, Blair Payroll, LLC, Draper & Damon’s Acquisition LLC, Draper & Damon’s LLC, Fairview Advertising LLC, Gold Violin LLC, Haband Acquisition LLC, Haband Company LLC, Haband Oaks, LP, Haband Online, LLC, Haband Operations, LLC, Johnny Appleseed’s, Inc., Linen Source Acquisition LLC, LM&B Catalog, Inc., Monterey Bay Clothing Company, Inc., Norm Thompson Outfitters, Inc., NTO Acquisition Corporation, Orchard Brands Insurance Agency LLC and Wintersilks, LLC (collectively the “*Debtors*”), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, on January 19, 2011, the Debtors’ Joint Plan of Reorganization (as thereafter amended and supplemented from time to time, the “*Plan*”) was filed with the Bankruptcy Court, which Plan contemplates the conversion of AIH from a Delaware limited liability company to a Delaware corporation that is the Company and provides for, among other things, the execution and delivery of this Agreement by the Company and the Stockholders;

WHEREAS, the Plan further provides that this Agreement shall be binding on all parties receiving Common Stock of the Company pursuant to the Plan, regardless of whether such parties execute this Agreement; and

WHEREAS, the Bankruptcy Court has entered an order pursuant to Section 1129 of the Bankruptcy Code, confirming the Plan and authorizing and directing the Company to execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

ARTICLE I DEFINITIONS

1.1. Definitions.

Unless otherwise provided in this Agreement, capitalized terms used herein shall have the following meanings:

[“*Ableco*” means Ableco Finance LLC, a [●] limited liability company.]

[“*ACAS*” means American Capital, Ltd., a Delaware corporation.]

“*Accelerated Closing*” has the meaning set forth in Section 6.3(d).

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “*control*” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “*controlling*” and “*controlled*” have meanings correlative to the foregoing. No Person shall be deemed to be an Affiliate of another Person solely by virtue of the fact that both Persons own shares of the Company’s Capital Stock. The term “*Affiliated*” and other forms of the word “*Affiliate*” shall have correlative meanings.

“*Agreement*” has the meaning set forth in the caption.

“*Approved Sale*” has the meaning set forth in Section 4.1(a).

“*Approving Stockholders*” has the meaning set forth in Section 4.1(a).

“*Bankruptcy Code*” means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.

“*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or any other court having competent jurisdiction over the Chapter 11 Cases.

“*Beneficial Owner*” and “*Beneficial Ownership*” shall be determined pursuant to Rules 13d-3 and 13d-5 under the Exchange Act. “*Beneficially Owns*” shall have a correlative meaning.

“*Board*” means the Board of Directors of the Company.

“*Business Day*” means any day other than a Saturday, Sunday or legal holiday recognized in the State of New York.

“*By-laws*” means the By-laws of the Company, as the same may hereafter be amended or restated from time to time.

[“*Canyon*” means Canyon Capital Advisors LLC, a [●] limited liability company.]

“Capital Stock” means with respect to any corporation or limited liability company, (i) any equity securities of such corporation or limited liability company, (ii) any securities that have any right or option to acquire any equity securities of such corporation or limited liability company (whether through conversion, exercise, exchange or otherwise) and (iii) any right or option to acquire (whether through conversion, exercise, exchange or otherwise) any equity securities or other securities that are directly or indirectly convertible into, or exchangeable or exercisable for, any equity securities of such corporation or limited liability company.

“Certificate of Incorporation” means the Certificate of Incorporation of the Company adopted pursuant to the Plan, as the same may be hereafter amended, modified, supplemented or restated from time to time.

“Chief Executive Officer” means the individual serving from time to time as the Company’s chief executive officer.

“Class A Common Stock” means the Class A Common Stock, \$0.001 par value per share, of the Company having the rights, privileges and preferences specified in the Certificate of Incorporation.

“Class A Stockholders” has the meaning set forth in the caption.

“Class B Common Stock” means the Class B Common Stock, par value \$0.001 per share, of the Company having the rights, privileges and preferences specified in the Certificate of Incorporation.

“Class B Stockholders” has the meaning set forth in the caption.

“Common Stock” means (i) Class A Common Stock; (ii) Class B Common Stock; and (iii) any securities issued with respect to the shares described in clauses (i) or (ii), including pursuant to a stock dividend, stock split, reclassification, or pursuant to an exchange (including a merger).

“Company” has the meaning set forth in the caption.

“Company Additional Debt Securities” has the meaning set forth in [Section 6.3\(a\)](#).

“Company Additional Stock” has the meaning set forth in [Section 6.3\(a\)](#).

“Company Share Equivalents” means any securities exercisable for, convertible into or exchangeable into Company Shares.

“Company Shares” means any shares of any class or series of Capital Stock of the Company, including the Common Stock held by any Stockholder.

“Competitor” means, at the time a Transfer of Common Stock is contemplated, a Person that derives a material portion of its revenue from the sale of products or services that are in direct competition with products or services that are produced, marketed or otherwise commercially exploited by the Company (or its Subsidiaries).

“**Competitor Affiliate**” means, with respect to any Competitor, any other Person directly or indirectly controlling, controlled by or under common control with such Competitor, other than any Stockholder as of the Effective Date or any Related Person of any such Stockholder (*provided* that such Person is a Related Person by reason of clause (b) or (c) of such term). For purposes of this definition, (1) an investment adviser to an investment fund, and any Person who directly or indirectly controls, is controlled by or under common control with such investment adviser, shall be deemed to be directly or indirectly controlling, controlled by or under common control with such investment fund, and (2) a Person shall not be considered to be in control of another Person if the first Person and its Affiliates (x) have Beneficial Ownership of less than 15% of the voting securities of the second Person, (y) do not possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the second Person, whether by contract or otherwise, and (z) are not deemed to be in control of the second Person by virtue of clause (1) of this sentence.

“**Corporate Opportunity**” means a business opportunity which (i) the Company is financially able to undertake, (ii) is, from its nature, in the line or lines of the Company’s existing or prospective business and is of practical advantage to it, and (iii) is one in which the Company has an interest or reasonable expectancy.

“**Debtors**” has the meaning set forth in the preamble.

“**Designating Stockholder**” means (i) with respect to a member of the initial Board, the Person(s) identified as such opposite the name of such initial Board member in Schedule II and (ii) with respect to a member of the Board other than the members named in Schedule II, the Stockholder or, in the case of the Other First Lien Holders, Stockholders, having the right to designate such member (or members) pursuant to Section 2.1(a).

“**Effective Date**” means [●], 2011.

“**Excess**” has the meaning set forth in Section 6.3(a).

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Excluded Securities**” means (i) Capital Stock issued pursuant to the Management Equity Incentive Program, (ii) Capital Stock issued or issuable upon conversion of the Class B Common Stock and the Class C Common Stock, (iii) Capital Stock issued as a pro rata stock dividend or distribution or upon any stock split, recapitalization or other subdivision or combination of Capital Stock, (iv) Capital Stock issued in connection with (a) the acquisition (whether by stock sale, merger, recapitalization, asset sale or otherwise) of another Person (or portion thereof) or (b) a joint venture or strategic alliance with another Person, or (v) Capital Stock issued as a bona fide “equity kicker” to a lender or placement agent in connection with a financing; *provided*, in the case of clause (v), for the avoidance of doubt, that the Company and/or its Subsidiaries, as applicable, complied in all respects with Section 6.3 with respect to such financing.

“**Existing Credit Agreements**” means (i) the [Credit Agreement] dated as of [●], 2011 among the Loan Parties named therein, [●], as Agent, and the Lenders party thereto, (ii) the First Lien Credit Agreement dated as of [●], 2011 among Ableco, L.L.C., as Agent, the Lenders party

thereto and the Loan Parties named therein, (iii) the [Credit Agreement] dated as of [●], 2011 among the Loan Parties named therein, [●], as Agent, and the Lenders party thereto, (iv) the Revolving Credit Agreement dated as of [●], 2011 among PNC Bank, National Association, as Lender and Agent, the other Lenders party thereto and the Loan Parties named therein and (v) the Intercreditor Agreement dated as of [●], 2011 among [●].

“**First Lien Lenders**” means the lenders who are party from time to time to the Credit Agreement.

“**GAAP**” means United States generally accepted accounting principles, consistently applied.

[“**Highland**” means Highland Capital Management LP, a [●] limited partnership.]

“**Independent**” means an individual who:

(i) is not, and within the preceding twenty-four (24) months has not been, an officer, director or employee of: (x) the Company or any Affiliate of the Company or (y) any Stockholder or any Affiliate of a Stockholder; and

(ii) does not have a material financial or other relationship with (x) the Company or any of its Affiliates or (y) any Stockholder or any Affiliate of a Stockholder.

“**Investor**” has the meaning set forth in Section 6.3(d).

“**Losses**” has the meaning set forth in Section 7.1.

“**Management Equity Incentive Program**” means that certain Orchard Brands Corporation Management Equity Incentive Program adopted pursuant to the Plan, as such Management Equity Incentive Program may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“**Offer Period**” has the meaning set forth in Section 6.3(b).

“**Other First Lien Lenders**” means First Lien Lenders other than Ableco, ACAS, Canyon and Highland.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“**Plan**” has the meaning set forth in the preamble.

“**Preemptive Notice**” has the meaning set forth in Section 6.3(a).

“**Pre-Emptive Portion**” has the meaning set forth in Section 6.3(a).

“**Preemptive Securities**” has the meaning set forth in Section 6.3(a).

“Pro Rata Portion” means, with respect to each Stockholder at any time, the ratio of (a) the number of shares of Common Stock held by such Stockholder divided by (b) all of the outstanding shares of Common Stock held by Stockholders.

“Public Offering” means a public offering of Common Stock (or the securities of any successor entity) pursuant to an effective registration statement filed under the Securities Act.

“Purchaser” has the meaning set forth in Section 4.2(a).

“Qualified Buyer” means, immediately prior to the contemplated transaction, (i) any Person who is not a Stockholder or an Affiliate of a Stockholder, (ii) any group of Persons (as the term “group” is used under the Exchange Act) that does not include a Stockholder or an Affiliate of a Stockholder or (iii) any Person that is a Stockholder or an Affiliate of a Stockholder, or any group of Persons that includes a Stockholder or an Affiliate of a Stockholder, if such Person’s participation as a buyer in the contemplated transaction has been approved by the holders of at least sixty percent (60%) of the Class A Common Stock held by Stockholders other than any Stockholder that (x) is participating as a buyer in the proposed transaction, (y) directly or indirectly owns any Capital Stock of such a buyer, or (z) has an Affiliate that is participating as a buyer in the proposed transaction or that directly or indirectly owns any Capital Stock of such a buyer.

“Qualified Public Offering” means a firmly-underwritten public offering registered under the Securities Act of shares of Class A Common Stock that results in the Class A Common Stock being listed on a national securities exchange in the United States.

“Registration Rights Agreement” means the Registration Rights Agreement dated the date hereof among the Company and the signatories thereto.

“Related Person” means, with respect to any Person, (a) an Affiliate of such Person; (b) any investment manager, investment advisor or general partner of such Person; and (c) any investment fund, investment account or investment entity, which fund, account or entity was not formed primarily for the purpose of acquiring Capital Stock of the Company or Capital Stock of a Competitor, whose investment manager, investment advisor or general partner is such Person or a Related Person of such Person; *provided, however*, that no Person shall be deemed an Affiliate of another Person solely by virtue of the fact that both Persons own shares of the Capital Stock of the Company.

“Required Holders” means Stockholders who Beneficially Own at least sixty percent (60%) of the then outstanding shares of Class A Common Stock; *provided* that such Stockholders shall include at least two Stockholders that are not Affiliates of each other and, after excluding the Stockholder that Beneficially Owns the largest number of shares of Class A Common Stock (such Stockholder being referred to as the **“Large Stockholder”**), such Stockholders shall include Stockholders who Beneficially Own at least five percent (5%) of the outstanding shares of Class A Common Stock; *provided further*, if the Large Stockholder Beneficially Owns in excess of [eighty-five] percent ([85]%) of the outstanding shares of Class A Common Stock, then the foregoing proviso shall not apply.

“Restricted Securities” means any Company Shares; *provided, however*, that Restricted Securities shall not include any securities that (i) have theretofore been registered and sold pursuant to the Securities Act, (ii) have been sold to the public pursuant to Rule 144 under the Securities Act (or any similar provision then in force), (iii) have become eligible for sale pursuant to Rule 144(b)(1) under the Securities Act (or any similar provision then in force) or (iv) may otherwise be sold or disposed of in a single public sale without restriction and without registration under the Securities Act.

“Sale of the Company” means a bona fide, arm’s-length transaction or series of related transactions that results in any Qualified Buyer acquiring by any means (including by merger, consolidation, share exchange or Transfer of the Company’s Capital Stock), directly or indirectly:

(i) Beneficial Ownership of a majority of the Class A Common Stock;

(ii) Beneficial Ownership of a majority of the voting Capital Stock of the entity surviving such merger, consolidation, share exchange or Transfer (or securities convertible into or exchangeable or exercisable for Capital Stock of such surviving entity) or Capital Stock of the entity surviving such merger, consolidation, share exchange or Transfer possessing the voting power under normal circumstances to elect a majority of such surviving entity’s board of directors, board of managers or similar governing body; or

(iii) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole.

“Secondary Indemnitor” has the meaning set forth in Section 7.4.

“Securities Act” means the Securities Act of 1933.

“Stockholder Indemnified Party” and **“Stockholder Indemnified Parties”** have the meanings set forth in Section 7.1.

“Stockholders” has the meaning set forth in the caption.

“Stockholder Transferor” has the meaning set forth in Section 4.2(a).

“Sub Board” means the Board of Directors or Board of Managers of a Subsidiary of the Company.

“Subject Lender” has the meaning set forth in Section 8.19.

“Subscribed Portion” has the meaning set forth in Section 6.3(b).

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time

owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more of the other Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of the gains or losses of such limited liability company, partnership, association or other business entity or shall be or control (or have the power to control) a managing director, manager or general partner of such limited liability company, partnership, association or other business entity.

“Subsidiary Additional Debt Securities” has the meaning set forth in Section 6.3(a).

“Subsidiary Additional Stock” has the meaning set forth in Section 6.3(a).

“Tag-Along Notice” has the meaning set forth in Section 4.2(a).

“Tag-Along Offered Shares” has the meaning set forth in Section 4.2(a).

“Tag-Along Right” has the meaning set forth in Section 4.2(a).

“Tag-Along Sale” has the meaning set forth in Section 4.2(a).

“Tag-Along Stockholders” has the meaning set forth in Section 4.2(b).

“Transfer” means any sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other direct or indirect disposition or encumbrance of an interest (whether with or without consideration, whether voluntarily or involuntarily or by operation of law) or the acts thereof; *provided, however*, that the term Transfer shall not include any conversion of the Class B Common Stock into Class A Common Stock so long as such Class A Common Stock is held by the same Person (or its Affiliate) that held such Class B Common Stock. For the avoidance of doubt, a change of control of any Stockholder shall not be considered a Transfer of such Stockholder’s Common Stock unless such change of control occurs as a result of a transaction or series of related transactions that are initiated after the date hereof for the purpose of avoiding the restrictions on Transfer set forth herein. The terms *“Transferee,” “Transferor,” “Transferred,”* and other forms of the word *“Transfer”* shall have the correlative meanings.

1.2. Aggregation of Holdings; Interpretation; Construction.

(a) For purposes of this Agreement, whenever a threshold for the amount invested in Common Stock of the Company or the percentage of ownership of Common Stock is to be determined as to a Stockholder, the investments and the Beneficial Ownership of Affiliates of such Stockholder shall be aggregated with the investments and Beneficial Ownership of such Stockholder including the references to amounts or percentages of shares in Section 2.1, the definitions of Pro Rata Portion, Pre-Emptive

Portion and Required Holders, and any other references to amounts or percentages of Common Stock in this Agreement.

(b) For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (i) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other gender; (ii) references herein to “Articles,” “Sections,” “subsections” and other subdivisions, and to Exhibits and other attachments, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits and other attachments to, this Agreement; (iii) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to other subdivisions within a Section or subsection; (iv) the words “herein,” “hereof,” “hereunder,” “hereby” and other words of similar import refer to this Agreement as a whole and not to any particular provision; (v) the words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation”; and (vi) references to laws, statutes or regulations mean such laws, statutes or regulations as the same may be amended from time to time.

(c) The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

(d) This Agreement is the result of the joint efforts of the parties hereto, and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of the parties and there will be no construction against any party based on any presumption of that party’s involvement in the drafting of this Agreement.

ARTICLE II BOARD OF DIRECTORS

2.1. Size; Election; Term.

The initial Board shall consist of the individuals named in Schedule II, who shall serve as directors for a term ending on the second anniversary of the Effective Date and until their successors are duly elected and qualified or until their earlier incapacity, death, resignation or removal as hereinafter provided. From and after the Effective Date, each Stockholder shall vote all of his, her or its Company Shares and any other voting securities of the Company over which such holder has voting control, and shall take all other necessary or desirable actions within his, her or its control (solely in his, her or its capacity as a stockholder, director, member of a Board committee or officer of the Company and including attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings, but not in any other capacity, including as a lender to the Company), and the Company shall take all necessary or desirable actions within its control (including calling special Board and stockholder meetings), so that:

(a) After the election of the initial Board, and except as provided in Section 6.3(d), individuals designated according to the following provisions are elected to the Board:

(i) any Stockholder that Beneficially Owns at least 31,673² shares of the Class A Common Stock shall have the right to designate one individual to serve as a director,

(ii) any Stockholder that Beneficially Owns at least 63,346³ shares of the Class A Common Stock shall have the right to designate two individuals to serve as directors,

(iii) any Stockholder that Beneficially Owns at least 95,000⁴ shares of the Class A Common Stock shall have the right to designate three individuals to serve as directors,

(iv) any Stockholder that Beneficially Owns at least 126,673⁵ shares of the Class A Common Stock shall have the right to designate four individuals to serve as directors,

(v) any Stockholder that Beneficially Owns at least 158,346⁶ shares of the Class A Common Stock shall have the right to designate five individuals to serve as directors and

(vi) the Chief Executive Officer of the Company;

provided, however, that

(x) ACAS shall retain the right to designate two individuals to serve as directors so long as it continues to Beneficially Own at least 47,500⁷ shares of Class A Common Stock and, if ACAS Beneficially Owns less than 31,673⁸ shares of Class A Common Stock, ACAS shall retain the right to designate one individual to serve as a director so long as it continues to Beneficially Own at least 19,000⁹ shares of Class A Common Stock,

(y) Each of Ableco, Highland or Canyon shall retain the right to designate one individual to serve as a director as long as it continues to Beneficially Own at least 19,000¹⁰ shares of Class A Common Stock and

² 16.67% of initial outstanding shares.

³ 33.34% of initial outstanding shares

⁴ 50.00% of initial outstanding shares.

⁵ 66.67% of initial outstanding shares.

⁶ 83.34% of initial outstanding shares.

⁷ 25% of initial outstanding shares.

⁸ 16.67% of initial outstanding shares.

⁹ 10% of initial outstanding shares.

¹⁰ 10% of initial outstanding shares.

(z) The Other First Lien Lenders shall retain the right until the second anniversary of the Effective Date (on which anniversary, their right shall expire) to designate one individual to serve as an Independent director as long as they collectively continue to Beneficially Own at least 19,000¹¹ shares of Class A Common Stock;

provided further that any director elected to the Board pursuant to this Section 2.1(a) during the period ending on the second anniversary of the Effective Date shall serve for a term ending on the second anniversary of the Effective Date and until his or her successor is duly elected and qualified or until his or her earlier incapacity, death, resignation or removal as hereinafter provided, and any director elected on and after the second anniversary of the Effective Date shall serve for a term of one year and until his or her successor is duly elected and qualified or until his or her earlier incapacity, death, resignation or removal as hereinafter provided.

(b) The authorized number of directors on the Board shall be established and maintained at a size to accommodate changes in the size of the Board as a result of actions under Sections 2.1(a) and 2.3.

(c) The Company shall pay (or shall cause one of its Subsidiaries to pay) the reasonable out-of-pocket expenses (including reasonable travel expenses) incurred by each director in connection with attending the meetings of the Board, any Sub Board and any committee of the Board or any Sub Board.

2.2. Board Committees and Subsidiary Boards.

(a) A Designating Stockholder shall have the ability to have one of the directors designated by it included on each committee of the Board for so long as such Designating Stockholder Beneficially Owns at least 62,700¹² shares of Class A Common Stock.

(b) The Company agrees that it shall cause each of its Sub Boards and, if applicable, any committees of any Sub Board, to consist of the same members as the Board and any committee of the Board, respectively, unless otherwise agreed in advance by unanimous approval of the Board.

2.3. Removal and Vacancies.

(a) Except as provided in Section 6.3(d), a director shall be deemed automatically (and without any further action by such individual, the Company or its Subsidiaries, the Board or any Sub Board, or any Stockholder, including any Designating Stockholder) removed from the Board, any Sub Board and any committee thereof as follows:

¹¹ 10% of initial outstanding shares.

¹² 33% of initial outstanding shares.

(i) in the case of any director other than the Chief Executive Officer, in the event that the Designating Stockholder for such director shall lose its right to designate such director under Section 2.1(a) as a result of a decrease in its Beneficial Ownership of Class A Common Stock below the applicable threshold; *provided*, that in the event the Designating Stockholder had the right to designate more than one director, the director most recently appointed by the Designating Stockholder shall be removed (unless all directors were appointed at the same time, in which case the Board shall determine which director shall be removed), unless the Designating Stockholder shall promptly identify which of the other directors designated by it shall be removed from the Board; and

(ii) in the case of the director who is the Chief Executive Officer, in the event that the individual serving as Chief Executive Officer ceases to serve as such for any reason or no reason.

Upon request of the Board or any Stockholder, if considered necessary to confirm a removal under this Section 2.3(a), each Stockholder shall, as soon as practicable after the date of such request, take action, including the voting of his, her or its Company Shares, to remove the director subject to such removal.

(b) Upon the written request of the applicable Designating Stockholder for any director, and for no other reason, such director (other than the Chief Executive Officer) of the Company or any of its Subsidiaries shall be removed from the Board, a committee or a Sub Board.

(c) If, at any time, a vacancy is created on the Board by reason of the incapacity, death, removal or resignation of a director (other than the Chief Executive Officer), such vacancy shall automatically reduce the number of directors until such time as the Designating Stockholder, if any, who is entitled to designate such director pursuant to Section 2.1(a), shall designate an individual to fill such vacancy and such designee shall have been elected to the Board in accordance with this Agreement and the Company's bylaws or similar governing documents, as applicable (whereupon the number of directors shall be automatically increased to reflect the filling of such vacancy). If the individual serving as Chief Executive Officer ceases to serve as such for any reason or no reason, then the individual that succeeds to that office shall be elected to the Board. Upon receipt of notice of the designation of a nominee pursuant to this Section 2.3(c), each Stockholder shall, as soon as practicable after the date of such notice, take action, including the voting of his, her or its Company Shares, to elect the director so designated to fill such vacancy.

(d) Except as provided in Section 6.3(d), if, at any time, a Stockholder becomes entitled to designate an initial director or an additional individual to serve as a director under Section 2.1(a), such Designating Stockholder shall designate such

individual and shall be entitled to call a special meeting of the stockholders for the purposes of increasing the size of the Board to accommodate an additional member, if required, and causing the election of such designated individual to the Board (unless the Board, upon notice of such designation, shall take action to increase the size of the Board, if required, and to cause the election of such designated individual to the vacancy thereby created).

2.4. Directors and Officers Insurance.

The Company shall maintain in effect at all times directors and officers indemnity insurance coverage covering all directors and officers of the Company and its Subsidiaries, and the Company's Charter and bylaws shall at all times provide for indemnification and exculpation of directors and officers to the fullest extent permitted under applicable law.

ARTICLE III RESTRICTIONS ON TRANSFER

3.1. Transfers of Restricted Securities.

No Stockholder shall Transfer Restricted Securities other than pursuant to (i) a Public Offering or (ii) an available exemption from registration under the Securities Act and any applicable state securities laws; *provided, however*, that no Transfer of Restricted Securities pursuant to this clause (ii) shall be consummated until the Company has either (x) received from the Transferring Stockholder an opinion of counsel, if reasonably requested by the Company, to the effect that such Transfer is exempt from the registration requirements of the Securities Act and any applicable state securities laws, all in form and substance reasonably satisfactory to the Company or (y) waived such requirement after consultation with counsel. Notwithstanding the foregoing, no such opinion of counsel shall be required with respect to any (i) Transfer of Restricted Securities to a Related Person or pursuant to any pledge or collateral assignment or other assignment of Restricted Securities or a part thereof to (A) a third party lender or other financing source for a Stockholder pursuant to a *bona fide* financing transaction or (B) an indenture trustee or any other trustee for the benefit of a secured party with respect to an obligation in effect as of the date of this Agreement or any refinancing of such obligation; and (ii) any foreclosure, deed or assignment in lieu of foreclosure or other exercise of rights or remedies by a pledge or assignee of such Restricted Securities or part thereof (including by any agent therefore).

3.2. Transfers to a Competitor.

(a) No Stockholder may Transfer any Common Stock to a Competitor.

(b) No Stockholder may Transfer any Common Stock to a Competitor Affiliate unless (i) such Stockholder provides prior notice to the Board disclosing the identity of the Competitor Affiliate and providing such other information as the Board may reasonably request and (ii) the Board provides notice to such Stockholder, within 30 days after receiving such information, that the Board is satisfied that financial statements and other information of the Company and its Subsidiaries will be kept confidential by such Competitor Affiliate and will not be disclosed to, or shared with, a Competitor.

3.3. Transfers Resulting in More Than 450 Holders of Record.

Notwithstanding anything herein to the contrary, no Stockholder shall Transfer any Common Stock to any Person if, at the time of such Transfer, the Company has more than four hundred fifty (450) “holders of record” (as determined for purposes of Section 12(g) of the Exchange Act) of Common Stock or if the Board reasonably determines that such Transfer would, if effected, result in the Company having more than four hundred fifty (450) holders of record of Common Stock; *provided that* the foregoing shall not prohibit: (i) a Transfer by a Stockholder to another Person of shares of any Common Stock that, immediately prior to the Transfer, is a holder of record of shares of Common Stock, (ii) a Transfer by a Stockholder to the Company, (iii) a Transfer of all shares of Common Stock owned by the proposed transferor to a single Person who is treated as a single record holder of Common Stock under the Exchange Act, or (iv) a Transfer so long as after giving effect to such Transfer the Company has no more than four hundred fifty (450) holders of record of Common Stock. Any attempted Transfer that is prohibited by this Section shall be null and void and shall not be effective to Transfer any Capital Stock of the Company, but only to the minimum extent necessary to prevent the Transfer from being a Transfer that is prohibited by this Section. The Company may seek any remedy available to it at law, in equity or otherwise, including an injunction prohibiting any such Transfer.

3.4. Agreement Binding Upon Transferees.

The terms of this Agreement shall be binding upon any Transferee of any Common Stock. As a condition to the effectiveness of any Transfer, the Transferee (unless already a Stockholder party to this Agreement) shall execute and deliver to the Company and the other Stockholders a joinder to this Agreement in substantially the form of Exhibit A. Any Transfer or attempted Transfer of any shares of Common Stock in violation of this provision shall be void and of no force or effect as described in Section 3.6.

3.5. Legends.

(a) Each certificate evidencing shares of Common Stock and each certificate issued in exchange for or upon the Transfer of any Common Stock shall be stamped or otherwise imprinted with a legend in substantially the following form:

“The securities represented by this certificate are subject to certain restrictions on transfer and other obligations (including the obligation to sell such securities upon an Approved Sale) set forth in the Stockholders Agreement, dated as of [●], 2011 and as amended and modified from time to time, among the issuer of such securities (the “*Company*”) and certain of the Company’s Stockholders pursuant to which, among other things, any transferee (unless already a Stockholder party to this Agreement) of the securities represented by this certificate is required to execute and deliver a joinder to such Stockholders Agreement and shall be bound by the terms of such

Stockholders Agreement. A copy of such Stockholders Agreement shall be furnished without charge by the Company to the holder hereof upon written request.”

Upon termination of this Agreement pursuant to Section 8.3, the holder of any Common Stock shall be entitled to receive from the Company, without expense to such holder, new certificates of like tenor not bearing the legend set forth above.

(b) In addition, each certificate representing Restricted Securities and each certificate issued in exchange for or upon the Transfer of any Restricted Securities (if such shares remain Restricted Securities after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

“The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the “*Securities Act*”), or any State securities laws and may not be offered, sold or otherwise transferred unless (i) the securities have been registered under the Securities Act and any and all such other applicable laws or (ii) an exemption from such registration is available and the Company has either (x) received an opinion of counsel, in form and substance reasonably satisfactory to the Company, to that effect or (y) waived such requirement after consultation with counsel.”

Whenever any particular shares of Common Stock cease to be Restricted Securities, the holder thereof shall be entitled to receive from the Company, without expense, new certificates of like tenor not bearing the legend set forth above.

3.6. Transfers in Violation of Agreement.

Any Transfer or attempted Transfer of any shares of Common Stock in violation of any provision of this Agreement shall be void and of no force or effect, and the Company shall not record such Transfer on its books or treat any purported Transferee of such shares of Common Stock as the owner of such shares for any purpose.

3.7. Issuance of New Capital Stock.

Prior to any issuance of Capital Stock of the Company to any Person (other than issuances (i) pursuant to a Public Offering, (ii) issuances pursuant to the Management Equity Incentive Program, (iii) upon the conversion of Class B Common Stock into Class A Common Stock so long as such Class A Common Stock is held by the same Person that held such Class B Common Stock or (iv) upon the conversion of Class C Common Stock into Class A Common Stock so long as such Class A Common Stock is held by the same Person that held such Class C Common Stock), the Company shall cause such Person to execute and agree to deliver to the Company and the other Stockholders a joinder to this Agreement.

3.8. Restrictions on Transfer Not Exclusive.

The restrictions on Transfers of Common Stock provided for herein shall be in addition to, and not in lieu of, any restrictions that may otherwise apply to a Stockholder's shares of Common Stock.

ARTICLE IV SALE OF COMPANY

4.1. Approved Sale.

(a) If the holders of at least sixty percent (60%) of the outstanding shares of Class A Common Stock approve a Sale of the Company (any such transaction that satisfies the conditions described in this Article IV, including Section 4.1 (c), (d) and (e) being hereinafter referred to as an "**Approved Sale**" and the holders of such Class A Common Stock being hereinafter referred to as the "**Approving Stockholders**"), then, upon receipt of written notice from the Company or the Approving Stockholders describing the terms of such Approved Sale (including the purchaser, the consideration and the form of the transaction), each Stockholder shall vote for, consent to and raise no objections against such Approved Sale, and shall, subject to Section 4.1(c), take all necessary or desirable actions in connection with the consummation of the Approved Sale, including any amendments to the Certificate of Incorporation and By-laws, as reasonably requested by the Company or the Approving Stockholders (*provided* such Approved Sale does not violate or conflict with this Agreement), and shall, subject to Section 4.1(c), take all necessary or desirable actions in connection with the consummation of the Approved Sale as reasonably requested by the Company or the Approving Stockholders. For the avoidance of doubt, (i) the obligations of the Stockholders pursuant to the foregoing sentence shall apply irrespective of the amount of consideration (if any) to be paid to the Stockholders pursuant to the Approved Sale, and (ii) all shares of Common Stock shall be treated as a single class for purposes of this Article IV.

(b) In connection with each Approved Sale and in furtherance of the foregoing:

(i) Each Stockholder shall cooperate fully with the transaction and take all steps reasonably requested by the Approving Stockholders to effect the transaction.

(ii) Each Stockholder shall execute a purchase and sale agreement and any other agreement reasonably necessary to effectuate the Approved Sale in the form entered into by the Company and the Approving Stockholders.

(iii) If the Approved Sale is structured as a merger, consolidation or sale of assets, each Stockholder shall waive any dissenters rights, appraisal rights or similar rights in connection with such merger or consolidation.

(iv) If the Approved Sale is structured as a sale of stock, each Stockholder shall agree to sell all of its Company Shares (including any Company Share Equivalents) on the terms and conditions approved by the Approving Stockholders and consistent with this Article IV.

(v) If the Approved Sale is structured as a sale of assets, each Stockholder shall approve any subsequent liquidation of the Company, the distributions in connection with which shall be pro rata and pursuant to the rights and preferences set forth in the Certificate of Incorporation.

(vi) Each Stockholder agrees not to assert, at any time, any claim against the Company or any other Stockholder in connection with such Approved Sale; *provided, however*, that the foregoing shall not limit any Stockholder's ability to assert, at any time, a claim that the Company or another Stockholder has violated a provision of this Agreement.

(c) The obligations of the Stockholders with respect to an Approved Sale are subject to the satisfaction of the following conditions, and neither the Company nor any Stockholder shall consummate an Approved Sale unless and until such conditions shall have been satisfied:

(i) Upon the consummation of the Approved Sale, each Stockholder shall receive in respect of its Company Shares an amount (if any) that is no less than the same portion of the aggregate consideration attributable to all Company Shares that such Stockholder would have received if such aggregate consideration had been distributed by the Company pursuant to the rights and preferences set forth in the Certificate of Incorporation;

(ii) If any holders of a class of Company Shares are given an option as to the form and amount of consideration to be received, each other holder of such class shall be given the same option; and

(iii) The obligations, expenses or potential obligations or expenses incurred by a Stockholder pursuant to this Section 4.1 in connection with such Approved Sale, including any obligations to indemnify pursuant to Section 4.1(d) below or otherwise, and any expenses associated therewith, shall not exceed the net cash proceeds paid to such Stockholder in respect of its holdings of Company Shares (including Company Share Equivalents) in connection with the Approved Sale.

(d) Each Stockholder Transferring Company Shares pursuant to this Section 4.1 (i) shall pay its pro rata share (based on its share of the purchase price received by all holders of Company Shares (including Company Share Equivalents)) of any reasonable expenses incurred by the Approving Stockholders in connection with such Approved Sale (including legal fees and expenses) to the extent not paid or reimbursed by the Company or the purchaser and (ii) shall be obligated to join on a several, pro rata basis (based on its share of the purchase price received by all holders of Company Shares (including Company Share Equivalents)), and on terms no less favorable than those applicable to the Approving Stockholders, in any indemnification, hold-back, escrow, contingent consideration or other similar items that the Approving Stockholders agree to provide in connection with such Approved Sale (other than any such obligations that relate specifically to a particular Stockholder, such as indemnification with respect to representations and warranties given by a Stockholder described in Section 4.1(e)); *provided, however*, that no Stockholder shall be liable hereunder for any indemnity or other obligations (including expenses) in excess of the net cash proceeds paid to such Stockholder in respect of its holdings of Company Shares (including Company Share Equivalents) in connection with the Approved Sale.

(e) Each Stockholder shall be obligated to make representations or warranties solely as to such Stockholder's (i) title and ownership of the Company Shares being sold by such Stockholder; (ii) authorization, execution and delivery of relevant documents by such Stockholder; and (iii) the enforceability of relevant documents against such Stockholder. No Stockholder shall be required, without such Stockholder's prior written consent, to enter into any post-closing restrictive covenants in connection with such Approved Sale.

(f) Each Stockholder agrees that it will deliver at the closing of the Approved Sale certificates evidencing the shares of Common Stock (and documents evidencing any Company Share Equivalents) to be sold by such Stockholder in the Approved Sale duly endorsed in blank or accompanied by written instruments of transfer in form and substance reasonably satisfactory to the Approving Stockholders. Subject to the other provisions of this Section 4.1, each Stockholder agrees that it shall execute such other documents as are being executed by the Approving Stockholders, and such other documents as the Approving Stockholders may reasonably request in connection with the consummation of the Approved Sale, in each case, at the time specified by the Approving Stockholders.

(g) Except as expressly provided in this Section 4.1, the Approving Stockholders shall have no obligation to any Stockholder with respect to the Transfer of any shares of Common Stock owned by such Stockholder in connection with the Approved Sale; *provided, however*, that the foregoing shall not limit any Stockholder's ability to assert, at any time, a claim that the Company or another Stockholder has violated a provision of this Agreement. Notwithstanding anything herein to the contrary, the Approving Stockholders shall have no obligation to any other Stockholder as a result of any decision by the Approving Stockholders to accept or consummate, or not to accept or consummate, any Sale of the Company (it being understood that any and all such decisions shall be made by each of the Approving Stockholders in their sole discretion).

(h) No Stockholder may disclose to any Person (except (i) to the Stockholder's limited partners, Affiliated investment funds, legal counsel or financial adviser or to another Stockholder, in each case on a confidential basis, (ii) with the Company's prior written consent, (iii) as required under applicable law, order or legal or investigative process or (iv) to a prospective Transferee; *provided* that such prospective Transferee is subject to restrictions on confidentiality that are at least as restrictive as those contained in this Agreement) any confidential information related to a potential Approved Sale; *provided, however*, that the foregoing limitation shall not apply to any information that (w) is generally available to the public at the time of disclosure or becomes generally available through no wrongful act on the part of such Stockholder; (x) becomes known to the Stockholder through disclosure by sources other than the Company or the other Stockholders having, to the knowledge of the Stockholder, the legal right to disclose such information; (y) is independently developed by the Stockholder without reference to or reliance upon such confidential information; or (z) is required to be disclosed by the Stockholder to comply with applicable laws or governmental regulations, *provided* that the Stockholder provides, to the extent legally permitted, prior written notice of such disclosure to the Company and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

4.2. Tag-Along Rights.

(a) If any Stockholder or group of Stockholders (collectively, the "**Stockholder Transferor**") has agreed to Transfer to any Person or group of Persons (collectively, a "**Purchaser**") other than in a Transfer pursuant to Section 4.1, in one transaction or a series of related transactions, an amount of Common Stock that would result in such Purchaser having Beneficial Ownership of more than sixty percent (60%) of the then outstanding Class A Common Stock (any such Transfer subject to this Section 4.2 being a "**Tag-Along Sale**"), the Stockholder Transferor shall give written notice (a "**Tag-Along Notice**") of such proposed Transfer to the Stockholders at least fifteen (15) Business Days prior to the consummation of such proposed Tag-Along Sale setting forth:

(i) the total number of shares of Common Stock proposed to be Transferred to the Purchaser (the "**Tag-Along Offered Shares**") and the purchase price per share of Common Stock;

(ii) the identity of the Purchaser;

(iii) all other material terms and conditions of the contemplated Transfer;

(iv) the expected closing date of the contemplated Transfer; and

(v) a statement that each such Stockholder shall have the right (the "**Tag-Along Right**") pursuant to this Section 4.2 to elect to sell up to its Pro Rata Portion of the Tag-Along Offered

Shares in accordance with the procedures set forth in Section 4.2(b).

(b) Upon delivery of a Tag-Along Notice, each Stockholder (other than the Stockholder Transferor) shall have the right, but not the obligation, to sell up to its Pro Rata Portion of the Tag-Along Offered Shares at the same price per share, for the same form of consideration and, subject to the remainder of this Section 4.2, pursuant to the same terms and conditions as set forth in the Tag-Along Notice. If a Stockholder (other than the Stockholder Transferor) wishes to participate in the Tag-Along Sale, it shall provide written notice to the Stockholder Transferor no more than ten (10) days after the date of receipt of the Tag-Along Notice, indicating its election to sell up to its Pro Rata Portion of the Tag-Along Offered Shares. Such notice shall set forth the number of shares of Common Stock that such Stockholder elects to include in the Tag-Along Sale, which number shall not exceed its Pro Rata Portion of the Tag-Along Offered Shares, and such notice shall constitute such Stockholder's binding agreement to sell such shares of Common Stock at the same price, for the same consideration, and subject to the remainder of this Section 4.2, pursuant to the same terms and conditions applicable to the Tag-Along Sale. The Stockholder Transferor shall not consummate the Tag-Along Sale unless the Purchaser purchases all of the shares of Common Stock requested to be included in the Tag-Along Sale by the electing Stockholders (the "**Tag-Along Stockholders**") at the same price and for the same consideration applicable to the Stockholder Transferor; *provided, however*, that in the event that the number of shares of Common Stock which the Stockholder Transferor and the Tag-Along Stockholders desire to sell in the Tag-Along Sale is more than the Tag-Along Offered Shares, to the extent that the Purchaser does not elect to purchase such excess shares of Common Stock the number of shares of Common Stock to be sold by the Stockholder Transferor and each Tag-Along Stockholder shall be reduced on a pro rata basis according to the proportion which the number of shares of Common Stock which each such party desires to have included in the Tag-Along Sale bears to the total number of shares of Common Stock desired by all such parties to have included in the Tag-Along Sale; *provided further, however*, that notwithstanding anything to the contrary in this Agreement, if for any reason the Purchaser does not purchase all of the shares of Common Stock requested to be included in the Tag-Along Sale on a pro rata basis as provided in the foregoing proviso, for the same consideration and on the same terms and conditions, then the Stockholder Transferor shall purchase such number of shares from the applicable Tag-Along Stockholders necessary to give effect to the requirement for pro rata participation by all Tag-Along Stockholders on the same terms and conditions as proposed in the Tag-Along Notice (which terms and conditions shall be no less favorable than those governing the Transfer to the Purchaser by the Stockholder Transferor).

(c) In connection with the Tag-Along Sale, the Tag-Along Stockholders shall agree (i) if the Tag-Along Sale is consummated, to pay their *pro rata* share of the reasonable costs incurred in connection with the Tag-Along Sale (including reasonable legal fees and expenses) to the extent not paid or reimbursed by the Company or the Purchaser; and (ii) subject to the remainder of this Section 4.2 including Section 4.2(d) below, to participate on a several, *pro rata* basis, and on terms no less favorable than those applicable to the Stockholder Transferor, in any indemnification, hold-back,

escrow, contingent consideration or other similar items relating to the Tag-Along Sale (based on the consideration that may be received in such Tag-Along Sale); *provided, however,* that no Tag-Along Stockholder shall be liable hereunder for any indemnity or other obligations (including expenses) in excess of the net cash proceeds paid to such Tag-Along Stockholder in respect of its holdings of Company Shares sold in connection with the Tag-Along Sale.

(d) As a condition to the effective exercise of the rights in this Section 4.2, but subject to the other provisions of this Section 4.2, each participating Tag-Along Stockholder shall join in and agree to be bound by all terms and conditions applicable to the Stockholder Transferor and agree to be bound by all provisions of the documents pursuant to which the Purchaser is to acquire securities of the Company (along with all other documents related to the Tag-Along Sale); *provided* all participating Tag-Along Stockholders are treated in the same manner. No Tag-Along Stockholder shall be required to make any representations and warranties in connection with such sale other than with respect to; (i) title and ownership of the Company Shares being sold by such Tag-Along Stockholder; (ii) authorization, execution and delivery of relevant documents by such Tag-Along Stockholder; and (iii) the enforceability of relevant documents against such Tag-Along Stockholder. No Tag-Along Stockholder shall be liable in respect of any indemnification provided in connection with a Tag-Along Sale (x) in excess of the net consideration received by such Tag-Along Stockholder in respect of its holdings of Company Shares in such Tag-Along Sale, (y) for the breach of any representations or warranties made by any other Stockholder as to itself (for example, as to such other Tag-Along Stockholder's ownership of Common Stock), and (z) other than on a several, pro rata basis with the Stockholder Transferor and all other Tag-Along Stockholders in relation to the aggregate consideration received by each of them in such Tag-Along Sale (except for any matters related solely to such Stockholder). No Tag-Along Stockholder shall be required to participate in any escrow, holdback, contingent consideration or similar items relating to such Tag-Along Sale in excess of such Tag-Along Stockholder's pro rata participation in the Tag-Along Sale (based on net proceeds to be received) or on any terms less favorable than those applicable to the Stockholder Transferor. No Tag-Along Stockholder shall be required, without such Tag-Along Stockholder's prior written consent, to enter into any post-closing restrictive covenants in connection with such Tag-Along Sale.

(e) If any shares of Common Stock are Transferred pursuant to this Section 4.2 to any Person which is not a party to this Agreement and such Person purchases less than 100% of the outstanding shares of Common Stock, such Person shall execute a joinder to this Agreement as a condition to the purchase of such shares and such shares shall continue to be subject to the provisions of this Agreement.

(f) With respect to the rights set forth in this Section 4.2, the Class A Common Stock and Class B Common Stock shall be considered as the same class of Common Stock. For the avoidance of doubt, no holder of Class B Common Stock shall be required to convert to Class A Common Stock in order to participate in a Tag-Along Sale.

(g) No Stockholder may disclose to any Person (except (i) to the Stockholder's limited partners, Affiliated investment funds, legal counsel or financial adviser or to another Stockholder, in each case on a confidential basis, (ii) with the Company's prior written consent, (iii) as required under applicable law, order or legal or investigative process or (iv) any prospective Transferee; *provided* that such prospective Transferee is subject to restrictions on confidentiality that are at least as restrictive as those contained in this Agreement) any information related to the transactions contemplated by the Tag-Along Notice; *provided, however*, that the foregoing limitation shall not apply to any information that (w) is generally available to the public at the time of disclosure or becomes generally available through no wrongful act on the part of such Stockholder; (x) becomes known to the Stockholder through disclosure by sources other than the Company or the other Stockholders having, to the knowledge of the Stockholder, the legal right to disclose such information; (y) is independently developed by the Stockholder without reference to or reliance upon such confidential information; or (z) is required to be disclosed by the Stockholder to comply with applicable laws or governmental regulations, *provided* that the Stockholder provides, to the extent legally permitted, prior written notice of such disclosure to the Company and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each of the parties hereby severally represents and warrants to each of the other parties as follows:

5.1. Consent. No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by such party, other than those that have been made or obtained on or prior to the Effective Date, in connection with (i) the execution or delivery of this Agreement or (ii) the consummation of any of the transactions contemplated hereby.

5.2. No Conflict.

The execution, delivery and performance of this Agreement by such party does not (x) violate, conflict with, or constitute a breach of or default under the organizational documents of such party or any material agreement to which it is a party or by which it is bound or (y) violate any law, regulation, order, writ, judgment, injunction or decree applicable to such party.

ARTICLE VI COVENANTS

6.1. Financial Statements and Other Information.

The Company shall deliver to each Stockholder:

(a) as soon as available and in any event within forty-five (45) days after each fiscal quarter of each fiscal year, unaudited statements of income and cash flows of the Company and its Subsidiaries for such quarterly period and for the period from the

beginning of the fiscal year to the end of such quarter, and unaudited balance sheets of the Company and its Subsidiaries as of the end of such quarterly period, all prepared in accordance with GAAP, subject to the absence of footnote disclosures and to normal year-end adjustments, and a comparison against corresponding periods in the prior year; and

(b) as soon as available and in any event within one hundred fifty (150) days after the end of the fiscal year ending on or about December 31, 2011 and within one hundred twenty (120) days after each fiscal year thereafter, audited statements of income and cash flows of the Company and its Subsidiaries for such fiscal year, and audited balance sheets of the Company and its Subsidiaries as of the end of such fiscal year prepared in accordance with GAAP, and accompanied by, with respect to the consolidated portions of such statements, an opinion of an independent accounting firm of recognized national standing.

6.2. Confidentiality.

(a) Each Stockholder shall, and shall cause its representatives to, hold in confidence and not disclose (except (i) to the Stockholder's limited partners, Affiliated investment funds, legal counsel or financial adviser or to another Stockholder, in each case on a confidential basis, (ii) with the Company's prior written consent, (iii) as required under applicable law, order or legal or investigative process or (iv) to a prospective Transferee; *provided* that such prospective Transferee is subject to restrictions on confidentiality that are at least as restrictive as those contained in this Agreement) any confidential information provided to or learned by it with respect to the Company, including pursuant to Section 6.1; *provided, however*, that the foregoing limitation shall not apply to any information that (a) is generally available to the public at the time of disclosure or becomes generally known through no wrongful act on the part of such Stockholder; (b) becomes available to the Stockholder through disclosure by sources other than the Company having, to the knowledge of the Stockholder, the legal right to disclose such information; (c) is independently developed by the Stockholder without reference to or reliance upon such confidential information; or (d) is required to be disclosed by the Stockholder to comply with applicable laws or governmental regulations, *provided* that the Stockholder provides, to the extent legally permitted, prior written notice of such disclosure to the Company and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure; and *provided further* no confidential information shall be provided to a Competitor or to a Competitor Affiliate (unless, in the case of a Competitor Affiliate, the Board has provided the notice described in Section 3.2(b)(ii)).

(b) Notwithstanding the fiduciary duties of directors regarding the Company's confidential information under the Delaware General Corporation Law and this Section 6.2, any director designated by a Designating Stockholder in accordance with Section 2.1 shall be and is hereby authorized to disclose to the Designating Stockholder for such director and such Designating Stockholder's Affiliates (except where the Designating Stockholder is a Competitor Affiliate, in which case such disclosure may only be made to such Designating Stockholder), confidential information of the Company to the extent

such disclosure is in furtherance of such entity's administration of its investment in the Company in the ordinary course of its business and provided that all such materials and information shall be kept confidential in accordance with the provisions described in Section 6.2(a) above.

6.3. Issuance of New Securities.

(a) Each time:

(i) the Company proposes to sell any newly issued shares of, or securities convertible into or exercisable or exchangeable for any newly issued shares of, its Capital Stock ("**Company Additional Stock**") other than Excluded Securities,

(ii) the Company proposes to incur additional indebtedness, or borrow additional money, by selling any debt securities or entering into any other debt facilities or financing arrangements (the "**Company Additional Debt Securities**"),

(iii) any Subsidiary of the Company proposes to sell any newly issued shares of, or securities convertible into or exercisable or exchangeable for any newly issued shares of, its Capital Stock ("**Subsidiary Additional Stock**") other than Excluded Securities, or

(iv) any Subsidiary of the Company proposes to incur additional indebtedness, or borrow additional money, by selling any debt securities or entering into any other debt facilities or financing arrangements (the "**Subsidiary Additional Debt Securities**" and together with the Company Additional Stock, Company Additional Debt Securities and Subsidiary Additional Stock, the "**Preemptive Securities**"),

the Company shall deliver a written notice (a "**Preemptive Notice**") thereof to each Stockholder at least thirty (30) days prior to the consummation of such sale of Company Additional Stock, Company Additional Debt Securities, Subsidiary Additional Stock or Subsidiary Additional Debt Securities, as the case may be (except when the Company issues or sells Preemptive Securities pursuant to an Accelerated Closing, as defined below). The Preemptive Notice shall:

(w) state the Company's or its Subsidiary's bona fide intention to offer such Preemptive Securities;

(x) in the cases of Company Additional Stock or Subsidiary Additional Stock, state the number and class of shares to be offered and the price and terms upon which it proposes to offer such securities;

(y) in the cases of Company Additional Debt Securities or Subsidiary Additional Debt Securities, state the aggregate principal

amount, the maturity date(s), the collateral security provisions (if any), and the price and terms (including covenants) upon which it proposes to offer such securities; and

(z) contain an offer to sell to each Stockholder at the same price and on the same terms and conditions that the Company or its Subsidiary proposes to issue and sell the securities,

(1) in the case of an offering of Company Additional Stock, an amount sufficient for such Stockholder to maintain its fully diluted Common Stock ownership position prior to the issuance of such Company Additional Stock pursuant to such offering,

(2) in the case of an offering of Company Additional Debt Securities, the amount of such Company Additional Debt Securities multiplied by a percentage equal to its then current fully diluted ownership percentage of the Company's Common Stock,

(3) in the case of an offering of Subsidiary Additional Stock, the amount of such Subsidiary Additional Stock multiplied by a percentage equal to its then current fully diluted ownership percentage of the Company's Common Stock, or

(4) in the case of an offering of Subsidiary Additional Debt Securities, the amount of such Subsidiary Additional Debt Securities multiplied by a percentage equal to its then current fully diluted ownership percentage of the Company's Common Stock,

together with (in the case of each of (1), (2), (3) and (4) above of this clause (z)) the full amount of any Excess (as defined below).

The amount of securities that may be purchased hereunder by a Stockholder (other than any Excess) is referred to as such Stockholder's "**Pre-Emptive Portion.**" "**Excess**" means the aggregate amount of Preemptive Securities that may be purchased by all Stockholders hereunder pursuant to their aggregate Pre-Emptive Portions, but as to which any of such Stockholders fail to elect to purchase their entire Pre-Emptive Portion.

(b) For a period of twenty-five days following the delivery of such Preemptive Notice (the "**Offer Period**"), each Stockholder shall be entitled, by written notice to the Company or its Subsidiary, as the case may be, to elect to purchase all or part of its Pre-Emptive Portion plus all or part of any Excess, and to take such action and/or make any election otherwise described in the Company's notice pursuant to Section 6.3(a). To the extent that elections pursuant to this Section 6.3(b) shall not be made by a Stockholder with respect to any offered securities within such twenty-five day period, then the Company shall not be obligated to issue to such Stockholder any such offered securities. In the event that any such offer is accepted by any Stockholder with respect to all or part of such Stockholder's Pre-Emptive Portion, the Company or its

Subsidiary, as the case may be, shall sell (subject to the remainder of this paragraph) to such Stockholder, and such Stockholder shall purchase from the Company or its Subsidiary, as the case may be, for the consideration and on the terms set forth in the Preemptive Notice the securities that such Stockholder has elected to purchase on such date as designated by the Company (other than in connection with the sale of Preemptive Securities, pursuant to an Accelerated Closing, in which event the provisions of paragraph (d) below shall apply). In the event that the Stockholders elect to purchase in the aggregate more than the aggregate amount of Preemptive Securities being offered pursuant to the Preemptive Notice, then each electing Stockholder shall first purchase the number of shares of Company Additional Stock or Subsidiary Additional Stock, or the principal amount of Company Additional Debt Securities or Subsidiary Additional Debt Securities, as the case may be, that it has elected to purchase up to its Pre-Emptive Portion and thereafter the Excess (if any) shall be allocated to such Stockholders who have elected to purchase more than their Pre-Emptive Portions *pro rata* on the basis of their respective Subscribed Portions (as herein defined). “**Subscribed Portion**” means, with respect to each Stockholder who has elected to purchase more than its Pre-Emptive Portion in connection with a sale, the quotient of (x) the number of shares of Common Stock held by such Stockholder (on a fully diluted basis), *divided by* (y) the total number of shares of Common Stock (on a fully diluted basis) held by all such Stockholders.

(c) The Company or its Subsidiary, as the case may be, shall have the right to issue and sell any Preemptive Securities not subscribed for and allocated pursuant to Section 6.3(b), in the amount, to such persons and in such manner as it determines in its sole discretion, including on a *pro rata* basis to those Stockholders electing to purchase their full Pre-Emptive Portion of any Preemptive Securities, for a period of 90 days after expiration of the Offer Period. If such issuance and sale is not made within such 90-day period, the restrictions provided for in this Section 6.3 shall again become effective.

(d) Notwithstanding anything in Section 6.3(a) to the contrary, in connection with any proposed sale of Preemptive Securities, the Company or its Subsidiary, as the case may be, shall not be required to provide advance Preemptive Notice if the Board, in its sole discretion, decides to dispense with such notice in order to close the sale of any such securities on an accelerated basis (an “**Accelerated Closing**”) to an investor or group of investors (collectively, an “**Investor**”); *provided* that after completing such issuance with the Investor, the Company shall provide each Stockholder with the opportunity to participate in such issuance in the manner contemplated by this Section 6.3 through one of the following processes:

(i) the Company or its Subsidiary, as the case may be, shall reserve for sale at a subsequent closing (the “**Subsequent Closing**”) a number of shares of Company Additional Stock or Subsidiary Additional Stock, or a principal amount of Company Additional Debt Securities or Subsidiary Additional Debt Securities, as the case may be, that would be sufficient for each Stockholder to purchase its Pre-Emptive Portion (calculated as if the Accelerated Closing had not so occurred) plus any Excess; or

(ii) the Investor shall agree to sell, and shall sell, a number of shares of Company Additional Stock or Subsidiary Additional Stock, or a principal amount of Company Additional Debt Securities of Subsidiary Additional Debt Securities, as the case may be, that would be sufficient for each Stockholder to purchase its Preemptive Portion (calculated as if the Accelerated Closing had not so occurred) plus and Excess.

In the case of an Accelerated Closing, the Company or its Subsidiary, as the case may be, shall provide Stockholders with the notice required by Section 6.3(a) as soon as reasonably practicable, but in no event later than five (5) Business Days following the Accelerated Closing. In the event that an Accelerated Closing shall occur that would cause a Stockholder to become a Designating Stockholder, or cause a Designating Stockholder to lose a right to designate a director under Article II, then the operation of Sections 2.1 and 2.3 shall be postponed until the Subsequent Closing has occurred.

(e) Notwithstanding anything herein to the contrary, any shares of Common Stock to be purchased by a Class A Stockholder under this Section 6.3 shall be in the form of additional shares of Class A Common Stock, and any shares of Common Stock to be purchased by a Class B Stockholder under this Section 6.3 shall be in the form of additional shares of Class B Common Stock; *provided*, that notwithstanding the preceding sentence, shares issued to any Stockholder that holds both Class A Common Stock and Class B Common Stock shall consist of shares of Class A Common Stock and Class B Common Stock in proportion to such Stockholder's percentage ownership of Class A Common Stock and Class B Common Stock.

6.4. Covenants of the Company.

The Company covenants and agrees with the Stockholders:

- (a) During the term of this Agreement, the Company shall not:
- (i) become subject to (including by way of amendment to or modification of) any contract that by its terms would (under any circumstances) restrict the Company's right to perform the provisions of this Agreement, the Registration Rights Agreement, the Certificate of Incorporation or the By-laws, except as expressly provided for in any of the foregoing documents;
 - (ii) enter into any agreement containing any non-competition restrictions that restrict a Stockholder's business or portfolio companies without such Stockholder's prior written approval; or
 - (iii) without the prior written consent of the applicable Stockholder, in each instance, (a) use in advertising, publicity, or otherwise the name of such Stockholder or its Affiliates, nor any trade name, trademark, trade device, service mark, symbol or any

abbreviation, contraction or simulation thereof owned by such Stockholder or its Affiliates, or (b) represent, directly or indirectly, that any product or any service provided by the Company or its Subsidiaries has been approved or endorsed by such Stockholder or its Affiliates.

(b) Transactions with Officers and Directors. All transactions by and between the Company and any Subsidiary, on the one hand, and any officer or director of the Company or Subsidiary, on the other hand, shall be conducted on an arm's-length basis, shall be on terms and conditions no less favorable to the Company or the Subsidiary than could be obtained from nonrelated persons and such transactions shall be approved in advance by a majority of the disinterested members of the Board; *provided, however*, that the foregoing approval requirement shall not apply to:

- (i) fees paid to directors for their service on the Board, including expense reimbursement,
- (ii) the purchase of directors and officers insurance from unaffiliated insurers or
- (iii) transactions contemplated by the Registration Rights Agreement.

(c) Transactions with Affiliates. All transactions by and between the Company and any Subsidiary, on the one hand, and any Stockholder that is an Affiliate of the Company, on the other hand, shall be approved in advance by either (x) a majority of the disinterested members of the Board or (y) a majority of the holders of shares of Class A Common Stock who do not have an interest in, and are not affiliated with the Stockholder having the interest in, the proposed transaction; *provided, however*, that the foregoing approval requirement shall not apply to:

- (i) dividend payments made in accordance with Section 1 of Article Four of the Certificate of Incorporation,
- (ii) transactions covered by Section 4.1,¹³ Section 6.3¹⁴ or Article VII,¹⁵
- (iii) transactions contemplated by the Registration Rights Agreement,
- (iv) any transactions contemplated by the Existing Credit Agreements,

¹³ Approved Sale provision.

¹⁴ Issuance of New Securities (pre-emptive rights) provision.

¹⁵ Indemnification provision.

(v) any transactions contemplated by agreements entered in connection with securities issuances that have been effected in compliance with Section 6.3¹⁶ or

(vi) any amendments, modifications, supplements or waivers with respect to the agreements referred to in the preceding clauses (iv) or (v).

ARTICLE VII INDEMNIFICATION

7.1. Investor Indemnification.

Without limitation of any other provision of this Agreement or any agreement executed in connection herewith, the Company agrees to defend, indemnify and hold each Stockholder, its Affiliates and direct and indirect partners (including partners of partners and stockholders and members of partners), members, stockholders, directors, officers, employees and agents and each person who controls such Stockholder within the meaning of Section 15 of the Securities Act, or Section 20 of the Exchange Act (collectively, the “*Stockholder Indemnified Parties*” and, individually, an “*Stockholder Indemnified Party*”) harmless from and against any and all damages, liabilities, losses, taxes, fines, penalties, reasonable costs and expenses (including reasonable fees of a single counsel representing the Stockholder Indemnified Parties), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any such Stockholder Indemnified Party (“*Losses*”), based upon, arising out of, or by reason of any third party or governmental claims relating in any way to (i) such Stockholder Indemnified Party’s status as a security holder, creditor, director, agent, representative or controlling person of the Company or (ii) such Stockholder Indemnified Party’s involvement with the Company (including any and all Losses under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, which relate directly or indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto), including in connection with any third party or governmental action or claim relating to any action taken or omitted to be taken or alleged to have been taken or omitted to have been taken by any Stockholder Indemnified Party as security holder, director, agent, representative or controlling person of the Company or otherwise, alleging so called control person liability or securities law liability; *provided, however*, that the Company will not be liable to the extent that such Losses arise from and are based on (A) an untrue statement or omission or alleged untrue statement or omission in a registration statement or prospectus which is made in reliance on and in conformity with written information furnished to the Company by or on behalf of such Stockholder Indemnified Party specifically for inclusion therein, or (B) conduct by a Stockholder Indemnified Party which constitutes fraud or willful misconduct. For the sake of clarity and the avoidance of doubt, a Stockholder Indemnified Party shall not be entitled to indemnification under this Section 7.1 in respect of any claim that such Stockholder Indemnified Party violated any of the provisions of this Agreement.

¹⁶ Issuance of New Securities (pre-emptive rights) provision.

7.2. Contribution.

If the indemnification provided for in Section 7.1 for any reason is held by a court of competent jurisdiction to be unavailable to a Stockholder Indemnified Party in respect of any Losses referred to therein, then the Company, in lieu of indemnifying such Stockholder Indemnified Party thereunder, shall contribute to the amount paid or payable by such Stockholder Indemnified Party as a result of such Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Stockholders, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Stockholders in connection with the action or inaction which resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the Company and the Stockholders shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Stockholders, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

7.3. Equitable Consideration.

Each of the Company and the Stockholders agrees that it would not be just and equitable if contribution pursuant to Section 7.2 were determined by pro rata or per capita allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 7.2.

7.4. Primacy of Indemnification; Subrogation.

In the event that any Stockholder Indemnified Party has rights to indemnification, advancement of expenses and/or insurance provided by any direct or indirect stockholder of the Company or any Affiliate thereof (any of the foregoing being a "**Secondary Indemnitor**"), other than insurance provided by a Secondary Indemnitor under a liability insurance policy issued to the Company or its officers or directors, then as between the Company and the Secondary Indemnitor the following shall apply: the Company (a) shall be the indemnitor of first resort (*i.e.* its obligations to the Stockholder Indemnified Party shall be primary and any obligation of the Secondary Indemnitor to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Stockholder Indemnified Party shall be secondary); (b) shall be required to advance the full amount of expenses incurred by the Stockholder Indemnified Party and shall be liable for the full amount of all judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees and costs of investigation, to the extent legally permitted and as required by the terms of these bylaws, without regard to any rights the Stockholder Indemnified Party may have against the Secondary Indemnitor; and (c) irrevocably waives, relinquishes and releases the Secondary Indemnitor from any and all claims it may have against the Secondary Indemnitor for contribution, subrogation or any other recovery of any kind in respect of its indemnification of and advancement of expenses to the Stockholder Indemnified Party. No advancement or payment by the Secondary Indemnitor to or on behalf of a Stockholder Indemnified Party with respect to any claim for which the Stockholder Indemnified Party has sought indemnification from the Company shall affect the

foregoing and the Secondary Indemnitor shall, to the extent of such advancement or payment, have a right of contribution from the Company and/or a right of subrogation to all rights of recovery of the Stockholder Indemnified Party against the Company. Each Secondary Indemnitor shall be an express third party beneficiary of this Section 7.4.

ARTICLE VIII MISCELLANEOUS

8.1. Voting Agreement.

This Agreement is intended to be a voting agreement pursuant to Section 218 of the Delaware General Corporation Law, as amended.

8.2. Effectiveness.

Notwithstanding anything contained herein to the contrary, this Agreement shall be effective upon execution of this Agreement by the Company and the Stockholders party hereto. For avoidance of doubt, neither this Agreement nor any of the rights, benefits, obligations or liabilities granted or imposed hereby shall be effective against, inure to the benefit of, or be enforceable by, any Person who does not own any Company Shares and does not execute and deliver to all relevant parties a counterpart to this Agreement.

8.3. Termination of Agreement.

Except as provided in Section 8.4, this Agreement shall terminate upon the earliest of (i) a Qualified Public Offering; and (ii) the date on which any one Person or group of Persons (as the term “group” is used in the Exchange Act) owns all of the outstanding Company Shares.

8.4. Survival.

Notwithstanding anything in this Agreement to the contrary, (i) Section 6.2 shall survive for two years after the termination of this Agreement and (ii) Section 3.5 shall survive until all legends have been removed in accordance with the terms thereof.

8.5. Other Activities of the Parties; Fiduciary Duties.

It is understood and accepted that certain of the Stockholders and their respective Affiliates have interests in other business ventures that may be in conflict with the activities of the Company and its Subsidiaries and that, subject to applicable law, nothing in this Agreement shall limit the current or future business activities of the parties whether or not such activities are competitive with those of the Company and its Subsidiaries. It is further understood and accepted that certain of the Stockholders may have interests in the Company and its Affiliates other than Company Shares and that such interests may conflict with the interests of the holders of Company Shares. The Company acknowledges that many of the Stockholders are in the business of investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company and/or its Subsidiaries and that nothing in this Agreement shall preclude or in any way restrict such Stockholder from investing or participating

in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company and/or its Subsidiaries.

8.6. Amendment and Waiver.

(a) Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or the Stockholders unless such modification, amendment or waiver is approved in writing by the Required Holders; *provided, however*, that:

(i) any modification, amendment or waiver of any of the provisions of Article VI and this Section 8.6(a)(i) shall also require the written approval of the Company, not to be unreasonably withheld or delayed;

(ii) any amendment, modification or waiver that would affect the rights or obligations of the holders of one or more classes or series of Common Stock disproportionately from any other class or series shall also require the approval of the holders of at least sixty percent (60%) of the outstanding shares of each class or series of Common Stock (and this Section 8.6(a)(ii) may not be amended, modified or waived without the approval of the holders of at least sixty percent (60%) of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting as a separate class), *provided, however*, that each class or series treated in an identical manner in all respects to any other class or series shall be considered as a single class or series with such other class or series for purposes of this Section 8.6(a)(ii);

(iii) any amendment, modification or waiver of Section 6.4(b) or Section 6.4(c) shall also require the approval of the holders of at least [eighty-five] percent ([85]%) of the outstanding shares of Class A Common Stock (and this Section 8.6(a)(iii) may not be amended, modified or waived without the approval of the holders of at least [eighty-five] percent ([85]%) of the outstanding shares of Class A Common Stock); and

(iv) any modification or amendment to, or waiver of, Section 2.1 and this Section 8.6(a)(iv) shall also require the approval of the holders of at least sixty percent (60%) of the then outstanding shares of Class A Common Stock held by the Stockholders; *provided that*: (A) any modification or amendment to clause (x) thereof and this clause (A) shall require the approval of ACAS, so long as ACAS has not lost its right to designate a director(s) thereunder; (B) any modification or amendment to clause (y) thereof and this clause (B) shall require the approval of Ableco, Canyon and Highland, so long as Ableco, Canyon and

Highland have not lost their respective right to designate a director thereunder; and (C) any modification or amendment to clause (z) thereof and this clause (C) shall require the approval of the Other First Lien Lenders, so long as not lost they have not lost their right to designate a director thereunder.

(b) In addition to the provisions set forth in Section 8.6(a), any party may waive any provision of this Agreement with respect to itself if such waiver is approved in writing by such party.

(c) The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

8.7. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

8.8. Entire Agreement.

Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

8.9. Successors and Assigns.

Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns and the Stockholders and their respective successors and assigns, subject to the restrictions on transferability set forth herein.

8.10. Counterparts.

This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

8.11. Remedies.

The Company and the Stockholders shall be entitled to enforce their rights under this Agreement specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that breach of any of the provisions of this Agreement would cause irreparable harm to the non-breaching party, that monetary damages would not constitute a full and adequate remedy, and that injunctive relief will therefore be warranted, and that the Company and any Stockholder may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief, and/or any other relief available at law or in equity (without posting a bond or other security) in order to enforce this Agreement or prevent any current or prospective violation of the provisions of this Agreement. Any party or parties that have successfully obtained injunctive relief or specific performance of this Agreement as a result of any breach by a Stockholder or Stockholders of any provisions of this Agreement shall be entitled to recover from the breaching Stockholder or Stockholders all costs and expenses (including attorneys' fees) incurred in connection with obtaining such injunctive relief or specific performance.

8.12. Notices.

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered: (a) upon the earlier of actual receipt and three Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this Section 8.12); (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated on the signature page attached hereto or to such other address (or facsimile number) as may be substituted by notice given as herein provided (*provided* any change of a party's address for notices will only be effective upon receipt). The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice.

8.13. Delivery by Facsimile or Electronic Exchange.

This Agreement, to the extent signed and delivered by means of a facsimile machine, pdf or other electronic exchange, 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. At the request of any party hereto, each other party hereto shall reexecute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine, pdf or other electronic exchange to deliver a signature or the fact that any signature or agreement or instrument was transmitted or

communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

8.14. Business Days.

If any time period for giving notice or taking action hereunder expires on a day is not a Business Day, the time period shall automatically be extended to the immediately following Business Day.

8.15. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. In furtherance of the foregoing, the internal law of the State of Delaware shall control the interpretation and construction of this Agreement, even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

8.16. Submission to Jurisdiction.

The Company and each Stockholder hereby irrevocably submit to any suit, action or proceeding arising out of or related to this Agreement to the exclusive jurisdiction of any court of the State of Delaware located in Wilmington and waive any and all objections to jurisdiction that they may have under the laws of the State of Delaware or the United States and any claim or objection that any such court is an inconvenient forum. The Company and each Stockholder hereby agree that any action or litigation brought by any party in relation to the subject matter of this Agreement shall be brought only in state court located in Wilmington, Delaware.

8.17. Waivers of Jury Trial.

The parties hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this Agreement and for any counterclaim therein.

8.18. No Third Party Beneficiaries.

Nothing herein expressed or implied is intended to confer upon any Person, other than the parties hereto or their respective permitted assigns, successors and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.19. No Effect Upon Lending Relationship.

Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall (i) effect, limit or impair the rights and/or remedies of any Stockholder (together with their respective successors and assigns, each a "**Subject Lender**") in its capacity as a lender to the Company or any of its Subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has or have borrowed money or (ii) be deemed otherwise to require or cause

any Subject Lender to take or omit to take any action in its capacity as a lender or holder of debt of the Company or any of its Subsidiaries.

8.20. Allocation of Rights by a Stockholder to Affiliates.

A Stockholder may allocate the exercise of any right under this Agreement, including its preemptive rights as provided in Section 6.3, among it and its Affiliates that would be permitted Transferees hereunder, as it shall determine.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

[NEW APPLESEED INC.], a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ORCHARD BRANDS CORPORATION

By: _____

Name:

Title:

SCHEDULE I

Stockholders:

SCHEDULE II

Initial Directors

Name of Initial Director	Designating Stockholder

EXHIBIT A

JOINDER AGREEMENT

WHEREAS, simultaneously with the execution of this Agreement, the undersigned is acquiring [Class A][Class B]Common Stock (the “[*Class A*][*Class B*] *Common Stock*”), par value \$0.001 per share of Orchard Brands Corporation, a Delaware corporation (the “*Company*”); and

WHEREAS, as a condition to the acquisition of the [Class A][Class B] Common Stock, the undersigned has agreed to join in a certain Stockholders Agreement, dated as of [●], 2011 (the “*Stockholders Agreement*”), among the Company and the Stockholders (as such term is defined in the Stockholders Agreement) party thereto; and

WHEREAS, the undersigned understands that the execution of this Agreement is a condition precedent to the acquisition of the [Class A][Class B]Common Stock;

NOW, THEREFORE, as an inducement to both the transferor of the [Class A][Class B] Common Stock and the other Stockholders to allow the Transfer (as such term is defined in the Stockholders Agreement) of the [Class A][Class B] Common Stock to the undersigned, the undersigned agrees as follows:

1. The undersigned hereby joins in the Stockholders Agreement and agrees to be bound by the terms and provisions of the Stockholders Agreement as provided by the Stockholders Agreement as a Stockholder, subject to the rights and privileges of such a Stockholder.

2. The undersigned hereby represents and warrants as follows:

(a) Authority; Enforceability. The undersigned (i) has the legal capacity or organizational power and authority to execute, deliver and perform its obligations under the Stockholders Agreement and (ii) (if the undersigned is not a natural person) is duly organized and validly existing and in good standing under the laws of its jurisdiction of organization. This Agreement has been duly executed and delivered by the undersigned. The Stockholders Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally and to the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

(b) Consent. No consent, waiver, approval, authorization, exemption, registration, license or declaration is required to be made or obtained by the undersigned, other than those that have been made or obtained on or prior to the date hereof, in connection with (i) the execution or delivery of the Stockholders Agreement or (ii) the consummation of any of the transactions contemplated thereby.

(c) No Conflict. The execution, delivery and performance of the Stockholders Agreement by the undersigned does not (x) violate, conflict with, or constitute a breach

of or default under the undersigned's organizational documents or any material agreement to which it is a party or by which it is bound or (y) violate any law, regulation, order, writ, judgment, injunction or decree applicable to such party.

(d) Investor Representation. The undersigned is an "Accredited Investor" as that term is defined in Rule 501 under the Securities Act.

3. The undersigned hereby agrees that the certificate or certificates to be issued to the undersigned representing the [Class A][Class B] Common Stock shall be legended as follows:

"The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the "*Securities Act*"), or any State securities laws and may not be offered, sold or otherwise transferred unless (i) the securities have been registered under the Securities Act and any and all such other applicable laws or (ii) an exemption from such registration is available and the Company has either (x) received an opinion of counsel, in form and substance reasonably satisfactory to the Company, to that effect or (y) waived such requirement after consultation with counsel."

"The securities represented by this certificate are subject to certain restrictions on transfer and other obligations (including the obligation to sell such securities upon an Approved Sale) set forth in the Stockholders Agreement, dated as of [●], 2011 and as amended and modified from time to time, among the issuer of such securities (the "*Company*") and certain of the Company's Stockholders pursuant to which, among other things, any transferee of the securities represented by this certificate may be required to execute and deliver a joinder to such Stockholders Agreement. A copy of such Stockholders Agreement shall be furnished without charge by the Company to the holder hereof upon written request."

IN WITNESS WHEREOF, the undersigned has executed this Agreement this _____ day of _____, 20__.

Name:

Title:

Address: