

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
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FREDERICK’S OF HOLLYWOOD, INC., <i>et al.</i> , ¹	:	Case No. 15-_____ (___)
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Debtors.	:	(Joint Administration Requested)
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING POSTPETITION SECURED FINANCING PURSUANT
TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e),
AND 503(b) OF THE BANKRUPTCY CODE, (II) AUTHORIZING THE
DEBTORS TO USE CASH COLLATERAL PURSUANT TO SECTION 363
OF THE BANKRUPTCY CODE, (III) PROVIDING ADEQUATE
PROTECTION TO THE PREPETITION LENDERS PURSUANT TO
SECTIONS 361, 362, AND 363 OF THE BANKRUPTCY CODE,
(IV) MODIFYING THE AUTOMATIC STAY PURSUANT TO SECTION
362(d) OF THE BANKRUPTCY CODE, (V) SCHEDULING A FINAL
HEARING, AND (VI) PROVIDING RELATED RELIEF**

Frederick’s of Hollywood, Inc. and its affiliated debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) hereby file this motion (the “Motion”) pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1 and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) seeking entry of: (i) an interim order (the “Interim Order”), substantially in the form attached hereto as **Exhibit A**, (a) authorizing the

¹ The debtors in these chapter 11 cases and the last four digits of each debtor’s taxpayer identification number are as follows: (i) FOHG Holdings, LLC (7902); (ii) Frederick’s of Hollywood Group Inc. (3042); (iii) FOH Holdings, Inc. (5442); (iv) Frederick’s of Hollywood, Inc. (6265); (v) Frederick’s of Hollywood Stores, Inc. (8882); and (vi) Hollywood Mail Order, LLC (5205). The debtors’ principal offices are located at 6464 W. Sunset Blvd., Suite 1150, Los Angeles, CA 90028.



Borrowers (as defined below), on an interim basis, to (1) obtain postpetition financing pursuant to a debtor-in-possession financing facility on the terms described herein, and (2) use Cash Collateral (as defined below), including, without limitation, to make payments on the Prepetition Obligations (as defined herein) as set forth in the DIP Budget (as defined herein), (b) granting priming liens and superpriority administrative claims, (d) providing Adequate Protection (as defined below) to the Prepetition Secured Parties (as defined below) for the priming of their existing liens and the Borrowers' use of Cash Collateral, (e) modifying the automatic stay pursuant to section 362 of the Bankruptcy Code (as defined below), (f) scheduling a final hearing on the Motion (the "Final Hearing"), and (g) granting related relief; and (ii) a final order (the "Final Order" and, together with the Interim Order, the "DIP Orders") authorizing the relief granted in the Interim Order on a permanent basis, as described in this Motion.

In support of this Motion, the Debtors rely upon and incorporate by reference the Declaration of William Soncini in Support of Chapter 11 Petitions and First Day Pleadings of Frederick's of Hollywood, Inc. and its Affiliated Debtors and Debtors in Possession (the "First Day Declaration") and the declaration of Michael A. O'Hara, the Chief Executive Officer and Managing Member of Consensus Advisory Services LLC and its affiliated entities ("Consensus"), the Debtors' investment banker (the "O'Hara Declaration"), with respect to the Debtors' proposed DIP financing, each filed contemporaneously herewith. In further support of the Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This court (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

3. The Debtors seek entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, and the Final Order, substantially in the form that shall be filed with the Court:

- (i) authorizing FOHG Holdings, LLC, Frederick's of Hollywood Group Inc., FOH Holdings, Inc., Frederick's of Hollywood, Inc., Frederick's of Hollywood Stores, Inc., and Hollywood Mail Order, LLC (collectively, the "Borrowers") to obtain a senior secured superpriority debtor in possession revolving credit facility in the maximum committed amount of \$11 million (the "DIP Facility"), \$5.2 million of which will be available on an interim basis, and to enter into a senior secured, superpriority debtor-in-possession credit and security agreement (together with all schedules and exhibits thereto, the "DIP Credit Agreement," and together with all security, pledge, guaranty, and other lien and loan documents entered into in connection therewith and as further amended, restated, supplemented, or otherwise modified from time to time, the "DIP Documents"),² by and among the Borrowers, Salus CLO 2012-1, Ltd ("Salus CLO" or the "DIP Lender"), and Salus Capital Partners, LLC ("SCP"), as administrative agent and collateral agent (in such capacity, the "DIP Agent"), all in respect of the obligations set forth in the DIP Documents and herein (the "DIP Obligations");
- (ii) authorizing the Borrowers to use "cash collateral" (as such term is defined in section 363 of the Bankruptcy Code) (the "Cash Collateral"), including, without limitation, to make payments on the Prepetition Obligations as set forth in the DIP Budget;
- (iii) granting to the DIP Agent, on behalf of the DIP Lender, senior, priming liens on the Prepetition Collateral securing the DIP Facility, and superpriority claims in respect of the DIP Obligations;
- (iv) granting Adequate Protection to the Prepetition Secured Parties in the form of Adequate Protection Liens, 507(b) Claims, and Adequate Protection Payments (all as defined below);
- (v) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Agreement;
- (vi) scheduling the Final Hearing; and

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the DIP Documents or DIP Orders, as applicable.

(vii) granting related relief.

Concise Summary

4. The following chart contains a summary of the essential terms of the DIP Facility, together with references to the applicable sections of the relevant source documents, in accordance with Bankruptcy Rule 4001(b)(1)(B) and (c)(1)(B) and Local Rule 4001-2:³

<p><i>Borrowers</i> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)</i></p>	<p>FOHG Holdings, LLC, Frederick’s of Hollywood Group Inc., FOH Holdings, Inc., Frederick’s of Hollywood, Inc., Frederick’s of Hollywood Stores, Inc., and Hollywood Mail Order, LLC</p>
<p><i>Lenders</i> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)</i></p>	<p>Salus CLO 2012-1, Ltd.</p> <p>Pursuant to that certain Participation Agreement (the “<u>Participation Agreement</u>”) by and among (i) Salus CLO, as selling lender and as DIP Lender, (ii) Front Street Re (Cayman) Ltd. (“<u>Front Street</u>”), as participant, and (iii) SCP, in its capacities as the DIP Agent and Prepetition Agent (as defined below), Front Street shall purchase from Salus CLO a last-out participation interest in the FILO Advance (as defined below) in an amount at any time equal to the Incremental DIP Exposure. “<u>Incremental DIP Exposure</u>” means, as of any date, an amount equal to (i) the then outstanding principal balance of the DIP loans made by the DIP Lender under the DIP Credit Agreement (in an amount not to exceed 110% of all disbursement amounts contained in the Approved Budget), minus (ii) the aggregate amount received by the Prepetition Agent from and after the Petition Date from “Total Operating Receipts” as reflected in the Budget and applied to the permanent repayment of the outstanding principal balance of the Prepetition Obligations in accordance with the terms of the DIP Credit Agreement, the Interim Order, or the Final Order, as applicable).⁴</p>
<p><i>Commitment</i> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)</i> <i>Local Rule 4001-2(a)(ii)</i></p>	<p>\$11 million, of which \$5.2 million shall be available on an interim basis.</p> <p>(DIP Credit Agreement § 1) (Interim Order ¶ 3)</p>
<p><i>Interest Rates</i> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)</i> <i>Local Rule 4001-2(a)(ii)</i></p>	<p><u>Non-Default Interest Rate</u>: LIBOR Rate plus 15.5%.</p> <p>(DIP Credit Agreement § 2.4(a))</p>

³ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the documents shall control. Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to them in the form of debtor-in-possession credit and security agreement attached hereto as **Exhibit B** (the “DIP Credit Agreement”).

⁴ This structure effectively increases Front Street’s investment in the Debtors’ prepetition capital structure commensurate with the Debtors’ borrowing needs during the chapter 11 cases. The Participation Agreement is attached hereto as **Exhibit C**.

	<p><u>Default Interest Rate:</u> 2.0% above the contractual rate.</p> <p>(DIP Credit Agreement § 2.4(b))</p>
<p>Term/Maturity <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Bankruptcy Rule</i> 4001(b)(1)(B)(iii) <i>Local Rule 4001-2(a)(ii)</i></p>	<p>The DIP Facility will mature on six (6) months from the execution of the DIP Credit Agreement.</p> <p>(DIP Credit Agreement § 1)</p>
<p>Events of Default <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Rule 4001-2(a)(ii)</i></p>	<p>The DIP Credit Agreement contains usual and customary events of default. In addition, an Event of Default shall occur if the Participation Agreement is not in full force and effect or Front Street has defaulted on its obligations thereunder.</p> <p>(DIP Credit Agreement § 8) (Interim Order ¶ 28)</p>
<p>Use of DIP Loan <i>Bankruptcy Rule</i> 4001(b)(1)(B), (c)(1)(B) <i>Local Rule 4001-2(a)(ii)</i></p>	<p>The proceeds of the DIP Facility may be used solely for the purposes permitted by the DIP Orders (as applicable) and the DIP Budget, including to (i) pay fees, costs and expenses in connection with the DIP Credit Agreement, (ii) pay postpetition operating expenses of the Borrowers incurred in the ordinary course of business, (iii) pay costs and expenses of administration of the chapter 11 cases, including payment of Allowed Professional Fees, and (iv) pay other amounts as specified in the DIP Budget and/or operative documentation and allowed by the Court.</p> <p>(DIP Credit Agreement p. 1-2)</p>
<p>Borrowing Limits <i>Bankruptcy Rule</i> 4001(c)(1)(B)</p>	<p>The DIP Credit Agreement contains negative covenants, including restrictions on incurrence of certain Indebtedness, the incurrence of Liens, and the making of certain Investments.</p> <p>(DIP Credit Agreement § 7)</p>
<p>Borrowing Conditions <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)</p>	<p>The DIP Credit Agreement contains usual and customary conditions precedent to extensions of credit. In addition, the DIP Lender's obligation to make any loan under the DIP Credit Agreement is subject to the Participation Agreement being in full force and effect and Front Street not having defaulted on its obligations thereunder or terminated its obligations to fund under Section 5 of the Participation Agreement.</p> <p>(DIP Credit Agreement § 4)</p>
<p>Fees <i>Bankruptcy Rule</i> 4001(c)(1)(B)</p>	<p><u>Unused Fee:</u> The Borrowers will pay to the DIP Agent, for the account of the DIP Lender, an unused line of credit fee in the amount and at the time agreed in a Fee Letter.</p> <p><u>Collateral Monitoring Fee:</u> The Borrowers will pay to the DIP Agent, for its own account, collateral monitoring fees in the amount and at the time agreed in a Fee Letter.</p>

<p>Agreed Budget <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)</i></p>	<p>So long as the DIP Obligations and any commitments under the DIP Facility remain outstanding, the Debtors must operate within a budget (the “<u>DIP Budget</u>”),⁵ subject to the permitted variance.</p> <p>(DIP Credit Agreement § 6.10)</p> <p><i>The Debtors have reason to believe that the DIP Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the DIP Budget.</i></p>
<p>Entities with Interest in Cash Collateral <i>Bankruptcy Rule</i> <i>4001(b)(1)(B)(i)</i></p>	<p>The Prepetition Agent on behalf of the Prepetition Lenders (each, as defined below).</p>
<p>Use of Cash Collateral <i>Bankruptcy Rule</i> <i>4001(b)(1)(B)(ii)</i> <i>Local Rule 4001-2(a)(ii)</i></p>	<p>The Debtors are authorized to use Cash Collateral subject to the terms of the Interim Order, Final Order, DIP Budget, and DIP Documents.</p> <p>(Interim Order ¶ 2)</p>
<p>Liens, Cash Payments or Adequate Protection Provided for Use of Cash Collateral <i>Bankruptcy Rule</i> <i>4001(b)(1)(B)(iv)</i></p>	<p>The Interim Order provides as “<u>Adequate Protection</u>” for the Prepetition Secured Parties as follows:</p> <p>(i) “<u>Adequate Protection Liens</u>”: The Prepetition Agent shall be granted (for the ratable benefit of the respective Prepetition Lenders and subject to the same priority as between such Prepetition Lenders) valid, binding, perfected and enforceable security interests and replacement liens upon all property of the Debtors, including Avoidance Actions and proceeds thereof, whether arising prepetition or postpetition of any nature whatsoever. The Adequate Protection Liens are subject and subordinate to (1) the Carve-Out, (2) the DIP Liens (as defined below), and (3) the Prior Permitted Senior Liens (as defined below).</p> <p>(ii) “<u>507(b) Claims</u>”: The Prepetition Secured Parties are each granted an administrative expense claim pursuant to section 507(b) of the Bankruptcy Code with priority over all other administrative expenses, but in all cases subject and subordinate to the Carve-Out and the DIP Superpriority Claims.</p> <p>(iii) “<u>Adequate Protection Payments</u>”: The Debtors shall, in accordance with the DIP Budget, (a) pay all reasonable fees and expenses under the Prepetition Credit Documents (as defined below) incurred by the Prepetition Agent and Prepetition Lenders, whether incurred prior to or following the Petition Date, and (b) pay all interest on the Line of Credit (as defined in the Prepetition Credit Agreement) at the Default Rate (as defined in the Prepetition Credit Agreement), other than any portion of the Line of Credit which has been participated to the Term Lender (as defined in the Prepetition Credit Agreement).</p> <p>(Interim Order ¶ 18)</p>

⁵ A copy of the DIP Budget is annexed hereto as Exhibit D.

<p><i>Other Covenants</i></p>	<p>The DIP Credit Agreement contains usual and customary affirmative and negative covenants.</p> <p>(DIP Credit Agreement §§ 6-7)</p>
<p><i>Liens and Priorities</i> <i>Bankruptcy Rule 4001(c)(1)(B)(i), (xi), Local Rules 4001-2(a)(i)(A), D, (G), and 4001-2(a)(ii)</i></p>	<p><i>DIP Liens:</i> Subject to the Carve-Out, the DIP Obligations shall be secured by the following liens (the “<u>DIP Liens</u>”):</p> <ul style="list-style-type: none"> • <i>First Priority Liens.</i> A first priority security interest and lien pursuant to section 364(c)(2) of the Bankruptcy Code on all unencumbered property of the Debtors and their estates (including, upon entry of the Final Order, Avoidance Action Proceeds). • <i>Junior Priority Liens.</i> A junior security interest and lien pursuant to section 364(c)(3) of the Bankruptcy Code on all property of the Debtors and their estates that is subject and subordinate to a Prior Permitted Senior Lien. • <i>Priming Liens.</i> A first priority, priming security interest in and lien pursuant to section 364(d)(1) of the Bankruptcy Code on all assets of the Debtors and their estates, of any nature whatsoever and wherever located, whether arising prior to or following the Petition Date, securing the obligations of the Debtors under the Prepetition Credit Agreement (as defined below). <p>(Interim Order ¶ 9)</p> <p><i>DIP Superpriority Claims:</i> Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Obligations will be entitled to superpriority administrative expense claim status in the chapter 11 cases (the “<u>DIP Superpriority Claims</u>”).</p> <p>(Interim Order ¶ 9)</p>
<p><i>Milestones</i> <i>Bankruptcy Rule 4001(c)(1)(B)(v-vi) Local Rule 4001-2(a)(ii)</i></p>	<p>The DIP Credit Agreement contains the following milestones:</p> <ul style="list-style-type: none"> • The Debtors fails to file the Sale Motion within two (2) days of the Petition Date; • The Bidding Procedures Order is not entered on or before twenty one (21) days after the Petition Date; • An auction is not conducted for the purchase of the assets on or before forty (40) days after the Petition Date; • The Sale Order is not entered on or before forty five (45) days after the Petition Date; and • The closing of the sale of all or substantially all of the Debtors’ assets shall not have occurred on or before the date that is sixty (60) days after the Petition Date.

	(DIP Credit Agreement § 8)
Carve Out <i>Local Rule 4001-2(a)(ii)</i>	The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the 507(b) Claims Parties shall each be subject and subordinate to the payment of the following: (i) the unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code, plus (ii) the fee and expense claims of the respective retained professionals of the Debtors and any Committee (collectively, the “ <u>Retained Professionals</u> ”) that have been approved by the Court during the chapter 11 cases which were incurred (a) on and after the Petition Date and prior to the Carve-Out Trigger Date in amounts not in excess of the amounts set forth in the DIP Budget, and (b) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding \$100,000 in the aggregate for all Retained Professionals provided that, in each case, such fees and expenses of the Retained Professionals are in accordance with the DIP Budget on a cumulative basis for the applicable period and are ultimately allowed on a final basis by the Court. (Interim Order ¶ 11)
Determination Regarding Prepetition Claim <i>Bankruptcy Rule 4001(c)(1)(B)(iii)</i>	The Debtors make certain customary admissions and stipulations with respect to the amount of prepetition indebtedness owing to the Prepetition Lenders and the validity, extent, perfection, priority, and enforceability of the Prepetition Liens. (Interim Order ¶ 14)
Waiver or Modification of the Automatic Stay <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i>	Notwithstanding the provisions of section 362 of the Bankruptcy Code, upon the maturity of any of the DIP Loans, the DIP Agent, on behalf of the DIP Lender, shall be entitled to immediate payment of the DIP Obligations and to enforce the remedies provided for under the DIP Credit Agreement or under applicable law, without further application to or order by the Court. (DIP Credit Agreement § 5.17)
Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien <i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i>	The DIP Liens and Adequate Protection Liens shall be valid, binding, perfected, and enforceable by operation of law upon entry of the Interim Order without any further action by any party. (Interim Order ¶ 13)
Release, Waivers or Limitation on any Claim or Cause of Action <i>Bankruptcy Rule 4001(c)(1)(B)(viii)</i>	Each Borrower acknowledges effective upon entry of the Interim Order, that no Debtor has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors’ liability to repay the DIP Agent or DIP Lender as provided in the DIP Credit Agreement or to seek affirmative relief or damages of any kind or nature from the DIP Agent or any DIP Lender. Each Debtor, on behalf of itself and its bankruptcy estate,

	<p>and on behalf of all its successors, assigns, and Subsidiaries and any Person acting for and on behalf of, or claiming through them (collectively, and in each case in their capacities as such, the “<u>Releasing Parties</u>”), fully, finally and forever releases and discharges the DIP Agent and the DIP Lender and its respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, participants, and each Person acting for or on behalf of any of them (collectively, and in each case in their capacities as such, the “<u>Released Parties</u>”) of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date of entry of the Interim Order in any way, arising out of, connected with or relating to the DIP Credit Agreement, the Interim Order, any other agreement, document or instrument related to any of the foregoing and the transactions contemplated thereby.</p> <p>(DIP Credit Agreement § 2.15) (Interim Order ¶ 14)</p>
<p><i>Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)</i></p>	<p>The Debtors shall indemnify the DIP Agent and DIP Lender and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “Indemnified Person”) and hold each of them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or shareholders) that relates to the DIP Facility or the Interim Order, including the financial accommodations to the Debtors contemplated under the DIP Credit Agreement, the chapter 11 cases, or any transactions in connection therewith, provided that no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct.</p> <p>(DIP Credit Agreement § 9.8) (Interim Order ¶ 19)</p>
<p><i>Release, Waivers or Limitation of Rights Bankruptcy Rule</i></p>	<p>Subject to entry of the Final Order, the DIP Agent, DIP Lender, and the Prepetition Secured Parties (collectively, the “<u>Secured Parties</u>”) shall not be subject to any surcharge under section 506(c) of the Bankruptcy Code.</p>

<p>4001(c)(1)(B)(x) Local Rules 4001-2(a)(i)(B), (C)</p>	<p>Subject to entry of the Final Order, the Secured Parties shall not be subject to the “equities of the case” exception under section 552(b) of the Bankruptcy Code.</p> <p>(Interim Order ¶ 12)</p>
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5. In accordance with Local Rule 4001-2, the following provisions of the DIP Credit Agreement are highlighted below:

- i. ***Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate.*** The Prepetition Lien and Claim Matters are binding on the estate and all parties in interest, including any Committee, 60 days from the from the date of the appointment of any Committee or, in the event that no Committee is appointed, upon conclusion of the date that is 75 days from the Petition Date. (Interim Order ¶ 15)
- ii. ***Provisions that waive rights of the debtor's estate under section 506(c).*** The proposed 506(c) waiver will be effective only after entry of the Final Order. (Interim Order ¶ 12)
- iii. ***Provisions that immediately grant prepetition secured creditors liens on the debtor's claims and causes of action arising under sections 544, 547, 548, and 549 of the Bankruptcy Code.*** Subject to entry of the Final Order, Avoidance Actions and proceeds thereof shall be subject to the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the 507(b) Claims. (DIP Credit Agreement § 1) (Interim Order ¶ 17)
- iv. ***Provisions that deem prepetition secured debt to be postpetition debt or prepetition loans from a prepetition secured lender used to pay part or all of that secured creditor's prepetition debt.*** The Debtors are authorized to use Cash Collateral, subject to and as set forth in the DIP Budget, the Interim Order, and the DIP Documents including, without limitation, to make payments on the Prepetition Obligations as set forth in the DIP Budget. (Interim Order ¶ 2)
- v. ***Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out.*** Subject to the DIP Budget, there is no

disparate treatment between the Debtors' professionals and those of a Committee. (Interim Order ¶ 11)

- vi. ***Provisions that prime any secured lien absent consent of the affected lienor.*** The Prepetition Secured Parties have consented to the priming occasioned by the DIP Liens.
- vii. ***Provisions that affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1).*** The Secured Parties are granted an "equities of the case" waiver. The proposed waiver will be effective only after entry of the Final Order. (Interim Order ¶ 12)

Background

6. On April 19, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner and no committee has been appointed or designated in these chapter 11 cases. The Debtors' request for joint administration of these chapter 11 cases for procedural purposes only is currently pending.

7. Tracing their origins to 1946, the Debtors sell high quality women's apparel and related products under their proprietary Frederick's of Hollywood® brand. Since their inception, the Debtors have remained a market leader and innovator in the female fashion and lingerie industry. The Debtors' major merchandise categories are foundations (including various types of undergarments), lingerie (including daywear and sleepwear), ready-to-wear (dresses and sportswear, including denim), and fragrance and accessories (including shoes, handbags, jewelry, personal care products, and novelties). At their height, the Debtors operated over 200 retail stores across the United States, as well as maintained a robust mail catalog and an e-commerce business through their website at www.fredericks.com.

8. The Debtors were compelled to commence these chapter 11 cases amidst a sustained decline in operating revenue attributable to increased competition from other apparel

retailers and brands, decreased foot traffic in shopping malls, and weak discretionary spending by target consumers due to the recent economic downturn. This confluence of factors, together with the rising cost of wholesale inventory and onerous real property lease terms, ultimately resulted in the cessation of the Debtors' retail store operations prior to the Petition Date.

9. Through these chapter 11 cases, the Debtors seek to effectuate a sale of their e-commerce business – including their intellectual property and remaining inventory – pursuant to a competitive bidding process that will maximize value for their stakeholders and inure to the benefit of all parties in interest.

10. Additional information regarding the Debtors' businesses, assets, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the Declaration of William Soncini in Support of Chapter 11 Petitions and First Day Pleadings of Frederick's of Hollywood, Inc. and its Affiliated Debtors and Debtors in Possession (the "First Day Declaration"), which is being filed contemporaneously herewith and is incorporated by reference herein.

Prepetition Secured Indebtedness

11. Certain of the Debtors are party to that certain Credit and Security Agreement, dated as of May 31, 2012 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Credit Agreement" and, together with all agreements, documents, notes, and instruments in respect thereof, the "Prepetition Credit Documents"), by and among Frederick's of Hollywood Group, Inc. ("Group"), FOH Holdings, Inc. ("Parent"), Frederick's of Hollywood, Inc. ("Frederick's"), Frederick's of Hollywood Stores, Inc. ("Stores"), and Hollywood Mail Order, LLC ("Mail Order" and, collectively with Group, Parent, Frederick's, and Stores, the "Borrowers"), as borrowers, the lenders party thereto (the "Prepetition Lenders"), and SCP, in its capacity as administrative and collateral agent (in such capacities, the

“Prepetition Agent” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”).

12. Under the Prepetition Credit Agreement, the Debtors have outstanding funded debt for borrowed money in the approximate aggregate principal amount of \$32,988,000, consisting of (i) approximately \$16,465,000 in respect of a Line of Credit, consisting of (x) approximately \$2,465,000 of outstanding revolving loans (the “Revolving Loans”), and (y) \$14,000,000 in respect of a first-in last-out advance (the “FILO Advance”), and (ii) \$16,523,000 outstanding in respect of a term loan (the “Term Loans” and, collectively with the Revolving Loans and the FILO Advance, the “Prepetition Credit Facility”). Borrowings under the Prepetition Credit Facility bear interest at a rate per annum equal to, (i) with respect to the Revolving Loans, the Prime Rate plus 8%, (ii) with respect to the FILO Advance, the LIBOR Rate plus 15.5%, and (iii) with respect to the Term Loans, the LIBOR Rate plus 17.5%.⁶ Pursuant to the Prepetition Credit Agreement, following the occurrence of an Event of Default, any amounts received on account of the obligations are required to be, following the payment of fees, indemnities, expenses, and principal and interest on any overadvances, applied in the following order: first, to payment of interest and fees on the Revolving Loans; second, to payment of interest and fees on the FILO Advance; third, to payment of principal of the Revolving Loans; fourth, to payment of principal of the FILO Advance; and fifth, to payment of interest, fees, and principal of the Term Loans.

13. Pursuant to (i) the Prepetition Credit Agreement, (ii) that certain Copyright Security Agreement, dated as of May 31, 2012, by and among Frederick’s, Mail Order, and SCP, (iii) that certain Trademark Security Agreement, dated as of May 31, 2012, by and among

⁶ Each of these interest rates includes 4% of default interest, which, as of the Petition Date, was being assessed under the Prepetition Credit Agreement.

Group, Frederick's, and SCP, and (iv) that certain Pledge Agreement, dated as of May 31, 2012, by and among Group, Parent, Frederick's, and SCP, the Borrowers' obligations under the Prepetition Credit Facility (the "Prepetition Obligations") are secured by first-priority, perfected security interests (the "Prepetition Liens") in substantially all of the Borrowers' assets (including intellectual property such as trademarks and copyrights, as well as shares and membership interests of the Borrowers that are subsidiaries of other Borrowers, and up to 65% of the outstanding capital stock of any of their foreign subsidiaries) (collectively, the "Prepetition Collateral"). The Prepetition Credit Facility matures on May 31, 2015.

Postpetition Financing

I. Efforts to Obtain Postpetition Financing

14. In December 2014, the Debtors retained Consensus to act as their financial advisor and investment banker to assist the Debtors in connection with a potential restructuring. Following its retention by the Debtors, Consensus supported the Debtors' management team in analyzing the Debtors' cash needs to determine the size of additional liquidity necessary to support the Debtors' operational needs.

15. After careful review, the Debtors, in their business judgment, determined that a chapter 11 process premised on the sale of substantially all of their assets would provide the best means to maximize value to all stakeholders. In anticipation of the commencement of the chapter 11 cases, the Debtors identified the Prepetition Lenders as the most likely sources of postpetition financing, given their liens on substantially all of the Debtors' assets, involvement over the past several months with the Debtors' restructuring efforts, and support for an expedited chapter 11 sale process. To that end, in March 2015, the Debtors and Consensus initiated a dialogue with the Prepetition Lenders regarding the possibility of the Prepetition Lenders providing debtor-in-possession financing to the Debtors. Certain of the Prepetition Lenders

expressed interest in providing the financing and advised Consensus that they would not consent to being primed by a third-party lender. In the weeks that followed, the Debtors and the Prepetition Lenders negotiated in good faith and at arm's length with respect to the terms and conditions of the financing. These negotiations ultimately resulted in the DIP Facility for which the Debtors are currently seeking approval.

16. Before agreeing to the terms of the DIP Facility, prior to the Petition Date, Consensus, on behalf of the Debtors, solicited indications of interest from various third parties for the purpose of testing the market and evaluating various other financing proposals. The third parties solicited comprised sophisticated financial institutions and other investors active in the debtor-in-possession financing market for retail companies.

17. Through discussions with the potential third-party lenders, however, it became readily apparent that the Debtors' existing capital structure, including the Debtors' level of secured debt (relative to asset value) and lack of unencumbered assets, foreclosed any opportunities for the Debtors to access unsecured or junior credit. Further, in the absence of a successful priming fight, any debtor-in-possession loan provided by the parties other than the Prepetition Lenders would have required the consent of the Prepetition Lenders, which they indicated they would not be willing to provide.

18. As a result of the foregoing, the Debtors concluded that there could be no realistic expectation of a third party lender or lender group providing the requisite financing to the Debtors, secured by liens junior to the prepetition liens or on an unsecured basis. Accordingly, the Debtors determined that the DIP Facility represented the best financing option available to the Debtors and their businesses because it would allow them to avoid the need to engage in a costly and time-consuming priming fight at the outset of these chapter 11 cases, as well as avoid

the execution risk associated with a transaction with a new lender (including any timing and due diligence constraints).

II. Overview of DIP Facility

19. The DIP Facility consists of an \$11 million credit facility in the form of revolving loans. The DIP Facility will be secured by priming DIP Liens and the DIP Agent, for itself and the benefit of the DIP Lender, will be granted DIP Superpriority Claims. The Prepetition Secured Parties have consented to both the priming of the Prepetition Liens by the DIP Liens and the granting of the DIP Superpriority Claims. The DIP Facility also provides for a “creeping roll-up” whereby the Debtors will satisfy their Prepetition Obligations through the proceeds of the Prepetition Collateral.

20. The DIP Facility contemplates that the Prepetition Secured Parties will receive adequate protection in accordance with sections 361 and 363(e) of the Bankruptcy Code for any postpetition diminution in value of their interests in the Prepetition Collateral. The Interim Order provides adequate protection to the Prepetition Lenders through Adequate Protection Liens, the granting of 507(b) Claims, and the Adequate Protection Payments.

Basis for Relief

I. Authority to Grant Priming Liens and Superpriority Claims Should Be Granted

21. The DIP Facility requires the Debtors to provide first-priority priming liens and superpriority claims pursuant to section 364(c) and (d) of the Bankruptcy Code. Section 364(c) of the Bankruptcy Code provides, among other things, that, if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt (i) with priority over any and all administrative expenses as specified in section 503(b) or 507(b) of the Bankruptcy Code, (ii) secured by a lien on property of the estate that is not otherwise subject to a

lien, or (iii) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364(c).

22. Section 364(d) of the Bankruptcy Code, in turn, allows a debtor to obtain credit secured by a senior or equal lien on property of the estate that is subject to a lien, after notice and a hearing, provided that (i) the debtor is unable to obtain such credit otherwise, and (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. 11 U.S.C. § 364(d).

23. As discussed above, despite the efforts of the Debtors and their advisors, the Debtors have been unable to (i) procure sufficient financing (a) in the form of unsecured credit allowable under section 503(b)(1), (b) as an administrative expense under section 364(a) or (b), (c) in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1), or (d) without granting limited priming liens pursuant to section 364(d), or (ii) obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein.

24. Having determined that financing is available only under sections 364(c) and (d) of the Bankruptcy Code, the Debtors commenced arm's-length negotiations with the DIP Lender over the DIP Facility. Provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance therewith. See, e.g., In re L.A. Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); In re Ames Dep’t Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“Cases consistently reflect that the court’s discretion under section 364 is to be

utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest.”).

25. Section 364 of the Bankruptcy Code does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); L.A. Dodgers, 457 B.R. at 313 (citing Ames Dep’t Store, 115 B.R. at 37 (noting the court “may not approve any credit transaction under subsection (c) [of section 364] unless the debtor demonstrates that it has attempted, but failed, to obtain unsecured credit under section 364(a) or (b)”); In re 495 Central Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that “most banks lend money only in return for a senior secured position”); In re Aqua Assocs., 123 B.R. 192, 197 (Bankr. E.D. Pa. 1991) (debtor adequately established that some degree of priming loan was necessary if debtor were to obtain funding).

26. Furthermore, a debtor may borrow money under section 364(d)(4) of the Bankruptcy Code if it meets its burden of establishing that the holder of the lien to be primed is adequately protected. In re Futures Equity L.L.C., 2001 Bankr. LEXIS 2229 *14 (Bankr. N.D. Tex. April 11, 2001) (Houser, J.). The transaction “should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing.” Id. at *15 (internal citations omitted). The debtor also has the burden

of demonstrating that (i) the credit transaction is necessary to preserve the estate and (ii) the terms of the transaction are fair and reasonable given the circumstances. See id.

27. Substantially all of the Debtors' assets are encumbered and, despite the diligent efforts of Debtors and Consensus, working capital for these chapter 11 cases was not available absent the proposed DIP Superpriority Claims and consensual priming liens. Accordingly, the Debtors believe that they were required to obtain financing under sections 364(c) and (d) of the Bankruptcy Code, and accordingly, the DIP Facility reflects the exercise of the Debtors' sound business judgment. The DIP Lender was unwilling to extend financing on terms more favorable to the Debtors, and the Debtors were not able to obtain alternative sources of financing. The Debtors' ability to continue to operate their e-commerce business pending a sale pursuant to section 363 of the Bankruptcy Code and to maximize value to all stakeholders depends upon their ability to obtain the DIP Facility. Without the proposed financing, the Debtors would not have sufficient funds to operate, jeopardizing the successful sale of substantially all of their assets, thereby diminishing recoveries for their stakeholders.

28. The DIP Facility, together with use of Cash Collateral, will enable the Debtors to operate their e-commerce business in the ordinary course and sell substantially all of their assets during these chapter 11 cases. The Debtors believe that this will preserve and enhance the value of their estates for the benefit of all parties in interest.

II. Use of Cash Collateral Should Be Approved

29. Under section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). The Debtors require the use of the Cash Collateral to fund their operations in conjunction with the liquidity provided by the DIP Facility. Absent such relief, the

Debtors' businesses will be brought to an immediate halt, with damaging consequences for their estates and creditors. The interests of the Prepetition Secured Parties in the Cash Collateral will be protected by the adequate protection detailed above, and they have agreed and consented to the use of Cash Collateral on such basis. Accordingly, the Debtors request that they be permitted to use the Cash Collateral in the operation of their businesses and administration of these chapter 11 cases.

III. DIP Facility's "Creeping Roll-Up" Feature is Appropriate

30. By this Motion, the Debtors also seek authority, pursuant to section 363(b) of the Bankruptcy Code, to use proceeds from the Prepetition Collateral to repay the Prepetition Obligations.

31. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell or lease property, other than in the ordinary course of business, with court approval. 11 U.S.C. § 363(b). Section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the use of a debtor's property prior to confirmation of a plan, however, it is well settled that transactions should be approved when they are supported by a sound business purpose. See, e.g., In re Abbotts Dairies, Inc., 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a court should approve a debtor's use of assets outside the ordinary course of business under section 363(b) if the debtor can demonstrate a sound business justification for the proposed transaction); Computer Sales Int'l Inc. v. Fed. Mogul Global, Inc. (In re Fed. Mogul Global, Inc.), 293 B.R. 124, 126 (D. Del. 2003) (same); In re Champion Enters., Inc., 2010 WL 2723820, at *4 (Bankr. D. Del. 2010) (noting that criteria for approval of a transaction under 363(b) is whether the debtor has demonstrated "good, sufficient and sound business purpose justifications"). Once the debtor articulates sound business reasons, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on

an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

32. After careful consideration of the terms of the DIP Facility, the Debtors determined that the creeping roll-up was appropriate and necessary under the circumstances. This feature was a critical component of the willingness of the DIP Lender to commit to provide funding under the DIP Facility. Indeed, the DIP Lender would not have agreed to provide the DIP Facility without a creeping roll-up of the Prepetition Obligations. Moreover, the financing contemplated under the DIP Credit Agreement will offer the Debtors much-needed funds to continue operating their e-commerce business and effectuate the sale process during these chapter 11 cases. Therefore, the Debtors believe that the roll-up is a necessary component to the DIP Facility and will ensure the Debtors’ access to sufficient liquidity for working capital and general corporate purposes to fund day-to-day operations during these chapter 11 cases.

33. Repayment of prepetition debt in the form of a “roll-up” is a common feature in debtor-in-possession financing arrangements and courts have approved roll-ups in a variety of cases. See, e.g., In re Furniture Brands Int’l, Inc., et al., Case No. 13-12329 (Bankr. D. Del. Oct. 11, 2013) (authorizing up to \$140 million in debtor-in-possession financing that included roll-up of approximately \$91 million prepetition debt pursuant to interim order); In re Appleseed’s Intermediate Holdings LLC, et al., Case No. 11-10160 (Bankr. D. Del. Jan. 20, 2011) (authorizing up to \$140 million in debtor-in-possession financing that included roll-up of approximately \$48 million prepetition debt pursuant to interim order); In re Source Interlink Cos. Inc., Case No. 09-11424 (Bankr. D. Del. Apr. 29, 2009) (authorizing up to \$385 million in debtor-in-possession financing that included roll-up of approximately \$149 million prepetition

debt pursuant to interim order); In re Dayton Superior Corp., Case No. 09- 10785 (Bankr. D. Del. Apr. 19, 2009) (authorizing up to \$165 million in debtor-in-possession financing that included roll-up of approximately \$109.8 million prepetition debt pursuant to interim order); In re Pac. Energy Res., Ltd., Case No. 09-10785 (Bankr. D. Del. Mar. 10, 2009) (authorizing up to \$183 million in debtor-in-possession financing that included roll-up of approximately \$143 million prepetition debt pursuant to interim order); In re Foamex Int'l Inc., Case No. 09-10560 (Bankr. D. Del. Feb. 20, 2009) (authorizing approximately \$95 million in debtor-in-possession financing that included full roll-up of approximately \$39 million prepetition debt pursuant to interim order); In re Hilex Poly Co. LLC, Case No. 08-10890 (Bankr. D. Del. May 7, 2008) (authorizing up to \$140 million in debtor-in-possession financing that included roll-up of approximately \$51 million prepetition debt pursuant to interim order); In re Holley Performance Prods. Inc., Case No. 08-10256 (Bankr. D. Del. Feb. 12, 2008) (authorizing approximately \$60 million in debtor-in-possession financing that included roll-up of approximately \$40 million prepetition debt pursuant to interim order).

IV. The Authorization to Pay the Fees Required by the DIP Lender

34. As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and DIP Lender in exchange for their providing the DIP Facility. Specifically, the Debtors will pay to the DIP Agent (i) for the benefit of the DIP Lender, the Unused Fee, and (ii) for the account of the DIP Agent, the Collateral Monitoring Fee.⁷ The fees the Debtors have agreed to pay to the DIP Lender and other obligations under the DIP Documents represent the most favorable terms to the Debtors on which the DIP Lender would

⁷ Pursuant to the terms of the Fee Letter among the DIP Agent and the Borrowers, any amounts paid as part of the Adequate Protection Payments to the Prepetition Agent on account of collateral monitoring fees payable under the Prepetition Credit Agreement are credited against Collateral Monitoring Fees payable with respect to the DIP Facility.

agree to make the DIP Facility available. The Debtors considered the fees described above when determining in their sound business judgment that the DIP Documents constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute the chapter 11 cases, and paying these fees in order to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors, and other parties in interest.

V. The Scope of the Carve-Out is Appropriate

35. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. See Ames Dep't Stores, 115 B.R. at 40. The DIP Facility does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. Id. at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). In addition, the Carve-Out ensures that proceeds of the DIP Facility may be used for the payment of U.S. Trustee fees and professional fees of the Debtors and any future Committee notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

VI. The DIP Lender Is a Good Faith Lender under Section 364(e)

36. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

37. As explained in detail herein and in the O’Hara Declaration, the DIP Documents are the result of (i) the Debtors’ reasonable and informed determination that the DIP Lender offered the most favorable terms available on which to obtain needed postpetition financing, and (ii) are the product of extended arm’s-length, good faith negotiations between the Debtors and the DIP Lender. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Debtors request that the Court find that the DIP Lender is a “good faith” lender within the meaning of section 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that section.

VII. Proposed Adequate Protection Should Be Authorized

38. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used by a debtor in possession, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. See MNBank Dallas, N.A. v. O’Connor (In re O’Connor), 808

F.2d 1393, 1396–97 (10th Cir. 1987); Martin v. U.S. (In re Martin), 761 F.2d 472, 474 (8th Cir. 1985); In re Shaw Indus., Inc., 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (citations omitted).

39. As noted above, as adequate protection for the interests of the Prepetition Secured Parties in connection with the Prepetition Liens, the Debtors will provide the Prepetition Secured Parties with Adequate Protection Liens, 507(b) Claims, and Adequate Protection Payments. All of the Prepetition Secured Parties have consented to the use of Cash Collateral and the priming occasioned by the DIP Liens. Without access to the proposed DIP Facility and use of Cash Collateral, the Debtors will be forced to cease operations and will not be able to consummate a timely and orderly sale pursuant to section 363 of the Bankruptcy Code. In contrast, the value of the Prepetition Collateral will be preserved, if not increased, by the DIP Facility and use of Cash Collateral because it ensures the uninterrupted continuation of the Debtors’ operations and a timely and orderly sale of substantially all of the Debtors’ assets that will maximize value to all stakeholders. Accordingly, the proposed adequate protection is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

VIII. Automatic Stay Should Be Modified on Limited Basis

40. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens.

41. Stay modifications of this kind are ordinary and standard features of postpetition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

IX. Interim Approval Should Be Granted

42. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

43. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtors request that the Court conduct an expedited preliminary hearing on this motion and (i) authorize the Debtors to use Cash Collateral and borrow up to \$5.2 million under the DIP Facility in order to (a) maintain and finance the ongoing operations of the Debtors and (b) avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, and (ii) schedule the Final Hearing.

44. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending the Final Hearing, the Debtors will be immediately and irreparably harmed. Accordingly, the interim relief requested is critical to preserving and maintaining the value of the Debtors' estates and facilitating their sale efforts.

Waiver of Bankruptcy Rules 6004(a) and (h)

45. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h) and any other applicable Bankruptcy Rule.

Notice

46. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the holders of the 30 largest unsecured claims on a consolidated basis; (iii) counsel to Salus Capital Partners, LLC, in its capacity as the administrative and collateral agent under the Debtors' prepetition credit facility and in its capacity as the administrative and collateral agent under the Debtors' proposed debtor-in-possession financing facility; (iv) any banking or financial institution that holds the Debtors' accounts; and (v) all parties entitled to notice pursuant to Local Rule 9013-1(m). As this Motion is seeking "first day" relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested and the urgency of the circumstances surrounding this Motion, no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request that the Court (a) enter the Interim Order and, after the Final Hearing, the Final Order, substantially in the form that shall be filed with the Court, and (b) grant such other or further relief as is just.

Wilmington, Delaware
Dated: April 20, 2015

Respectfully submitted,

RICHARDS, LAYTON & FINGER, P.A.

/s/ Russell C. Silberglied

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- and -

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Tyson M. Lomazow (*pro hac vice* admission pending)

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mbrod@milbank.com

Proposed Counsel to Debtors and Debtors in Possession

Exhibit A

Proposed Form of Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----	X	
	:	
In re:	:	Chapter 11
	:	
FREDERICK’S OF HOLLYWOOD, INC., <i>et al.</i> , ¹	:	Case No. 15-_____ (___)
	:	
	:	
Debtors.	:	(Joint Administration Requested)
-----	X	

INTERIM ORDER (I) AUTHORIZING POST-PETITION SECURED FINANCING PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) AND 503(b) OF THE BANKRUPTCY CODE; (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE; (III) PROVIDING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362, AND 363 OF THE BANKRUPTCY CODE; (IV) MODIFYING THE AUTOMATIC STAY PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE; (V) SCHEDULING A FINAL HEARING; AND (VI) PROVIDING RELATED RELIEF

Upon the motion (the “**Motion**”) dated April 19, 2015 of the above captioned debtors and debtors-in-possession (each individually referred to as a “**Debtor**” and collectively as the “**Debtors**”) in these cases (the “**Chapter 11 Cases**”), for the entry of this Order (the “**Interim Order**” and any order of this Court approving the DIP Facility (defined below) on a final basis (the “**Final Order**,” and together with the Interim Order, the “**DIP Orders**”) authorizing the Debtors, pursuant to title 11 of the United States Code (the “**Bankruptcy Code**”), including sections 105(a), 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) thereof, and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), including Rules 2002, 4001,

¹ The debtors in these chapter 11 cases and the last four digits of each debtor’s taxpayer identification number are as follows: (i) FOHG Holdings, LLC (7902); (ii) Frederick’s of Hollywood Group Inc. (3042); (iii) FOH Holdings, Inc. (5442); (iv) Frederick’s of Hollywood, Inc. (6265); (v) Frederick’s of Hollywood Stores, Inc. (8882); and (vi) Hollywood Mail Order, LLC (5205). The debtors’ principal offices are located at 6464 W. Sunset Blvd., Suite 1150, Los Angeles, CA 90028.

and 9014, to: (i) obtain postpetition financing (the “**DIP Facility**”) and enter into a senior secured priming and superpriority debtor-in-possession credit agreement (together with all schedules and exhibits thereto, the “**DIP Credit Agreement**,” and together with all security, pledge, guaranty, and other lien and loan documents entered into in connection therewith and as further amended, restated, supplemented or otherwise modified from time to time, the “**DIP Credit Documents**”),² substantially in the form annexed to the Motion as Exhibit A, by and among the Borrowers and Salus Capital Partners, LLC (“**SCP**”) and Salus CLO 2012-1, Ltd (“**Salus CLO**” or the “**DIP Lender**”), and SCP, as administrative agent and collateral agent for the DIP Lender (in such capacity, the “**DIP Agent**”), all in respect of the obligations set forth in the DIP Credit Documents and herein (the “**DIP Obligations**”); (ii) grant mortgages, security interests, liens and superpriority claims for the benefit of the DIP Agent and DIP Lender in respect of the DIP Obligations as provided herein and in the DIP Credit Documents, including, subject to entry of the Final Order, with respect to Avoidance Actions (defined below); (iii) subject to the terms hereof and the terms of the DIP Credit Documents, use Cash Collateral (defined below); (iv) provide Adequate Protection (defined below) to the Prepetition Secured Parties (defined below); (v) modify the automatic stay pursuant to section 362 of the Bankruptcy Code; (vi) to the extent provided herein, fund postpetition allowed fees and expenses of Retained Professionals (defined below) as provided herein and the Carve-Out (defined below); (vii) pending a final hearing on the Motion (the “**Final Hearing**”), obtain an emergency postpetition loan of up to \$5.2 million under the DIP Credit Agreement (the “**Interim DIP Facility**”), (viii) in accordance with Bankruptcy Rule 4001(c)(2), request that this Court schedule the Final Hearing and approve notice with respect thereto; and (ix) grant related relief; and the

² Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Motion, DIP Credit Agreement and DIP Credit Documents.

Court, having considered the Motion and the exhibits attached thereto, including, without limitation, the DIP Credit Agreement; and in accordance with Bankruptcy Rule 4001(c)(2) and (c)(3), due and proper notice of the Motion having been given; and a hearing to consider approval of the Interim DIP Facility having been held and concluded (the “**Interim Hearing**”); and upon all of the pleadings filed with the Court; and evidence presented in support of the Motion; and the Court having noted the appearances of parties in interest at the Interim Hearing on the record; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates (the “**Estates**”) and their creditors; and after due deliberation and consideration, and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS:³

A. Chapter 11 Filed. On April 19, 2015 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Each Debtor is continuing in the management and possession of its business and properties as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no statutory committee (a “**Committee**”) has as of the date of this Interim Order been appointed in these Chapter 11 Cases.

B. Jurisdiction and Venue. Consideration of this Motion constitutes a “core proceeding” as defined in 28 U.S.C. §§ 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

³ Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

C. Notice and Hearing. Notice of the relief sought by the Motion, and the Interim Hearing with respect thereto was delivered to the following parties in interest: the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); the DIP Agent; the Prepetition Agent (defined below); Front Street Re (Cayman) Ltd. (“**FSR**”); the Internal Revenue Service; any parties that have a lien on any of the Debtors’ property to the knowledge of the Debtors; and the entities listed on the Debtors’ consolidated list of largest unsecured creditors that was annexed to the Debtors’ chapter 11 petitions (collectively, the “**Interim Notice Parties**”). Under the circumstances, such notice constitutes due, sufficient and adequate notice of the Motion, Interim Hearing and this Interim Order pursuant to the Bankruptcy Rules, including Bankruptcy Rules 2002, 4001(b), 4001(c) and (d), 5003(e) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the Bankruptcy Code, and no further notice of the Motion or this Interim Order is necessary or required.

D. Prepetition Secured Obligations. Pursuant to that certain Credit and Security Agreement dated as of May 31, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “**Prepetition Credit Agreement**,” and together with all agreements, documents, notes and instruments in respect thereof, the “**Prepetition Credit Documents**”) between and among the Debtors, SCP, as administrative agent and collateral agent (in such capacities, the “**Prepetition Agent**”) and the lenders that are parties thereto from time to time (the “**Prepetition Lenders**” and together with the Prepetition Agent, the “**Prepetition Secured Parties**”), the Prepetition Lenders made loans and extended other financial accommodations to the Debtors prior to the Petition Date. The Debtors’ obligations in respect of the Prepetition Credit Documents are collectively referred to as the “**Prepetition Obligations**,” and the

collateral securing the Prepetition Obligations shall be referred to as the “**Prepetition Collateral**.”

E. Necessity and Best Interest.

(1) An immediate and critical need exists for the Debtors to obtain authority for the use of Cash Collateral and to obtain additional funds necessary to maintain the stability of their businesses. The use of Cash Collateral alone would be insufficient to meet the Debtors’ postpetition liquidity needs and provide the necessary assurances to customers, suppliers and regulatory authorities. The Debtors are unable to obtain the required funds (i) in the forms of (w) unsecured credit or debt allowable under section 503(b)(1) of the Bankruptcy Code, (x) an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (y) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code or (z) debt secured only as described in section 364(c)(2) or (3) of the Bankruptcy Code or (ii) on terms more favorable than those offered by the DIP Lender under the DIP Budget (defined below), the other DIP Credit Documents and this Interim Order.

(2) The Debtors have requested that, pursuant to the terms of the DIP Credit Documents, the DIP Lender make loans and advances and provide other financial accommodations to the Debtors. The ability of the Debtors to manage their Chapter 11 Cases and consummate a sale of the assets depends upon the Debtors obtaining such financing. The DIP Lender is only willing to make such loans and advances and provide such other financial accommodations on a secured, super-priority basis, as more particularly described herein, pursuant to the terms and conditions of the DIP Credit Documents and this Interim Order. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the

continued operation of the Debtors' businesses, the management and preservation of their assets and properties, and is in the best interests of the Debtors, their estates and creditors.

(3) The terms of the DIP Credit Documents have been negotiated at arms' length and in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors. The DIP Lender is extending financing to the Debtors in good faith and the DIP Agent and DIP Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

(4) The Debtors (in consultation with their advisors) have determined that (i) the DIP Budget is reasonable and will allow the Debtors to proceed with their Chapter 11 Cases and consummate the proposed sale of the Debtors' assets without the accrual of unpaid allowed administrative expenses; and (ii) the DIP Budget includes all reasonable, necessary, and foreseeable expenses to be incurred for the period set forth in the DIP Budget.

(5) It is in the best interests of the Debtors' estates that they be allowed to finance their operations under the terms and conditions set forth herein. The relief requested by the Motion is necessary to avoid harm to the Debtors' estates, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the immediate entry of this Interim Order. The terms of the DIP Facility and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

The Court, having determined that good cause exists for the relief requested in the Motion,

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Motion. The Motion is granted to the extent provided herein. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral, subject to and as set forth in the DIP Budget, this Interim Order and the DIP Credit Documents including, without limitation, to make payments on the Prepetition Obligations as set forth in the DIP Budget. For purposes of this Interim Order, the term “Cash Collateral” shall mean and include all “cash collateral” as defined by section 363(a) of the Bankruptcy Code. Notwithstanding the foregoing, Cash Collateral of the Prepetition Secured Parties shall not include loan proceeds of the DIP Facility.

3. DIP Borrowing Authorization.

a. The Debtors are hereby authorized to (i) enter into the DIP Credit Agreement substantially in the form annexed to the Motion as Exhibit A and the other DIP Credit Documents and (ii) borrow funds, incur debt and perform their obligations in accordance with the terms and conditions of the applicable DIP Credit Documents, this Interim Order and the DIP Budget. The Debtors are authorized to enter into and perform the transactions contemplated in this Interim Order and the DIP Credit Documents and to borrow under the DIP Credit Agreement on an interim basis in amount under the Interim DIP Facility not to exceed \$5,200,000, subject to the terms and conditions of the DIP Budget, this Interim Order and the other DIP Credit Documents. The DIP Credit Agreement and the other DIP Credit Documents shall constitute and are hereby deemed to be the legal, valid and binding obligations of the Debtors party thereto and each of their respective Estates, enforceable against each such Debtor and its respective Estate in accordance with the terms hereof and the DIP Credit Documents and

any successor of each such Debtor or any representative of the Estates (including a trustee, responsible person, or examiner with expanded powers). The DIP Agent and DIP Lender and any other parties to whom obligations are or may be owed pursuant to any DIP Credit Documents shall have the rights set forth in the DIP Credit Documents to make loans, advances and/or financial accommodations pursuant to the terms and conditions thereof.

b. The Debtors acknowledge, represent, stipulate and agree, and the Court hereby finds and orders, that: subject to the entry of this Interim Order, the Debtors have obtained all authorizations, consents and approvals necessary to be obtained, made or given by the Debtors in connection with the execution, delivery, performance, validity and enforceability of the DIP Credit Documents.

c. In entering into the DIP Credit Documents and obtaining the use of Cash Collateral, and as consideration therefor and for the other accommodations and agreements of the DIP Lender reflected herein and in the DIP Credit Documents, the Debtors hereby agree that until such time as all of the DIP Obligations are indefeasibly paid in full in cash and the DIP Credit Agreement and DIP Credit Documents are terminated in accordance with the terms thereof, the Debtors shall not in any way prime or seek to prime the DIP Obligations, the DIP Liens or the DIP Superpriority Claims (defined below) provided to the DIP Lender under this Interim Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or super-priority administrative expense pursuant to sections 326, 330, 331, 364(d), 503(b), 506, 507(a), 507(b) or 726 of the Bankruptcy Code or otherwise or acquiescing thereto; each Debtor is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the DIP Agent and DIP Lender and their respective successors and assigns, the full and prompt payment when due (whether at maturity or earlier, by reason of acceleration or otherwise, and at

all times thereafter) and performance of, all DIP Obligations owed or hereafter owing to DIP Agent or any DIP Lender by each other Debtor.

d. Each Debtor agrees that (i) its guarantee obligation hereunder shall be, and is, absolute and unconditional for all purposes in these Chapter 11 Cases and is a present and continuing guaranty of payment and not of collection, and (ii) its obligations under this Interim Order and any DIP Credit Document shall not be discharged until the indefeasible payment, in full, in cash of the DIP Obligations, and the termination of the lending commitments under the DIP Credit Documents.

e. In no event shall the DIP Agent and DIP Lender, whether in connection with the extension of financing to the Debtors or the exercise of any rights or remedies under the DIP Credit Facility, hereunder or otherwise, be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors, so long as the actions of the DIP Agent and DIP Lender do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Comprehensive Environmental Response, Compensation and Liability Act, sections 9601 et seq. of title 42, United States Code, as amended, or any similar federal or state statute).

4. DIP Interest, Fees, Expenses and Reserves.

a. The DIP Obligations shall bear interest at the applicable rate (including any applicable default rate after the occurrence of an Event of Default) set forth in the DIP Credit Documents, and be due and payable in accordance with this Interim Order and the DIP Credit

Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court.

b. The Debtors shall pay to the DIP Agent, for itself and, if applicable, the ratable benefit of the DIP Lender, the fees payable under the terms of the DIP Credit Documents whether or not such amounts are included in the DIP Budget or arose before or after the Petition Date. None of such fees payable pursuant to this Paragraph shall be subject to any other approval by this Court, except as otherwise provided herein.

c. The Debtors shall pay the reasonable fees and expenses of the attorneys and advisors for the DIP Agent and DIP Lender, whether or not incurred prepetition or postpetition, as provided under the DIP Credit Documents. Invoices supporting such fees and expenses shall be submitted to counsel for the Debtors, with copies to the U.S. Trustee, counsel for each of the Prepetition Agent, counsel for FSR and counsel for any Committee (invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine). No attorney or advisor to the DIP Agent or DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. The U.S. Trustee, Prepetition Agent, FSR, the Debtors, and Committee shall have ten (10) business days in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors.

5. DIP Obligations. Upon their execution, the DIP Credit Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; **provided, however,** that notwithstanding any other provision of

this Interim Order or of the other DIP Credit Documents, the Debtors shall not, prior to entry of the Final Order approving the DIP Credit Documents, incur DIP Obligations in a principal amount greater than the Interim DIP Facility. No obligation, payment, transfer or grant of security under this Interim Order or the other DIP Credit Documents shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtors shall use the DIP Facility solely as provided in the DIP Orders and the DIP Credit Documents. From and after the Petition Date, the DIP Facility and Cash Collateral shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted under the DIP Budget and the other DIP Credit Documents.

6. DIP Budget. Funds available to the Debtors under the DIP Facility and use of Cash Collateral shall be used solely in accordance with a budget (as amended, supplemented, extended or otherwise modified from time to time, the “**DIP Budget**”) and (i) actual disbursements shall not exceed 110% of (A) the projected disbursements in the DIP Budget (as reflected in the DIP Budget line item labeled “Total Operating Disbursements”) as of the end of any consecutive two-week period after the Petition Date or (B) the projected disbursements in the DIP Budget for each line item set forth in the DIP Budget in the line items under the heading “Disbursements” (other than that labeled “Salus Secured Lender Counsel”) as of the end of any consecutive two-week period after the Petition Date; and (ii) the amount of actual receipts shall not be less than 90% of the projected receipts in the DIP Budget (as reflected in the DIP Budget line item entitled “Total Operating Cash Receipts”) as of the end of any two-week period after the Petition Date, in each case, as determined on a cumulative weekly basis commencing on the

Petition Date. Notwithstanding the foregoing, the Debtors shall not be entitled to any variance on the line items related to payments to Retained Professionals. The DIP Budget shall be prepared by the Debtors. The initial DIP Budget and any subsequent DIP Budget shall also be in form and substance reasonably satisfactory to each of the Prepetition Agent and FSR; provided that if FSR has terminated its funding obligations under Section 5 of the Participation Agreement, then FSR shall no longer have the ability to approve the DIP Budget. In addition to the consent rights in the previous sentence, the initial DIP Budget and each subsequent DIP Budget shall be in form and substance satisfactory to the DIP Agent in its sole discretion for the time period set forth therein. The DIP Budget may be amended, supplemented, extended or otherwise modified from time to time in any manner as to which Debtors and the DIP Agent mutually agree without further order of this Court or advance notice but subject to the consent of the Prepetition Agent and FSR (in the case of FSR so long as FSR has not terminated its funding obligations under section 5 of the Participation Agreement), which shall not be unreasonably withheld or delayed. The Debtors shall provide any modified DIP Budget to the U.S. Trustee and counsel to each of the Prepetition Agent and FSR and counsel for any Committee; **provided**, **however**, the Debtors may take appropriate actions with respect to confidentiality of any portion of the DIP Budget. If the U.S. Trustee, any Prepetition Secured Party or the Committee objects to a DIP Budget, the Debtors may continue to operate and use DIP Facility Proceeds and Cash Collateral under such DIP Budget until the Court orders otherwise.

7. **DIP Reporting Requirements**. The Debtors shall deliver to the DIP Agent such reports, data and other information required to be delivered pursuant to the DIP Credit Documents. The Debtors shall deliver to counsel to each of Prepetition Agent and FSR and counsel to any Committee such reports, data and other information required to be delivered by

the Debtors to the DIP Agent pursuant to the DIP Credit Documents and in the same form delivered to the DIP Agent; **provided, however**, the Debtors may take appropriate actions with respect to confidentiality of such reports, data and other information.

8. Amendment of DIP Credit Documents. The DIP Credit Documents may be amended, supplemented or otherwise modified (including, without limitation, waivers of any provisions of the DIP Credit Documents) without further order of this Court; **provided, however**, that the Debtors shall file with the Court and provide written advance notice of any such amendment, supplement or other modification to counsel to each of the U.S. Trustee, the Prepetition Agent, FSR, and the Committee (which, to the extent such contact information for such parties is known to the Debtors, shall be transmitted by fax or e-mail, and, if not known, by overnight mail), each of which shall have two (2) business days from the date of such notice within which to object in writing to such amendment, supplement or other modification, and upon any such timely written objection, such amendment, supplement or other modification shall only be permitted pursuant to an order of this Court (the entry of which may be sought on an expedited basis); and, **provided further**, any amendment having the effect of (i) increasing the DIP Lender's aggregate lending commitments, (ii) increasing the fees or applicable interest rates, other than increases described in the DIP Credit Documents and other than the imposition of the Default Rate (as defined in the DIP Credit Agreement), (iii) modifying the scheduled final maturity of the DIP Obligations under the DIP Credit Documents, or (iv) imposing any additional material burden on the Debtors, shall be permitted only after notice, a hearing and an order of this Court (the entry of which may be sought on an expedited basis).

9. Superpriority Claims and DIP Liens. Pursuant to the Bankruptcy Code, including sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) thereof, in respect of the DIP Obligations

under the DIP Credit Agreement, the other DIP Credit Documents and this Interim Order, the DIP Agent is granted, for itself and the ratable benefit of the DIP Lender(s), the following:

a. Superpriority administrative expense claims pursuant to Bankruptcy Code section 364(c)(1) with priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), which superpriority expense claims of the DIP Agent and DIP Lender shall be subject and subordinate only to the Carve-Out (the “**DIP Superpriority Claims**”); **provided, however,** for the avoidance of doubt, pursuant to applicable bankruptcy law, the granting of such DIP Superpriority Claims does not affect the status and superior priority of any liens, including the DIP Liens (defined below), Prepetition Liens and Prior Permitted Senior Liens (defined below);

b. A first priority, priming security interest in and lien pursuant to Bankruptcy Code section 364(d)(1) (the “**Section 364(d)(1) Liens**”) on all assets of the Debtors and their Estates (the “**DIP Collateral**”) of any nature whatsoever and wherever located, whether first arising prior to or following the Petition Date, now owned or hereafter acquired, including all accounts, all chattel paper, all commercial tort claims, all deposit accounts, all documents, all equipment, all general intangibles, all intellectual property, all owned real property and the proceeds of all leased real property, all goods, all instruments, all inventory, all investment property, all letter-of-credit rights, all books and records, and all proceeds, rents, profits, and offspring of the foregoing (including Cash Collateral), which Section 364(d)(1) Liens shall be senior to any existing liens or claims, subject and subordinate only to (i) the Carve-Out, and (ii)

liens on property of a Debtor (including the proceeds of such property) that are in existence on the Petition Date but only to the extent a lien on such property (x) is valid, binding, perfected, enforceable and not avoidable, and (y) the lien on such property (or the proceeds of such property, as applicable) on the Petition Date was senior in priority to the Prepetition Liens (the items referenced in the foregoing clauses (x), (y) and (z) being referred to collectively as the “**Prior Permitted Senior Liens**”), **provided, however,** for the avoidance of doubt, the Prepetition Liens are not Prior Permitted Senior Liens;

c. A first priority security interest and lien pursuant to Bankruptcy Code section 364(c)(2) on all unencumbered property of the Debtors and the Estates including all Avoidance Actions⁴ and proceeds thereof (subject to entry of the Final DIP Order) (the “**Section 364(c)(2) Liens**”), which Section 364(c)(2) Liens shall be subject and subordinate only to the Carve-Out; and

d. A junior security interest and lien pursuant to Bankruptcy Code section 364(c)(3) on all property of the Debtors and the Estates that is subject and subordinate to a Prior Permitted Senior Lien (the “**Section 364(c)(3) Liens**”), which Section 364(c)(3) Liens are also subject and subordinate to the Carve-Out.⁵

10. **DIP Collateral.** The DIP Liens include liens upon and security interests in (i) all of those items and types of collateral in which security interests may be created under Article 9 of the Uniform Commercial Code, (ii) all of those items and types of collateral not

⁴ “Avoidance Actions” means all claims and causes of action under Chapter 5 of the Bankruptcy Code, including, without limitation, those under sections 544, 545, 547, 548, 549, 550, 552(b) and 553 and state laws of similar import.

⁵ The Section 364(d)(1) Liens, Section 364(c)(2) Liens, and Section 364(c)(3) Liens shall be collectively referred to as the “**DIP Liens**.”

governed by Article 9 of the Uniform Commercial Code, including, without limitation, to the extent not permitted by applicable nonbankruptcy law, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests, and commercial tort claims of the Debtors, (iii) any and all other DIP Collateral of any nature or form, and (iv) the products, rents, offspring, profits, and proceeds of any of the foregoing. None of the DIP Obligations, DIP Liens or DIP Superpriority Claims shall (a) be subject to or *pari passu* with any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code, (b) be subject to or *pari passu* with any inter-company claim, whether secured or unsecured, of any Debtor or any domestic or foreign subsidiary or affiliate of any Debtor, (c) be subject to sections 510, 549, or 550 of the Bankruptcy Code, or (d) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise, except as expressly provided in this Interim Order.

11. Carve-Out.

a. Generally. Upon the occurrence of the Carve-Out Trigger Date (defined below), the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens (defined below), and the 507(b) Claims (defined below) of the Prepetition Secured Parties shall each be subject and subordinate to the payment (from either Cash Collateral or proceeds resulting from liquidation of DIP Collateral or Prepetition Collateral) of the following: (i) the unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code (for the avoidance of doubt, there is no limitation on the obligations of the Debtors and their Estates with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code); plus (ii)

the fee and expense claims of the respective retained professionals of the Debtors and any Committee that have been approved by this Court during the Chapter 11 Cases pursuant to sections 327, 328, and 1103 of the Bankruptcy Code or otherwise (the retained professionals of the Debtors and any Committee are collectively referred to as the “**Retained Professionals**”), which were incurred (A) on and after the Petition Date and prior to the Carve-Out Trigger Date in amounts not in excess of the amounts set forth in the DIP Budget, and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding \$100,000 in the aggregate for all Retained Professionals **provided that**, in each case, such fees and expenses of the Retained Professionals are in accordance with the DIP Budget on a cumulative basis for the applicable period and are ultimately allowed on a final basis by this Court (whether or not such fees and expenses are allowed by this Court as of or after the Carve-Out Trigger Date) pursuant to sections 330 and 331 of the Bankruptcy Code or otherwise and are not excluded from the Carve-Out under Paragraph 16 of this Interim Order, **provided, however**, nothing herein shall waive the right of any party to object to the allowance of any such fees and expenses, and **provided further**, that the Carve-Out shall not include any bonus, transaction, success or completion fees or any other fees of similar import for Retained Professionals (all such amounts in this Paragraph 12(a)(i) and (ii), together with the limitations set forth therein, are collectively referred to as the “**Carve-Out**”).

b. **Professional Fee Escrow**. On a weekly basis the Debtors shall be authorized to transfer funds to the Milbank, Tweed, Hadley & McCloy LLP Client Trust Account (the “Professional Fee Account”) in the amounts for the preceding week, if any, set forth in the Budget for fees and expenses of the Retained Professionals. Such funds shall be held in the Professional Fee Account for the benefit of the Retained Professionals, respectively, to be

applied *pro rata* to the fees and expenses of such Retained Professionals approved for payment pursuant to one or more orders of the Bankruptcy Court (the “Escrowed Funds”), provided, however, that for the avoidance of doubt, fees and expenses payable to the Retained Professionals shall be paid solely out of the Professional Fee Account, and all amounts deposited in the Professional Fee Account shall reduce, on a dollar for dollar basis, the obligation to fund the Carve-Out, and provided further success fees that may be earned by any Retained Professional shall be paid from the proceeds of any transaction and shall not be deposited into the Professional Fee Escrow. Without in any way limiting the Debtors’ ability to use the Escrowed Funds to pay the fees and expenses of the Retained Professionals, the Escrowed Funds in the Professional Fee Account shall remain encumbered by and subject to the DIP Liens, and the Superpriority Claims, in their respective order of priority; provided, however, that such liens and claims shall be subordinate to the Carve-Out. The DIP Lender shall have no obligation to pay any fees and expenses of the Retained Professional except to the extent of the funding in the Professional Fee Account.

c. Carve-Out Trigger Date. The term “**Carve-Out Trigger Date**” means the date on which the DIP Agent provides written notice to the Debtors, the U.S. Trustee, counsel to FSR and counsel to any Committee that the Carve-Out is invoked, which notice may be delivered only on or after the occurrence of an Event of Default under the DIP Credit Documents or upon the Maturity Date.

d. Reduction of Amounts. The fixed dollar amount of \$100,000 available to be paid under the Carve-Out following the Carve-Out Trigger Date shall be funded into the Professional Fee Escrow as provided in the DIP Budget. Any allowed fees and expenses of Retained Professionals incurred on and after the Carve-Out Trigger Date shall be paid solely

from such amount funded into the Professional Fee Escrow.

e. Reservation of Rights. Fees and expenses of Retained Professionals incurred in excess of the amounts provided therefor under the DIP Budget, including after the occurrence of the Carve-Out Trigger Date, shall, subject to approval of the Court, constitute allowed administrative expenses of the Debtors' estates pursuant to, *inter alia*, sections 328, 330(a), 331, and 503(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Carve-Out shall be limited to cumulative amounts provided under the DIP Budget for the applicable period. The payment of any fees or expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to (i) reduce any Debtor's obligations owed to any of the DIP Agent, the DIP Lender or the Prepetition Secured Parties (collectively, the "Secured Parties"), or (ii) modify, alter or otherwise affect any of the liens and security interests of such parties in the DIP Collateral or Prepetition Collateral. Except as otherwise set forth in Paragraphs 12(a) and 12(b), the Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professionals, the U. S. Trustee or Clerk of the Bankruptcy Court (or of any other entity) incurred in connection with the Chapter 11 Cases or any successor case, and nothing in this Interim Order or otherwise shall be construed to obligate such parties in any way to pay such compensation to or to reimburse such expenses (for the avoidance of doubt, nothing in this Paragraph 12 shall be construed as limiting the Carve-Out or limiting payment of the Carve-Out from Cash Collateral, proceeds of the DIP Facility and/or DIP Collateral, which payments shall be made directly to the Retained Professionals from the Professional Fee Escrow after the Carve-Out Trigger Date; **provided, however**, the Secured Parties shall not be responsible for payment of the Carve-Out from sources other than the Professional Fee Escrow.

12. Waiver of Right to Surcharge. Because (i) of the consent the DIP Agent and DIP Lender to the current payment of administrative expenses of the Debtors' Estates in accordance with the DIP Budget, (ii) the subordination of the DIP Liens, Adequate Protection Liens and 507(b) Claims of the Prepetition Secured Parties to the Carve-Out, **subject to the entry of the Final Order**, the Secured Parties are each entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code and (b) any "equities of the case" claims under section 552(b) of the Bankruptcy Code. Accordingly, but subject to approval by the Bankruptcy Court, **the Final Order will provide that** no costs or expenses of administration or other charge, lien, assessment or claim incurred at any time (including, without limitation, any expenses set forth in the DIP Budget) by any Debtor or any other person or entity shall be imposed or charged against any or all of the DIP Collateral, the Prepetition Collateral or the Secured Parties or their respective claims under sections 506(c) or 552(b) of the Bankruptcy Code, and the Debtors, on behalf of their Estates, waive any such rights. It is expressly understood by all parties that in making all such undertakings and proceeding in compliance with the DIP Budget, this Interim Order and the DIP Credit Documents, the Secured Parties have each relied on the foregoing provisions of this Paragraph. Notwithstanding any approval of or consent to the DIP Budget, nothing in this Interim Order shall constitute or be deemed to constitute the consent by any of the Secured Parties to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in the DIP Budget) against such party, its claims or its collateral under sections 105(a), 506(c) or 552(b) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties.

13. Automatic Perfection.

a. The (i) DIP Liens granted to the DIP Agent, for the benefit of the DIP Lender pursuant to this Interim Order and the DIP Credit Documents, and (ii) Adequate Protection Liens granted pursuant to this Interim Order to the Prepetition Secured Parties shall be valid, binding, perfected and enforceable by operation of law upon entry of this Interim Order by the Court without any further action by any party. The (i) DIP Agent and DIP Lender in respect of the DIP Liens, and (ii) Prepetition Secured Parties in respect of the Adequate Protection Liens, shall each not be required to enter into or to obtain any control agreements, landlord waivers, mortgagee waivers, bailee waivers or warehouseman waivers or to give, file or record any financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property) (collectively, the “**Perfection Documents**”), or obtain consents from any licensor or similarly situated party in interest, or take any other action in order to validate and to perfect the DIP Liens granted under the DIP Credit Documents and this Interim Order and the Adequate Protection Liens granted under this Interim Order and approved hereby, all of which are automatically perfected by the entry of this Interim Order. If the Secured Parties, independently or collectively, in each of their sole discretion respectively, choose to obtain, enter into, give, record or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority or enforceability of the DIP Liens and Adequate Protection Liens, and (z) such liens

shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of recording or filing any Perfection Documents, the Secured Parties may, in each of their sole discretion, choose to record or file a true and complete copy of this Interim Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the Secured Parties shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. In addition, the DIP Agent may, in its sole discretion, at the Debtors' expense, require the Debtors to file or record any Perfection Document. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent all Perfection Documents as the DIP Agent may reasonably request.

b. The Prepetition Agent shall be deemed to be an agent or bailee, as the case may be, on behalf of and for the benefit of the DIP Agent and DIP Lender for the purposes of perfecting the security interests granted in the DIP Collateral, and, until the indefeasible payment in full in cash of DIP Obligations, the DIP Collateral and Perfection Documents in the possession, custody or control of the Prepetition Agent (or in the possession, custody or control of agents or bailees of the Prepetition Agent) shall be deemed to be for the benefit of the DIP Agent. Upon an Event of Default and the request of the DIP Agent, the Prepetition Agent (or its agents or bailees, as applicable) shall transfer, assign and otherwise convey, as applicable, any DIP Collateral and Perfection Documents in its possession, custody or control to the DIP Agent for the enforcement of rights and remedies under the DIP Credit Documents, and, upon the indefeasible payment in full in cash of all DIP Obligations, the DIP Agent (or its agents or bailees, as applicable) shall transfer, assign and otherwise convey any Prepetition Collateral and

Perfection Documents to the Prepetition Agent if any Prepetition Obligations remain unsatisfied. For the avoidance of doubt, the grant, perfection, scope and vesting of the DIP Liens, DIP Superpriority Claims and DIP Obligations are fully effectuated by this Interim Order and any security agreements, collateral agreements or other Perfection Documents executed as part of the DIP Credit Documents shall supplement the grant, perfection, scope and vesting set forth herein as well as the powers and protections accorded to the DIP Agent, on behalf of itself and the DIP Lender, but in no event shall any such security agreement, collateral agreement or other Perfection Document be interpreted as a limitation of such provisions of this Interim Order.

14. Stipulations and Waivers: After consultation with their attorneys and financial advisors, **subject to and without prejudice to the rights of any Committee and any other party in interest as set forth in Paragraph 15 below**, the Debtors admit, stipulate, and agree to the following, and make the releases and waivers set forth below and as described in this Interim Order and the DIP Credit Documents, on and as of the Petition Date:

a. Prepetition Credit Documents. Prior to the Petition Date, the Debtors entered into the Prepetition Credit Documents with the Prepetition Agent.

b. Prepetition Secured Obligations.

(1) Pursuant to the Prepetition Credit Documents, as of the Petition Date, the Debtors were indebted and liable to the Prepetition Agent, on behalf of the Prepetition Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$32,865,000 in respect of the Prepetition Obligations, plus accrued but unpaid interest, costs, fees and expenses.

(2) The Prepetition Secured Obligations constitute the legal, valid and binding obligations of the Debtors that are party thereto, enforceable in accordance with their

terms (other than in respect of the stay of enforcement arising under section 362 of the Bankruptcy Code and no portion of the Prepetition Secured Obligations is subject to avoidance, recharacterization, disgorgement, recovery or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

c. Prepetition Liens. The Prepetition Liens are (i) valid, binding, perfected, enforceable, liens on and security interests in the Prepetition Collateral, (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (iii) subject only to (A) after giving effect to this Interim Order, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, and the Carve-Out, and (B) Prior Permitted Senior Liens.

d. Releases and Waivers. Each Borrower hereby acknowledges effective upon entry of this Interim Order, that no Debtors has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors' liability to repay the DIP Agent or DIP Lender as provided in the DIP Credit Agreement or to seek affirmative relief or damages of any kind or nature from the DIP Agent or any DIP Lender. Each Debtor, on behalf of itself and its bankruptcy estate, and on behalf of all its successors, assigns, and Subsidiaries and any Person acting for and on behalf of, or claiming through them (collectively, and in each case in their capacities as such, the "Releasing Parties"), hereby fully, finally and forever releases and discharges the DIP Agent and each DIP Lender and its respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, participants, and each Person acting for or on behalf of any of them (collectively, and in each case in their capacities as such, the "Released Parties") of and from any and all actions, causes of action, demands, suits,

claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, arising out of, connected with or relating to the DIP Credit Agreement, the Interim Order, any other agreement, document or instrument related to any of the foregoing and the transactions contemplated hereby or thereby.

e. Default. The Debtors are in default with respect to their Prepetition Secured Obligations and an Event of Default has occurred under the Prepetition Credit Documents.

15. Effect of Debtors' Stipulations and Waivers on Third Parties.

a. Generally. The admissions, stipulations, agreements, releases, and waivers set forth in the immediately preceding Paragraph 14 of this Interim Order (collectively, the "**Prepetition Lien and Claim Matters**") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other Estate representative and all parties-in-interest and all of their successors-in-interest and assigns, including, without limitation, any Committee, unless, and solely to the extent that, (i) any

Committee, any chapter 7 trustee, or any party-in-interest with standing and requisite authority, has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in Paragraph 16 of this Interim Order) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “**Challenge**”) by no later than 60 days from the from the date of appointment of any Committee date or, in the event that no Committee is appointed in these Chapter 11 Cases, upon conclusion of the date that is 75 days from the Petition Date, as such applicable date (such applicable date is referred to as a “**Challenge Deadline**”) may be extended from time to time in the sole discretion of (y) the Prepetition Agent with respect to the Prepetition Obligations; provided, that if the Prepetition Obligations (other than those owed to FSR) have been indefeasibly repaid in full, then FSR’s consent shall also be required to extend such deadline, or (z) by this Court for good cause shown pursuant to an application filed by any Committee or any other party in interest prior to the expiration of the Challenge Deadline; and (ii) this Court rules in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such ruling is not subject to any further review or appeal.

b. **Binding Effect.** To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall pursuant to this Interim Order become binding, conclusive and final on any

Committee and any other person, entity or party-in-interest in the Chapter 11 Cases, and their successors and assigns, and in any successor case for all purposes and shall not be subject to challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other representative of the Estates. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all parties-in-interest and preclusive as provided in sub-paragraph (a) above except to the extent that each of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Agent shall be entitled to include the related costs and expenses, including but not limited to reasonable attorneys' fees, incurred in defending themselves in any such proceeding pursuant to the Prepetition Credit Documents.

16. Limitation on Use of Proceeds. Notwithstanding anything in this Interim Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the DIP Budget shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with: (a) objecting, contesting or raising any defense to the validity, perfection, priority, or enforceability of, or any amount due under, the DIP Credit Documents or the Prepetition Credit Documents or any security interests, liens or claims granted under this Interim Order, the DIP Credit Documents, or the Prepetition Credit Documents to secure such amounts; (b) asserting any Challenges, claims, actions or causes of action against any of DIP Lender or any of its respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; (c) preventing, hindering or otherwise delaying enforcement or realization

on the DIP Collateral or the Prepetition Collateral; or (d) seeking to amend or modify any of the rights granted to the Secured Parties under this Interim Order, the DIP Credit Documents or the Prepetition Credit Documents, including seeking use of Cash Collateral and/or the DIP Collateral on a contested basis. No more than \$50,000 in the aggregate of the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by any Committee to investigate (but not prosecute or Challenge) Prepetition Lien and Claim Matters. Any claim incurred which exceeds the limitations which shall be contained in the Final Order, including in connection with any activities described in subparagraph (b) of this paragraph, shall not constitute an allowed administrative expense claim for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.

17. Avoidance Actions. Notwithstanding anything in this Interim Order or any other DIP Credit Document to the contrary, **subject to the entry of the Final Order** Avoidance Actions and proceeds thereof shall be DIP Collateral and shall be subject to the DIP Liens and DIP Superpriority Claims until such time as the DIP Obligations have been indefeasibly paid in full in cash. Except as provided in paragraph 18(b) below, Avoidance Actions and proceeds thereof shall also be subject to the Adequate Protection Liens of the Prepetition Secured Parties and the 507(b) Claims of the Prepetition Secured Parties.

18. Adequate Protection.

a. Generally. This Court finds that the Adequate Protection provided in this Interim Order, including, without limitation, in this Paragraph 18, is reasonable and sufficient to protect the interests of the Prepetition Secured Parties.

b. Adequate Protection Liens. As adequate protection of the Prepetition Liens of the Prepetition Secured Parties under the applicable Prepetition Credit Documents

(“**Adequate Protection**”) in accordance with sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Agent shall be granted (for the ratable benefit of the respective Prepetition Lenders and subject to the same priority as between such Prepetition Lenders) valid, binding, perfected and enforceable security interests and replacement liens (collectively the “**Adequate Protection Liens**,”) upon all property of the Debtors, including Avoidance Actions and proceeds thereof, whether arising prepetition or postpetition of any nature whatsoever, wherever located, in each case to secure the Prepetition Secured Obligations from the aggregate diminution, if any, subsequent to the Petition Date, in the value of the Prepetition Collateral. The Adequate Protection Liens are subject and subordinate to (A) the Carve-Out, (B) the DIP Obligations, DIP Liens and DIP Superpriority Claims, and (C) the Prior Permitted Senior Liens. None of the Adequate Protection Liens shall (x) be subject to any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code, (y) subject to any inter-company claim, whether secured or unsecured, of any Debtor or any domestic or foreign subsidiary or affiliate of any Debtor, or (z) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise except as expressly provided in this Interim Order, the Final Order and the DIP Credit Documents, including, without limitation, with respect to the Carve-Out, Prior Permitted Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims.

c. 507(b) Claims. The Prepetition Secured Parties are hereby each granted an administrative expense claim pursuant to Bankruptcy Code section 507(b) (each, a “**507(b) Claim**”) of the Bankruptcy Code with priority over all other administrative expenses, but in all cases subject and subordinate to the Carve-Out, Prior Permitted Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims.

d. Adequate Protection Payments. Subject to section 506(b) of the Bankruptcy Code, the Debtors shall, in accordance with the DIP Budget, (x) with respect to the Prepetition Agent: (i) pay all reasonable fees and expenses under the Prepetition Credit Documents incurred by the Prepetition Agent and Prepetition Lenders, whether incurred prior to or following the Petition Date, and (ii) pay all interest on the Line of Credit (as defined in the Prepetition Credit Agreement) at the Default Rate (as defined in the Prepetition Credit Agreement), other than any portion of the Line of Credit which has been participated to the Term Lender as defined in the Prepetition Credit Agreement. The payments under this Paragraph 18(d) shall be collectively referred to as the “**Adequate Protection Payments**.” Invoices supporting fees and expenses being charged to the Debtors shall be submitted to counsel for the Debtors, with copies to the U.S. Trustee, counsel for FSR, counsel for the DIP Agent and counsel for any Committee (invoices may be redacted to the extent necessary to protect any information subject to the attorney-client privilege and any information constituting attorney work product, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine). The Prepetition Agent (and its counsel and advisors) shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court. The U.S. Trustee, the DIP Agent, the Prepetition Agent, the Debtors, FSR and any Committee shall have ten (10) business days in which to raise an objection to the payment of any fees and expenses of any attorneys and advisors for the Prepetition Agent. To the extent any such objection is not resolved or withdrawn within such ten (10) business day period, the Court shall adjudicate the matter and fashion an appropriate remedy; provided, that any portion of such fees that are not objected to may be paid. In the event any Adequate Protection Payment would be required to be repaid to

the Debtors as a result of application of Bankruptcy Code section 506(b) or otherwise, any such amounts shall not be repaid and instead shall be applied as follows: first, to the DIP Obligations until such obligations are indefeasibly paid in full, in cash; and second, to the Prepetition Obligations until such obligations are indefeasibly paid in full, in cash.

19. Indemnification. The Debtors shall indemnify the DIP Agent and DIP Lender and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “**Indemnified Person**”) and hold each of them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or shareholders) that relates to the DIP Facility or this Interim Order, including the financial accommodations to the Debtors contemplated hereby, the Chapter 11 Cases, or any transactions in connection therewith, provided that no Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct. Nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent or DIP Lender in the DIP Credit Documents. For the avoidance of doubt, this Paragraph 19 does not apply or otherwise affect any indemnification rights or obligations in respect of the Prepetition Secured Parties under the Prepetition Credit Documents.

20. Remedies. Upon the occurrence of an Event of Default under the DIP Credit Documents and following the giving of three (3) business days’ notice to the Court, U.S. Trustee,

counsel for the Debtors, counsel for FSR, counsel for any Committee, and counsel for the Prepetition Agent (the “**Remedies Notice Period**”), (i) the DIP Agent is granted leave to cease making financial accommodations to the Debtors, accelerate any or all of the DIP Obligations and declare such DIP Obligations to be immediately due and payable in full, in cash, and (ii) the DIP Agent, for the benefit of the DIP Lender, shall be entitled to exercise all of its rights and remedies under this Order and the DIP Credit Documents, including, without limitation, foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, DIP Liens and DIP Superpriority Claims on any or all of the DIP Collateral and/or to exercise any other default-related remedies under the DIP Credit Documents, this Interim Order or applicable law in seeking to recover payment of the DIP Obligations. For the avoidance of doubt, with respect to Prior Permitted Senior Liens, any exercise of such rights and remedies shall be in accordance with applicable non-bankruptcy law in respect of Prior Permitted Senior Liens. During the Remedies Notice Period, the Debtors, the Prepetition Agent, FSR, any Committee or any other party in interest may seek an order of the Court staying the DIP Agent’s exercise of such remedies against the DIP Collateral solely on the grounds that no Event of Default has occurred and, if no such stay is obtained, then the DIP Agent may exercise any and all such rights and remedies without further order of the Court or notice to any party and the Debtors’ authority to use Cash Collateral under this Interim Order shall terminate. During the Remedies Notice Period, the Debtors may continue to use the DIP Collateral, including Cash Collateral, subject to the DIP Budget and the other limitations contained in this Interim Order.

21. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lender, contained in this Interim Order or the DIP Credit Documents, or

otherwise available at law or in equity, and subject to the terms of the DIP Credit Documents, upon written notice to the landlord of any leased premises that an Event of Default or the Maturity Date has occurred under the DIP Credit Documents, the DIP Agent may, subject to the applicable notice provisions, if any, in this Interim Order and any separate agreement by and between such landlord and the DIP Agent, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, provided that the DIP Agent shall only be obligated to pay rent of the Debtors that first accrues after the DIP Agent's written notice referenced above and that is payable during the period of such occupancy by the DIP Agent, calculated on a daily per diem basis. Nothing herein shall require the DIP Agent to assume any lease as a condition to the rights afforded to the DIP Agent in this Paragraph. **Subject to entry of the Final Order**, any landlord's lien, right of distraint or levy, security interest or other interest that any landlord, warehousemen or landlord's mortgagee may have in any DIP Collateral of the Debtors located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, is hereby subordinated to the DIP Obligations, DIP Liens, and DIP Superpriority Claims.

22. **Insurance Policies**. Effective as of entry of this Interim Order, the DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors that in any way relates to DIP Collateral or Prepetition Collateral, as applicable; provided, however, for the avoidance of doubt, this provision shall not delete any other additional insured or loss payee from any insurance policy.

23. Successors and Assigns. This Interim Order, the DIP Credit Agreement and the other DIP Credit Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including any subsequently appointed trustee, responsible individual, examiner with expanded powers, or other Estate representative.

24. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any subsequent order (other than entry of any subsequent DIP Order), and the rights, remedies, powers, privileges, liens and priorities of the Secured Parties provided for in this Interim Order and in any DIP Credit Document shall not be modified, altered or impaired in any manner by any order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent not indefeasibly paid in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, each of the Debtors having hereby waived such discharge); (ii) converting any of the Chapter 11 Cases to a Chapter 7 case; (iii) dismissing any of the Chapter 11 Cases; or (iv) any superseding cases under the Bankruptcy Code. The terms and provisions of this Interim Order as well as the DIP Obligations, DIP Liens, DIP Superpriority Claims, DIP Credit Documents, and Adequate Protection Liens shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by this Interim Order and the DIP Credit Documents to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full, in cash.

25. Good Faith. The DIP Facility, the use of Cash Collateral, and the other provisions of this Interim Order, the DIP Credit Agreement and the other DIP Credit Documents have been negotiated in good faith and at arm's-length among the Debtors and the Secured Parties, and the

extension of the financial accommodations to the Debtors by the Secured Parties pursuant to this Interim Order and the DIP Credit Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. The Secured Parties are entitled to, and are hereby granted, the full protections of section 364(e) of the Bankruptcy Code.

26. Subsequent Reversal or Modification. Subject to Paragraph 16, if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, that action will not affect (i) the validity of any obligation, indebtedness or liability under this Interim Order and the DIP Credit Documents by the Debtors prior to the date of receipt of written notice to the DIP Agent and Prepetition Agent of the effective date of such action; or (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to this Interim Order and the DIP Credit Documents, including, without limitation, the DIP Obligations, DIP Liens and DIP Superpriority Claims, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection Payments and 507(b) Claims. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Debtors to the Secured Parties prior to written notice to the DIP Agent and Prepetition Agent of the effective date of such action, shall be governed in all respects by the original provisions of this Interim Order and the DIP Credit Documents, and the DIP Agent and DIP Lender shall be entitled to all the rights, remedies, privileges and benefits granted pursuant to this Interim Order and the DIP Credit Documents.

27. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the Secured Parties may have to bring or be heard on any matter brought before the Court. Any consent, modification, declaration of default, or exercise of remedies or non-exercise of remedies under or in connection with this Interim Order or the DIP

Credit Documents shall require the approval of DIP Agent, and, as and to the extent required by the voting provisions of the DIP Credit Agreement and shall not be deemed a waiver or relinquishment of any of the rights of the DIP Agent and DIP Lender. Nothing contained in this Interim Order (including without limitation, the authorization to use any Cash Collateral) shall impair, prejudice or modify any rights, claims or defenses available in law or equity to the Secured Parties, including, without limitation, the right to (a) request conversion of the Debtors' Chapter 11 Cases to cases under chapter 7, (b) seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) object to the fees and expenses of any Retained Professionals, and (d) seek relief from the automatic stay. All such rights, claims and defenses, and the rights, objections and defenses of all parties in connection therewith, are hereby reserved.

28. Additional Defaults. In addition and without limitation of the Events of Default set forth in and defined in the DIP Credit Documents or this Interim Order, it shall be a default hereunder (and constitute an "Event of Default" under the DIP Credit Documents) if (a) an order is entered dismissing or converting any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or appointing a Chapter 11 trustee or an examiner with powers beyond those specified in sections 1106(a)(3) and (4) of the Bankruptcy Code, (b) an order is entered approving the sale of substantially all assets that would not indefeasibly pay the DIP Obligations in full in cash, (c) any other motion is filed by the Debtors for any relief directly or indirectly affecting the DIP Collateral in a material manner unless all DIP Obligations have been indefeasibly paid in final, in full, in cash, and completely satisfied upon consummation of the transaction contemplated thereby, or (d) the Debtors fail to comply with any of the terms of this

Interim Order, including the DIP Budget (subject to all applicable variances). Any order for dismissal or conversion shall be automatically deemed to preserve the rights of the Secured Parties under this Interim Order. Any order for dismissal or conversion shall be automatically deemed to preserve the rights of the Secured Parties under this Interim Order. If an order dismissing any of these Chapter 11 Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, (i) the claims, security interests, liens and claims granted to or for the benefit of the Secured Parties pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order, as applicable, until all DIP Obligations and Prepetition FILO Obligations shall have been paid and satisfied in full (and that such claims and liens, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

29. Order Governs. In the event of any conflict between the provisions of this Interim Order and the DIP Credit Documents, the provisions of this Interim Order shall control and govern to the extent of such conflict.

30. Sale. Upon the closing of a sale of substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code all liens securing the DIP Obligations and the Prepetition Obligations are transferred to the proceeds of such sale, and such proceeds shall be applied at the closing of the sale to permanently and indefeasibly repay the DIP Obligations and the Prepetition Obligations related to the Line of Credit (other than those participated to the Term Lender), as applicable, in full, in cash.

31. Right to Credit Bid. **Subject to the entry of the Final Order** and any and all applicable law, pursuant to section 363(k) of the Bankruptcy Code and included as part of any

restructuring plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code, the DIP Agent shall have the right to use the DIP Obligations, DIP Liens and DIP Superpriority Claims and the Prepetition Agent shall have the right to use the Prepetition Obligations related to the Line of Credit (other than those participated to the Term Lender), in each case subject to section 363(k) of the Bankruptcy Code, to credit bid with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral or Prepetition Collateral.

32. No Marshaling. **Subject to the entry of the Final Order**, none of the DIP Collateral, Prepetition Collateral or the Secured Parties shall be subject to the doctrine of marshaling.

33. Headings. The headings in this Interim Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Interim Order.

34. Immediate Effect. This Interim Order is hereby deemed effective immediately pursuant to Bankruptcy Rule 6004(h).

35. Final Hearing. The Final Hearing on the Motion shall be on _____, __, 2015, at the United States Bankruptcy Court for the District of Delaware, ____ Floor, Courtroom No. __, 824 Market Street, Wilmington, Delaware.

36. Notice. The Debtors shall, on or before _____ __, 2015, serve by United States mail, first class postage prepaid, copies of the Motion, this Interim Order and a notice of the Final Hearing (the "**Final Hearing Notice**") to be held on _____ __, 2015, at __ .m., E.T. (the "**Final Hearing Date**") to consider entry of the Final Order on the Interim Notice Parties. Copies of the Motion, this Interim Order and the Final Hearing Notice also shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid, within the later of one business day following the

receipt of such request and _____, 2015. The Final Hearing Notice shall state that any party in interest objecting to the entry of the Final Order shall file written objections with the Court no later than _____.m. E.T. on _____, 2015, which objections shall be served so that the same are received on or before such date and time by the Interim Notice Parties.

Dated: Wilmington, Delaware
_____, 2015

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

DIP Credit Agreement

SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND
SECURITY AGREEMENT

dated as of April 19, 2015

between

FOHG HOLDINGS, LLC, FREDERICK'S OF HOLLYWOOD GROUP INC., FOH
HOLDINGS, INC., FREDERICK'S OF HOLLYWOOD, INC., FREDERICK'S OF
HOLLYWOOD STORES, INC., and HOLLYWOOD MAIL ORDER, LLC,
as Borrowers

and

SALUS CLO 2012-1, LTD.,
as Lender

and

SALUS CAPITAL PARTNERS, LLC,
as Agent

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SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

This SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (“Agreement”), dated as of April 19, 2015, and is entered into by and among FHOG Holdings (“FOHG”), a Delaware limited liability company, FREDERICK’S OF HOLLYWOOD GROUP INC., a New York corporation (“Group”), FOH HOLDINGS, INC., a Delaware corporation (“Parent”), FREDERICK’S OF HOLLYWOOD INC., a Delaware corporation (“Frederick’s”), FREDERICK’S OF HOLLYWOOD STORES, INC., a Nevada corporation (“Stores”), and HOLLYWOOD MAIL ORDER, LLC, a Nevada limited liability company (“Mail Order” and together with FOHG, Group, Parent, Frederick’s and Stores, each individually and as a debtor and debtor-in-possession, a “Borrower”, and collectively, the “Borrowers”), and SALUS CLO 2012-1, LTD. (“Salus CLO” or the “Lender”) and SALUS CAPITAL PARTNERS, LLC (“SCP”) as administrative and collateral agent for the Lender (in such capacity, the “Agent”).

RECITALS

WHEREAS, on April 19, 2015 (the “Petition Date”), the Borrowers filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware (such court, together with any other court having competent jurisdiction over the Chapter 11 Cases from time to time, the “Bankruptcy Court”) and commenced cases numbered [CASE NUMBERS] respectively (each, a “Chapter 11 Case” and, collectively, the “Chapter 11 Cases”), and have continued in possession and operation of their assets and in the management of their business pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrowers are parties to that certain Credit and Security Agreement dated May 31, 2012 (as amended, supplemented or otherwise modified, the “Prepetition Credit Agreement”) by and among Group, Parent, Frederick’s, Stores, and Mail Order as borrowers and Salus CLO, SCP and Front Street Re (Cayman), Ltd. (“FSR”) as lenders (collectively, in such capacity, the “Prepetition Lenders”) and SCP as administrative and collateral agent (in such capacity, the “Prepetition Agent”) pursuant to which the Salus CLO and SCP provided the Borrowers a \$24,000,000 revolving line of credit comprised of a Line of Credit and a FILO Advance and FSR provided the Borrowers the Term Loan;

WHEREAS, on the Petition Date, approximately \$32,865,000 million principal amount of Advances under the Line of Credit were outstanding under the Prepetition Credit Agreement and approximately \$16,400,000 million principal amount of the Term Loan was outstanding under the Prepetition Credit Agreement, in each case together with accrued interest, fees and costs;

WHEREAS, the Borrowers have requested, and the Lender has agreed, upon the terms and conditions set forth in this Agreement to make available to the Borrowers a senior secured super priority debtor in possession revolving credit facility, pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, in the maximum committed amount of \$11,000,000, which will be used solely in order to (a) pay fees, costs and expenses in connection

with this Agreement, including payment of Agent's and Lender's reasonable attorney's fees and other out of pocket expenses, (b) pay post-petition operating expenses of the Borrowers incurred in the ordinary course of business, (c) pay costs and expenses of administration of the Chapter 11 Cases, including payment of Allowed Professional Fees, and (d) pay other amounts as specified in the Approved Budget and/or operative documentation and allowed by the Bankruptcy Court, in the case of (b) through (d), in amounts and categories consistent with the Approved Budget and subject to the Interim Financing Order or the Final Financing Order, as applicable; and

WHEREAS, the Lender has agreed to provide revolving loans to the Borrowers pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on terms and conditions of this Agreement and in the Interim Financing Order (or the Final Financing Order when applicable) so long as (a) such postpetition credit obligations are secured by a first priority and senior security interest in and lien upon substantially all of the assets of the Borrowers, whether now existing or hereafter acquired and (b) all Obligations of the Borrowers to the Agent and the Lender hereunder and under the other Loan Documents shall be full recourse to each of the Borrowers, in each instance as more fully set forth in the Loan Documents and in the Interim Financing Order, or the Final Financing Order when applicable.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 1. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the UCC to the extent such terms are defined therein.

“Accounts” shall have the meaning given it under the UCC.

“Advances” means an advance or advances under the Line of Credit, and includes, without limitation, the FILO Advance.

“Affiliate” or “Affiliates” means any other Person controlled by, controlling, or under common control with any of the Borrowers, including without limitation any Subsidiary of a Borrower. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 10% or more of the Capital Stock having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Capital Stock, contract or otherwise.

“Agent” is defined in the Preamble to this Agreement.

“Aggregate Commitments” means an amount not to exceed \$11,000,000.

“Agreement” means this Senior Secured, Super-Priority Debtor-In-Possession Credit And Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

“Allowed Professional Fees” means unpaid professional fees and expenses of the Case Professionals, to the extent such fees and expenses are incurred and allowed and payable pursuant to an order of the Bankruptcy Court (which order has not been reversed, vacated, or stayed).

“Applicable Margin” means fifteen and one-half percent (15.5%).

“Applicable Percentage” means, in each case as the context requires, (a) with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time, or (b) with respect to all Lenders at any time, the percentage of the sum of the Aggregate Commitments represented by the sum of such Lender’s Commitment at such time, in each case as the context provides. If the commitment of each Lender to make Loans has been terminated pursuant to this Agreement or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments.

“Approved Budget” means the debtor in possession thirteen (13) week budget prepared by the Borrowers and furnished to the Agent on or before the Closing Date and thereafter weekly in accordance with this Agreement, as the same may be updated, modified and/or supplemented thereafter in accordance with this Agreement, and which shall include a weekly cash budget, including information on a line item basis as to (x) projected cash receipts, and (y) projected disbursements (including ordinary course operating expenses, bankruptcy related expenses (including professional fees and expenses), capital expenditures, asset sales, and fees and expenses of the Agent (including counsel therefor) and any other fees and expenses relating to the Loan Documents). The initial Approved Budget is attached hereto as **Exhibit A**.

“Approved Budget Variance Report” shall mean a weekly report provided by the Borrowers to the Agent in accordance with Section 6.11: (i) showing by line item actual receipts, actual disbursement amounts, cash on hand, and actual professional fees invoiced or paid (other than counsel for the Agent) as of the last day of each Testing Period, noting therein all variances, on a line-item basis, from amounts set forth for the applicable period in the Approved Budget, and which shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrower.

“Avoidance Actions” means the Borrower’s claims and causes of action that constitute avoidance actions under Sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

“Bankruptcy Code” means title 11 of the United States Code.

“Bankruptcy Court” shall have the meaning ascribed to it in the Recitals.

“Bidding Procedures Motion” means a motion in form and substance satisfactory to the Agent seeking the entry of the Bidding Procedures Order.

“Bidding Procedures” means the procedures for the Sale which shall be in a form and substance satisfactory to the Agent.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in a form and substance satisfactory to the Agent (a) approving the Bidding Procedures, (b) approving the form of the asset purchase agreement or the Stalking Horse Purchase Agreement and (c) scheduling an auction and the Sale Hearing.

“Borrower(s)” shall have the meanings ascribed to such terms in the Introduction.

“Business Day” means each day on which the Federal Reserve Bank of New York is open for business and, if such day relates to determination of the LIBOR Rate, a day on which dealings are carried on in the London Interbank Eurodollar market.

“Capitalized Lease” means, with respect to any Person, any lease of real or personal property by such Person as lessee which is required under GAAP to be capitalized on the balance sheet of such Person.

“Capital Stock” means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or nonvoting, including common stock, preferred stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934), and including, without limitation stock or equity appreciation rights.

“Case Professionals” means the professionals, retained by the Borrowers and any official committee of unsecured creditors appointed in these Chapter 11 Cases by Order of the Bankruptcy Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) under Sections 327, 328 or 1103(a) of the Bankruptcy Code.

“Cash Management Bank” means Wells Fargo Bank, National Association or any other financial institution reasonably acceptable to Agent.

“Cash Management Order” means the order of the Bankruptcy Court entered in the Chapter 11 Cases, together with all extensions, modifications and amendments that are in form and substance acceptable to the Agent in its Permitted Discretion, which, among other matters, authorizes the Borrower to use their cash management system.

“Carve Out” has the meaning provided in the Interim Financing Order or Final Financing Order, as applicable.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and

Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means each occurrence of any of the following:

(a) Permitted Holders fail to own and control, directly or indirectly, 51%, or more, of the Capital Stock of Group having the right to vote for the election of members of the Board of Directors of Group;

(b) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 30% of the Capital Stock of Group having the right to vote for the election of members of the Board of Directors of Group;

(c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Group (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of Group was approved by a vote of at least a majority the directors of Group then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of Group;

(d) the Parent shall cease to have, directly or indirectly through one or more Borrowers, beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting power of the Capital Stock of each Borrower (other than Group) and each Guarantor, free and clear of all Liens (other than Liens in favor of Lender);

(e) Group shall cease to have, directly or indirectly through one or more Borrowers, beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting power of the Capital Stock of the Parent, free and clear of all Liens (other than Liens in favor of Agent);

(f) (i) Group consolidates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to any Person, or (ii) any Borrower consolidates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to another Person, or (iii) any entity consolidates with or merges into any other Borrower unless the Parent has beneficial ownership of one hundred percent (100%) of the aggregate voting power of all Capital Stock of the resulting, surviving or transferee entity; and

(g) an individual holding the office of Group’s Chief Executive Officer as of the Closing Date shall for any reason either cease to hold such office or be actively engaged in the day-to-

day management of Borrowers, unless a successor approved by Agent in its Permitted Discretion is appointed within ninety (90) days of such cessation of such individual.

“Chapter 11 Case(s)” shall have the meaning ascribed to it in the Recitals.

“Charges” means all federal, state, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to the Pension Benefit Guaranty Corporation at the time due and payable), levies, assessments, charges, liens, claims or encumbrances upon or arising on account of (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of Borrowers, (d) Borrowers’ ownership or use of any properties or other assets, or (e) any other aspect of Borrowers’ business.

“Closing Date” means the date of the making of the initial Loan hereunder or the date on which the Agent sends Borrowers written notice that each of the conditions precedent to the making of the initial Loan hereunder either has been satisfied or has been waived.

“Collateral” means any property or other assets, now existing or hereafter acquired, real or personal, tangible or intangible, and whether owned by, consigned to, or held by, or under the care, custody or control of Borrowers, including all money, cash, cash equivalents, Accounts, Deposit Accounts and deposits, Investment Property, Inventory, Equipment, Fixtures, Goods, Chattel Paper, Documents, Instruments, letters of credit, Letter of Credit Rights, Supporting Obligations, Commercial Tort Claims, books and records, real property interests, leasehold estates in real property of Borrowers, as lessee, General Intangibles (including all Intellectual Property, payment intangibles, contract rights, choses in action, and Software), Avoidance Actions, and all of Borrowers’ other interests in property of every kind and description, and the products, profits, rents of, dividends or distributions on, accessions to, and all Proceeds (including tort claims, insurance claims, insurance proceeds, and Avoidance Action proceeds) of any of the foregoing, regardless of whether the Collateral, or any of it, is property as to which the UCC provides for the perfection of a security interest, and all rights and remedies applicable to such property. Notwithstanding the foregoing, Collateral shall not include Avoidance Actions or Proceeds thereof until entry of the Final Financing Order.

“Collection Account” means the collection account numbered *****5293 maintained with the Cash Management Bank.

“Commitment” means, as to any Lender, such Lender’s commitment to make Loans under this Agreement and “Commitments” shall mean the Commitments of all Lenders.

“Confidential Information” means all non-public, confidential or proprietary information of Borrowers disclosed to Agent or any Lender prior to or during the term of this Agreement by Borrowers or any of its officers, employees, agents or representatives, including, without limitation, any trade secrets, research and development test results, marketing or business plans, strategies, forecasts, budgets, projections, customer and supplier information, and any other analyses, computations or studies prepared by or for Borrowers.

“Constituent Documents” means with respect to any Person, as applicable, that Person’s certificate of incorporation, articles of incorporation, by-laws, certificate of formation, articles of organization, limited liability company agreement, management agreement, operating agreement,

shareholder agreement, partnership agreement or similar document or agreement governing such Person's existence, organization or management or concerning disposition of ownership interests of such Person or voting rights among owners of such Person's ownership interests.

"Contingent Liability(ies)" means, with respect to any Person, any obligation of such Person guaranteeing any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (ii) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (iii) any obligation of such Person, whether or not contingent, (A) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (B) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (C) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (D) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Liability" shall not include any products warranties extended in the ordinary course of business. The amount of any Contingent Liability shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Liability is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Liability) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Control Agreement" means each deposit account control agreement, securities account control agreement, or similar agreement executed by a financial institution in favor of Agent for the benefit of the Lenders with respect to any deposit account, securities account or other account of Borrowers, and pursuant to which Agent for the benefit of the Lenders has "control" of such account, as contemplated by Section 9-104 of the UCC, and which is reasonably satisfactory to Agent in form and substance.

"Credit Card Collection Account" means any deposit account maintained by Borrowers for the purpose of collecting proceeds of Credit Card Receivables, which is established and maintained at an institution reasonably satisfactory to Agent and subject to the Agent's first priority security interest and Agent's exclusive control pursuant to a Control Agreement; provided that, notwithstanding Agent's exclusive control, the applicable Credit Card Processor may have rights to debit such deposit account for unpaid processing fees, chargebacks and other amounts due under the applicable Credit Card Agreement.

"Credit Card Issuer" means any Person who issues or whose members issue credit cards (but specifically excluding Borrowers or any Affiliate of a Borrower as issuer of any proprietary or house credit card).

“Credit Card Processor” means any servicing or processing agent that facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to Borrowers’ sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Credit Card Receivables” means, collectively, (i) all present and future rights of Borrowers to payment from any Credit Card Issuer or Credit Card Processor arising from the sale of goods or provision of services to customers who have purchased such goods or services using a credit or debit card, and (ii) all present and future rights of Borrowers to payment from any Credit Card Issuer or Credit Card Processor in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or provision of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the applicable Credit Card Agreement(s) or otherwise.

“Credit Party Expenses” means, without limitation, (a) all out-of-pocket expenses incurred by the Agent in connection with this Agreement, the other Loan Documents, and the Interim Financing Order and Final Financing Order, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof and the Interim Financing Order and Final Financing Orders (whether or not the transactions contemplated hereby or thereby shall be consummated), or (B) the enforcement or protection of the rights of the Agent or Lenders in connection with this Agreement or the Loan Documents and the Bankruptcy Case, or efforts to monitor, preserve, protect, collect, or enforce the Collateral; (b) all fees and out-of-pocket charges (as adjusted from time to time) of the Agent with respect to access to online Loan information, the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith; and (c) upon the occurrence and continuance of an Event of Default all reasonable out-of-pocket expenses incurred by the Agent and/or Lenders.

“Daily One Month LIBOR” means, for any day, the rate of interest equal to LIBOR then in effect for delivery for a one (1) month period. When interest is determined in relation to Daily One Month LIBOR, each change in the interest rate shall become effective on the Business Day that Agents determines that Daily One Month LIBOR has changed.

“Default” means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“Default Period” is defined in Section 2.4(b) of this Agreement.

“Default Rate” is defined in Section 2.4(b) of this Agreement.

“Director” means a director if a Borrower is a corporation, or a governor, or manager or managing member if a Borrower is a limited liability company.

“Disqualified Capital Stock” means, with respect to any Person, any Capital Stock of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event or otherwise, (i) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund obligation or otherwise, (ii) is redeemable or subject to any mandatory repurchase requirement at the sole option of the holder thereof, or (iii) is convertible into or exchangeable for (whether at the option of the issuer or the holder thereof) (A) debt securities or (B) any Capital Stock referred to in clause (i) or (ii) above, in each case under clause (i), (ii) or (iii) above at any time on or prior to date that is 180 days following the Maturity Date; provided, however, that only the portion of Capital Stock that so matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, is so redeemable at the option of the holder thereof, or is so convertible or exchangeable on or prior to such date shall be deemed to be Disqualified Capital Stock.

“Distribution Center Lease” means that certain Lease Agreement by and between Ryan Companies USA Inc., as landlord, and Frederick’s of Hollywood, Inc., as tenant, dated September 25, 1998 for Distribution Center premises at 5005 S. 40th Street, Phoenix, AZ 85040, as amended by First Amendment dated August 1, 1999, Second Amendment dated January 12, 2000, Third Amendment dated February 15, 2002, Fourth Amendment dated May 9, 2005, Fifth Amendment dated December 27, 2007, Fifth Amendment dated December 27, 2007, between Cotton Fredericks, LLC as successor in interest to Ryan Companies USA Inc., as landlord, and Frederick’s of Hollywood Inc., as tenant, Sixth Amendment dated May 8, 2010, Seventh Amendment dated August 16, 2012, and Eighth Amendment dated November 8, 2012 conditional on the sale of the Building to Laboratory Corporation of America.

“Domain Names” means fredericks.com or any other Internet domain name by which the customers of the Borrowers may access an Internet website through which the Borrowers conduct business.

“Environmental Law” means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health and the environment.

“Equipment” shall have the meaning given it under the UCC.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is a member of a group which includes Borrowers and which is treated as a single employer under Section 414 of the IRC.

“Event of Default” is defined in Section 8.1 of this Agreement.

“Excluded Taxes” means, with respect to Agent or a Lender or any other recipient of any payment to be made by or on account of any Obligation hereunder, (a) income, net worth or franchise taxes imposed on (or measured by) its net income or net worth by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or in which its lending office is located or in which it is taxable

solely on account of some connection other than the execution, delivery or performance of this Agreement or the receipt of income hereunder, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which a Borrower is located, and (c) any tax imposed by the Foreign Account Tax Compliance Act.

“Fee Letter” means the fee letter dated as of the Closing Date by and among the Borrowers and the Agent.

“FILO Advance” means the “first in last out tranche” of the aggregate loans made by the Prepetition FILO Lenders to Borrowers under the Prepetition Credit Agreement.

“Final Financing Order” means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be satisfactory in form and substance to the Agent in its sole discretion, and from which no appeal or motion to reconsider has been filed, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Agent, which, among other matters but not by way of limitation, authorizes the Borrower to obtain credit, incur the Obligations, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super priority of the Agent’s claims.

“Flagship Store Lease” means the lease agreement, dated as of March 2, 2005, between 6753 Hollywood Associates, LLC, a California limited liability company, as landlord, and Frederick’s, as tenant, with respect to the Borrowers’ flagship retail store located in Los Angeles, California, as such lease agreement may be amended, modified, extended or renewed from time to time.

“Frederick’s” shall have the meaning ascribed to it in the Introduction.

“FSR” shall have the meaning ascribed to it in the Recitals.

“Funds Transfer and Deposit Account Liability” means the liability of Borrowers owing to the Agent or Lenders, arising out of any indemnity by Agent or Lenders to the Cash Management Bank or any of Borrowers’ other depository banks in connection with any deposit, disbursement, cash management or other services afforded to Borrowers by any such bank.

“GAAP” means generally accepted accounting principles, applied on a basis consistent with the accounting practices applied in the financial statements described in Section 5.5 of this Agreement. Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing.

“General Intangibles” shall have the meaning given it under the UCC.

“Goods” means any “goods” as defined in the UCC, now owned or hereafter acquired by Borrowers, wherever located, including embedded software to the extent included in “goods” as defined in the UCC.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Group” shall have the meaning ascribed to it in the Introduction.

“Hazardous Substances” means pollutants, contaminants, hazardous substances, hazardous wastes, or petroleum, and all other chemicals, wastes, substances and materials listed in, regulated by or identified in any Environmental Law.

“Hosting Agent” means any Person engaged to host or maintain any Website Collateral.

“Hosting Agreement” means any agreement between any Borrower and any Hosting Agent.

“Indebtedness” means, with respect to any Person, (a) all obligations for borrowed money or with respect to deposits or advances of any kind, (b) all obligations evidenced by bonds, debentures, notes or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances or other financial products, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations as a lessee under leases considered Capitalized Leases in accordance with GAAP, (f) all obligations to pay the deferred purchase price of assets, (g) all obligations owing under any hedging, derivative, foreign exchange, or similar transaction, (h) all Contingent Liabilities, (i) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any property owned or acquired by such Person, (j) all Disqualified Capital Stock issued by such Person, with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, and (k) any obligation guaranteeing any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (j).

“Indemnified Liabilities” is defined in Section 9.8 of this Agreement.

“Indemnitee” is defined in Section 9.8 of this Agreement.

“Intellectual Property Rights” means all actual or prospective rights arising in connection with any intellectual property or other proprietary rights, including without limitation all rights arising in connection with copyrights, patents, service marks, trade dress, trade secrets, trademarks, trade names or mask works.

“Interest Payment Date” is defined in Section 2.6(a) of this Agreement.

“Interim Financing Order” means, collectively, an order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing, together with all extension, modifications, and amendments thereto, in form and substance satisfactory to the Agent in its sole discretion which, among other matters but not by way of limitation, authorizes, on an interim basis, the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents.

“Inventory” shall have the meaning given it under the UCC.

“Investment Property” shall have the meaning given it under the UCC.

“Landlord Lien State” means any state or other jurisdiction under whose statutory or common law the rights of a landlord to or in assets of that landlord’s tenant, for unpaid rent, may be senior to a perfected security interest in such assets.

“Lender(s)” means Salus CLO 2012-1, Ltd and any person now or hereafter holding a Commitment pursuant to this Agreement.

“LIBOR Rate” means the variable rate per annum reasonably determined by the Agent utilizing www.bankrate.com (or such other electronic or other quotation source(s) as Agent considers appropriate), to be the Daily One Month LIBOR Rate (being the rate offered on the London Inter-Bank Market for U.S. Dollar deposits for delivery for a one month period). The applicable LIBOR Rate for any date for which such rate is not published shall be the rate set forth for the last preceding date. If Agent determines (i) that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful for Agent to determine or charge interest rates based upon the LIBOR Rate, or (ii) that adequate and reasonable means do not exist for determining the LIBOR Rate, or (iii) that the LIBOR Rate does not adequately and fairly reflect the cost to Agent of funding amounts under the Line of Credit, then Agent shall notify Borrowers and upon receipt of such notice, all interest rates hereunder shall thereafter be based upon the Prime Rate; and in such event, Agent shall adjust the Applicable Margin for any portion of the Line of Credit bearing interest based upon the LIBOR Rate so as to accurately reflect the change in reference rate to the Prime Rate.

“Licenses” means (a) all license agreements and covenants not to sue with any other party with respect to any patent, trademark, or copyright, along with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, royalties, damages, claims and payments now and hereafter due and/or payable to any Borrower with respect thereto, including, without limitation, the right to recover any damages and payments for past, present and future breaches thereof, (iii) rights to sue for past, present and future breaches thereof, and (iv) other rights to use, exploit or practice any or all of the patents, trademarks or copyrights throughout the world, in each case whether now owned or hereafter acquired by any Borrower, and (b) the Hosting Agreement and any other agreement relating to the Website Collateral or any Website, or both.

“Licensed Intellectual Property” is defined in Section 5.7(b) of this Agreement.

“Lien” means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including, without limitation, the interest of each lessor under any Capitalized Lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a Person, whether now owned or subsequently acquired and whether arising by agreement or operation of law.

“Line of Credit” means the \$24,000,000 revolving line of credit provided by the Prepetition Lenders to the Borrowers under the Prepetition Credit Agreement.

“Loan(s)” shall have the meaning ascribed to it in Section 2.1.

“Loan Account” means the account maintained by the Agent which reflects Borrowers’ Indebtedness under Loans.

“Loan Documents” means this Agreement, the Note, the Participation Agreement, the Fee Letter, together with every other agreement, note, document, contract or instrument to which any Borrower now or in the future may be a party and which may be required by Agent or a Lender in connection with, or as a condition to, the execution of this Agreement or the continued access to credit hereunder.

“Mail Order” shall have the meaning ascribed to it in the Introduction.

“Material Adverse Effect” means any of the following:

(a) A material adverse effect on the business, operations, results of operations, assets, liabilities or financial condition of Borrowers, taken as a whole;

(b) A material adverse effect on the ability of Borrowers to collectively perform their obligations under the Loan Documents, or any other document or agreement related to this Agreement;

(c) A material adverse effect on the ability of Agent or Lenders to enforce the Obligations, including, without limitation, a material adverse effect on the validity or enforceability of any Loan Document or on the status, existence, perfection, priority (subject to Permitted Liens) or enforceability of any Lien securing payment or performance of the Obligations; or

(d) A material adverse deviation in Borrowers’ actual financial performance from Borrowers’ projected financial performance as set forth in the then current Business Plan.

“Material Contract” means (i) the Flagship Store Lease, the Distribution Center Lease, any other lease for real property involving aggregate consideration payable by Borrowers in excess of \$500,000 per annum, and any agreement evidencing or concerning Subordinated Debt, (ii) each Material License, and (iii) with respect to any Person, (x) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$250,000 or more in any calendar year (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and

other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than sixty 60 days' notice without penalty or premium) and (y) all other contracts or agreements material to the business, operations, condition (financial or otherwise), performance or properties of a Borrower or Borrowers taken as a whole.

“Material License” means each license or sublicense by a Borrower, as licensor, of any Owned Intellectual Property or Licensed Intellectual Property which either (i) involves aggregate payments from the licensee of more than \$100,000 per annum, or (ii) grants to such licensee rights in any category which is part of Borrowers' core business.

“Maturity Date” means the date that is six months from the date hereof.

“Multiemployer Plan” means a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which Borrowers or any ERISA Affiliate contributes or is obligated to contribute.

“Note” means a note substantially in the form of **Exhibit B** made payable to the order of each Lender in the amount of such Person's Commitment, as such promissory note may be amended, supplemented, restated, modified or extended from time to time, and any promissory note or notes issued in exchange or replacement therefor.

“Obligations” means any and all debts, obligations and liabilities of Borrowers to the Agent or Lenders, whether or not such debts, obligations and liabilities arise under or in respect of this Agreement or the other Loan Documents (including any Funds Transfer and Deposit Account Liability), whether incurred in the past, present or future, whether voluntary or involuntary, direct or indirect, primary or secondary, and however arising, and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not Borrowers may be liable thereunder individually or jointly with others, or whether recovery upon such Indebtedness may subsequently become unenforceable.

“OFAC” is defined in Section 6.6(b) of this Agreement.

“Officer” means with respect to any Person, an officer if such Person is a corporation, a manager or managing member if such Person is a limited liability company, or a partner if such Person is a partnership.

“Operating Account” is defined in Section 2.2(a) of this Agreement.

“Outstanding Amount” means with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments, occurring on such date.

“Owned Intellectual Property” is defined in Section 5.7(a) of this Agreement.

“Owner” means with respect to any Borrower, each Person having legal or beneficial title to an ownership interest in such Borrower or a right to acquire such an interest.

“Parent” shall have the meaning ascribed to it in the Introduction.

“Participation Agreement” means that certain Participation Agreement entered into as of April 19, 2015, between (i) Lender, as selling lender (in such capacity, the “Selling Lender”) and as Lender, (ii) FSR, as participant (in such capacity, the “Participant”), and (iii) SCP, in its capacities as Agent and Prepetition Agent

“Participation Interest” shall have the meaning provided for it in the Participation Agreement.

“Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) maintained for employees of Borrowers or any ERISA Affiliate and covered by Title IV of ERISA.

“Permitted Discretion” means a determination by the Agent made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Holder” means the shareholders of Group as of the Effective Date set forth in Schedule 1 attached hereto, and any Affiliate of any such Person.

“Permitted Lien” and “Permitted Liens” are defined in Section 7.2 of this Agreement.

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

“Petition Date” shall have the meaning ascribed to it in the Recitals.

“Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of Borrowers or any ERISA Affiliate.

“Premises” is defined in Section 3.5(a) of this Agreement.

“Prepetition Agent” shall have the meaning ascribed to it in the Recitals.

“Prepetition Credit Agreement” shall have the meaning ascribed to it in the Recitals.

“Prepetition FILO Lender(s)” means those lenders who advanced a line of credit under the Prepetition Credit Agreement which pursuant to the Prepetition Credit Agreement was deemed to be the initial amount of credit advanced and the last amounts to be repaid.

“Prepetition Lenders” shall have the meaning ascribed to it in the Recitals.

“Prepetition Loan Account” shall mean the “Loan Account” as defined in the Prepetition Credit Agreement.

“Prime Rate” means the rate per annum which JP Morgan Chase Bank, N.A. announces from time to time as the JP Morgan Chase Prime Rate, as in effect from time to time.

“Prior Permitted Senior Liens” means liens on property of a Borrower (including the proceeds of such property) that are in existence on the Petition Date but only to the extent a lien on such property (x) is valid, binding, perfected, enforceable and not avoidable, and (y) the lien

on such property (or the proceeds of such property, as applicable) on the Petition Date was senior in priority to the Liens of the Prepetition Agent.

“Proceeds” shall have the meaning given it under the UCC.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means a reportable event (as defined in Section 4043 of ERISA), other than an event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the Pension Benefit Guaranty Corporation.

“Required Lenders” means, as of any date of determination, Lenders holding more than fifty percent (50%) of the sum of the aggregate Commitments and the then outstanding amount of the Loans or, if the aggregate Commitments have been terminated pursuant to Section 8.2 hereof, the total outstanding amount of the Loans.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, chief operating officer, treasurer, assistant treasurer, chief accounting officer or controller of a Borrower or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Borrower as an authorized signatory of any certificate or other document to be delivered hereunder and for whom the Agent has received satisfactory background checks. Any document delivered hereunder that is signed by a Responsible Officer of a Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Borrower.

“Restricted Payment” means (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of Capital Stock of any Borrower; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of Capital Stock of any Borrower or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Capital Stock of any Borrower now or hereafter outstanding; (d) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of Capital Stock of any Borrower or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (e) any payment, loan, contribution, or other transfer of funds or other property to any stockholder of any Borrower other than payment of compensation in the ordinary course of business to holders of Capital Stock who are employees, officers or directors of any Borrower; (f) any payment or prepayment of principal of, premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to, any Subordinated Debt; and (g) any payment of management fees, advisory fees, transaction fees or other fees of a similar nature by Borrowers to any Affiliate or any holder of Capital Stock of any Borrower.

“Sale” means the sale of all or substantially all of the Borrowers’ assets pursuant to an asset purchase agreement and/or agency agreement acceptable, in each case, to the Agent and approved by the Bankruptcy Court in the Sale Order pursuant to section 363 of the Bankruptcy Code.

“Sale Effective Date” means the date on which the Sale is consummated.

“Sale Hearing” means the hearing before the Bankruptcy Court to consider approval of the Sale.

“Sale Motion” means a motion in form and substance satisfactory to the Agent seeking the entry of the Sale Order.

“Sale Order” means an order of the Bankruptcy Court, in form and substance satisfactory to Agent, approving the Sale and distribution of proceeds to the Agent.

“Salus CLO” shall have the meaning ascribed to it in the Introduction.

“SCP” shall have the meaning ascribed to it in the Introduction.

“Software” means all “software,” as such term is defined in the UCC, now owned or hereafter acquired by Borrowers, other than software embedded in any category of Goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Stalking Horse Purchase Agreement” means that certain Asset Purchase Agreement, dated as of April 13, 2015, by and among Authentic Brands Group, LLC, a Delaware limited liability company and any entity or entities formed on its behalf to consummate the transaction described therein and each of the Borrowers, as such document is amended or modified.

“Store Account” means any deposit account maintained by Borrowers for the purpose of collecting Proceeds of Inventory and other Collateral (other than Credit Card Receivables).

“Stores” shall have the meaning ascribed to it in the Introduction.

“Subordinated Debt” means Indebtedness approved by the Agent that is subordinated to the Obligations, including without limiting the generality of the foregoing, the Obligations outstanding pursuant to the Prepetition Credit Agreement.

“Subsidiary” means, with respect to any Person, (a) any corporation of which an aggregate of more than 50% of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate more than 50% of such Capital Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or

capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of any Borrower.

“Supporting Obligations” means all “supporting obligations,” as such term is defined in the UCC, now owned or hereafter acquired by Borrowers, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments, or Investment Property.

“Taxes” means taxes, levies, imposts, deductions, Charges or withholdings, and all liabilities with respect thereto, provided, however, that there shall be excluded from “Taxes” all Excluded Taxes.

“Term Loan” means those certain term loans made by FSR under the Prepetition Credit Agreement.

“Termination Date” means the earliest to occur of (i) the date of Agent’s notice in writing to the Borrower of the occurrence of an Event of Default, (ii) a sale of all or substantially all of the assets of the Borrower, (iii) the confirmation of a plan of reorganization or a plan of liquidation, (iv) the date all obligations under this Agreement are paid in full other than contingent indemnification obligations, or (v) the Maturity Date.

“Testing Period” means each consecutive two week period occurring after the Petition Date.

“UCC” means the Uniform Commercial Code in effect in the state designated herein as the state whose laws shall govern this Agreement, or in any other state whose laws are held to govern this Agreement or any portion of this Agreement or perfection of the Agent’s Lien in any portion of the Collateral.

“Wage Order” means the order of the Bankruptcy Court entered in the Chapter 11 Cases, together with all extensions, modifications and amendments that are in form and substance acceptable to the Agent in its Permitted Discretion, which, among other matters, authorizes and directs the Borrowers to pay certain pre-petition wages, benefits and other amounts owing to employees.

“Website” means an Internet website accessible through a Domain Name, as may be modified from time to time.

“Website Collateral” means all data and content maintained by all Hosting Agents pursuant to the Hosting Agreement or any other similar agreement with any other Person.

2. AMOUNT AND TERMS OF THE LOANS

2.1 Loans. Subject to the terms and conditions set forth in this Agreement, the Lenders agree to make loans (each such loan, a “Loan”) to the Borrowers from time to time through the Termination Date (i) in an aggregate amount not to exceed at any time the lesser of (x) the Aggregate Commitments, and (y) funding provided under the Approved Budget subject to the Permitted Variance, and (ii) as to each individual Lender, in an amount not to exceed such Lender’s Commitment to make Loans. Within the limits of each Lender’s Commitment, and subject to the other terms and conditions hereof, the Borrowers may periodically borrow under this Section 2.1(a), repay in whole or in part under Section 2.3, and reborrow under this Section 2.1(a); provided, however, that no repayment of the Loans shall be made until the Line of Credit is paid in full. Lenders have no obligation to make any Loan at any time that a Default or Event of Default has occurred and is continuing.

2.2 Borrowings of Loans.

(a) **Loans Credited to Operating Account.** All Loans shall be credited to Borrowers’ demand deposit Account No. *****1804 maintained by Borrowers with the Cash Management Bank (the “Operating Account”) (which account shall at all times be subject to a Control Agreement in favor of Agent) unless the parties agree to disburse to another account.

(b) **Loan upon Borrowers’ Request.** Each Borrowing of Loans shall be made upon the Borrower’s notice to the Agent and the Lenders. Each notice pursuant to this Section 2.2(b) must be delivered to the Agent in writing substantially in the form attached hereto as **Exhibit C** (a “Loan Request”) no later than 1:30 p.m. (New York time), on the Business Day on which Borrowers desire the Loan to be funded, which Loan Request shall specify the amount of the requested Loan and the proposed date of funding of such Loan. No Loan Request will be deemed received until the Agent acknowledges receipt. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.2 (and, if such Loan is the initial Loan hereunder, Section 4.1), the Lenders shall use reasonable efforts to make all funds so requested available to the Borrowers in like funds by no later than 4:00 p.m. on the date of receipt by the Agent and Lenders of the Loan Request by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Agent and the Lenders by the Borrowers.

(i) The Agent, without the request of the Borrowers, may advance as a Loan any interest, fee, service charge (including direct wire fees), or other payment to which any Lender is entitled from any of the Borrowers pursuant hereto or any other Loan Document and may charge the same to the Loan Account. The Agent shall advise the Borrowers of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent’s rights and the Borrowers’ obligations under Section 2.4. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.2(b) shall bear interest at the interest rate applicable to the Loans.

(ii) Each Loan shall be made by the Lenders pro rata in accordance with their respective Applicable Percentage. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

2.3 Prepayments.

(a) Subject to Section 2.2, the Borrowers may, upon irrevocable notice to the Agent, at any time or from time to time voluntarily prepay Loans and, subject to the order of payment set forth below, in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. three Business Days prior to any date of prepayment; and (ii) any prepayment shall be in a principal amount of \$100,000 or a whole multiple of \$10,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. All prepayments shall be first applied ratably to the outstanding Loans; and second, the amount remaining, if any, after the prepayment in full of all Loans outstanding, to the Line of Credit. Notwithstanding the foregoing, no prepayment shall be made on the Loans until the obligations related to the Line of Credit (other than that portion of the FILO Advance that has been participated to FSR under the Participation Agreement) has been irrevocable paid in full in cash. Each such notice shall specify the date and amount of such prepayment. Any prepayment shall be accompanied by all accrued interest on the amount prepaid.

(b) Borrowers and/or DIP Agent shall cause all collected funds in the Collection Account to be transferred by the Cash Management Bank to the Prepetition Loan Account on each Business Day for application to the Obligations related to the Line of Credit (other than that portion that has been participated to FSR) and then, if such prepetition obligations are paid in full to the Obligations.

2.4 Interest and Interest Related Matters.

(a) **Interest Rate Applicable to the Loans.** Subject to the provisions of Section 2.4(b) below, each Loan shall bear interest on the outstanding principal amount hereof at a rate per annum equal to the sum of (x) the LIBOR Rate, plus (y) the Applicable Margin.

(b) **Default Interest Rate.** Commencing on the day an Event of Default occurs, through and including the date identified by Agent in writing as the date that the Event of Default has been cured or waived (each such period a "Default Period"), or during a time period specified in Section 2.4 hereof, or at any time following the Termination Date, in Agent's sole discretion and without waiving any of their other rights or remedies and without prior notice of its application or any notice of retroactive application in the event that the Agent does not impose the Default Rate on the first day of any Default Period, the outstanding balance of the Obligations shall bear interest at a rate that is two percent (2.0)% above the applicable contractual rate set forth in Section 2.4(a) hereof for each Loan (the "Default Rate"). The Agent shall promptly give written notice to Borrowers of any imposition of the Default Rate.

2.5 Fees. Borrowers shall pay to the Agent and the Lenders fees in the amounts, and at the times, specified in the Fee Letter. All such fees shall be fully earned, due and payable as provided in the Fee Letter.

2.6 Interest Accrual; Principal and Interest Payments; Computation.

(a) **Interest Payments and Interest Accrual.** Accrued and unpaid interest on the outstanding balance of the Loans shall be due and payable on the first day of each month (each an "Interest Payment Date") and on the Termination Date. Interest on each Loan shall accrue

from the most recent date on which interest has been paid for such Loan or, if no interest has been paid, from the date of such Loan to the Interest Payment Date.

(b) **Payment of Obligations.** All Obligations shall be fully due and payable on the Termination Date.

(c) **Payments Due on Non Business Days.** If any payment required to be made hereunder is due on a day which is not a Business Day (including, without limitation, any Interest Payment Date or the Termination Date), such payment shall be made on the next Business Day, and interest shall continue to accrue during that time period.

(d) **Computation of Interest and Fees.** Interest accruing on the unpaid principal amount of the Loans and all fees payable under this Agreement shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

2.7 Termination or Reduction of Aggregate Commitment by Borrowers; Notice.

(a) **Termination by Borrower Advance Notice.** Borrowers may terminate the Aggregate Commitments at any time prior to the Maturity Date or from time to time permanently reduce the Aggregate Commitments if Borrowers (i) deliver written notice to the Agent of Borrowers' intentions at least five (5) business days prior to the date of such termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$250,000 or any whole multiple of \$100,000 in excess thereof, and (iii) the Borrowers shall not terminate or reduce the Aggregated Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the total Loans outstanding would exceed the Aggregate Commitments. For the avoidance of doubt, the Commitments shall terminate on the Termination Date.

2.8 Repayment of Loans. The Borrowers shall repay to the Lenders (through the Agent) on the Termination Date the Outstanding Amount of the Loans and all other outstanding Obligations outstanding on such date.

(a) **No Withholding Taxes.** Any and all payments by or on account of any Obligations of Borrowers hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future Taxes. If Borrowers shall be required by law to deduct any Taxes from or in respect of any sum payable under this Agreement (including any payments made pursuant to Section 9.8 hereof) or under any other Loan Document, (i) the sum payable shall be increased as much as shall be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.8) the Agent or Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrowers shall make such deductions, and (iii) Borrowers shall pay the full amount deducted to the relevant taxing or other Governmental Authority in accordance with applicable law. Within thirty (30) days after the date of any payment of Taxes, Borrowers shall furnish to Agent or Lender a certified copy of a receipt evidencing payment thereof.

(b) **Indemnity by Borrowers.** Borrowers shall indemnify Agent and Lenders and within ten (10) days of demand therefor, pay the Agent or Lenders for the full amount of Taxes (including any Taxes imposed by any jurisdiction on amounts payable under this Section 2.8)

paid by the Agent or Lenders and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally asserted.

2.9 Increased Costs.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by Agent or Lenders;

(ii) subject Agent or Lenders to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to Agent or Lenders in respect of any Loan; or

(iii) impose on Agent or Lenders any other condition, cost or expense affecting this Agreement or any Loan made by Lenders;

and the result of any of the foregoing shall be to increase the cost to the Agent or the Lenders of making or maintaining any Loan, or to reduce the amount of any sum received or receivable by the Agent or the Lenders hereunder (whether of principal, interest or any other amount) then, upon request of the Agent or any Lender made through the Agent, Borrowers shall pay to the Agent or the Lenders (through the Agent) such additional amount or amounts as will compensate the Agent or such Lender for such additional costs incurred or reduction suffered.

(b) **Certificates for Reimbursement.** Any notice of the Agent or any Lender made through the Agent to Borrowers setting forth the amount or amounts necessary to compensate such the Agent or a Lender as specified in subsection (a) of this Section 2.9 in reasonable detail sufficient to allow Borrowers to verify such calculation, and delivered to Borrowers shall be conclusive absent manifest error. Borrowers shall pay such the Agent or the Lender (through the Agent) the amount shown as due in such notice to Borrowers within five (5) days after receipt thereof.

(c) **Delay in Requests.** Failure or delay on the part of the Agent or any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.9 shall not constitute a waiver of such Person's right to demand such compensation.

2.10 Survival. All of Borrowers' obligations under Sections 2.8 and 2.9 shall survive termination of the Agent's obligations to make any Loans hereunder and the repayment of all Obligations hereunder.

2.11 Evidence of Debt.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the Loan Account) in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in

connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note which shall evidence such Lender's Loans, in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Notes and upon cancellation of such Note, together with such Lender's agreement to provide the Borrower with customary indemnification with respect to such lost, stolen, destroyed or mutilated Note, the Borrower will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) Agent shall render monthly statements regarding the Loan Account to the Borrowers including principal, interest, fees, and including an itemization of all charges and expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between the Borrowers and the Lenders unless, within five (5) Business Days after receipt thereof by the Borrowers, the Borrowers shall deliver to the Agent written objection thereto describing the error or errors contained in any such statements.

2.12 Payments Generally.

(a) All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent in Dollars and in immediately available funds not later than 12:00 p.m. on the date specified herein. All payments received after 12:00 p.m. on the date specified herein by the Agent shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue and shall be calculated pursuant to Section 2.6. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Consolidated Credit Facility; Joint and Several Obligations. Each Borrower acknowledges that it is jointly and severally liable for all of the Obligations. Each Borrower expressly understands, agrees and acknowledges that (i) Borrowers are all affiliated entities by common ownership, (ii) each Borrower desires to have the availability of one common credit facility instead of separate credit facilities, (iii) each Borrower has requested that Agent and

Lenders extend such a common credit facility to Borrowers on the terms provided herein, (iv) Lenders will be lending against, and relying on a Lien upon, all or substantially all of the assets of Borrowers even though the proceeds of any particular Loan made hereunder may not be advanced directly to or on behalf of a particular Borrower, (v) each Borrower will benefit by the making of Loans and the availability of a credit facility of a size greater than each could independently warrant, and (vi) all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon each Borrower.

2.14 Borrower Representative. Each Borrower hereby designates Group as its representative and agent on its behalf (Group, in such capacity, “Borrower Representative”) for the purposes of requesting and giving instructions with respect to disbursement of proceeds of the Loans, effecting repayment of the Loans, and giving and receiving all other notices and consents under this Agreement or under any of the other Loan Documents and taking all other actions (including with respect to compliance with covenants) on behalf of any Borrower or Borrowers under the Loan Documents. Group hereby accepts such appointment. Agent and Lenders may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from all Borrowers, and may give any notice or communication required or permitted to be given to any Borrower or Borrowers under the Loan Documents to Borrower Representative on behalf of such Borrower or Borrowers. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

2.15 Release. Each Borrower hereby acknowledges effective upon entry of the Interim Financing Order, that no Borrower has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Borrowers’ liability to repay the Agent or Lenders as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Agent or any Lender. Each Borrower, on behalf of itself and its bankruptcy estate, and on behalf of all its successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the “Releasing Parties”), hereby fully, finally and forever releases and discharges the Agent and each Lender and its respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, participants, and each Person acting for or on behalf of any of them (collectively, the “Released Parties”) of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and

which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Financing Order, the Final Financing Order and the transactions contemplated hereby or thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.

2.16 Waiver of any Priming Rights; Credit Bid. Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, each Borrower hereby irrevocably waives any right or alleged right, (i) pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations (other than the Carve-Out and Permitted Liens); or (ii) to propose any sale or of reorganization or liquidation which seeks to limit or eliminate the right of the Agent to credit bid all or any portion of the Obligations.

3. SECURITY INTEREST AND THE COLLATERAL AND AGENT'S RIGHTS CONCERNING THE COLLATERAL

3.1 Security Interest and the Collateral.

(a) **Grant of Security Interest.** Borrowers hereby pledge, assign and grant to Agent for the benefit of the Agent and the Lenders a Lien and security interest in the Collateral, as security for the payment and performance of the Obligations.

(b) Further Actions Required of Borrowers.

(i) Borrowers shall defend the right, title and interest of Agent in and to the Collateral against the claims and demands of all Persons whomsoever, and shall take all such actions requested by Agent in order to preserve, protect and enhance the Agent's Lien in any Collateral, including, without limitation, (i) all actions necessary to grant Agent "control" of any Investment Property, Deposit Accounts, Letter of Credit Rights or electronic Chattel Paper owned by Borrowers, with any agreements establishing control to be in form and substance reasonably satisfactory to the Agent, (ii) the delivery to the Agent of all original Instruments, Chattel Paper, negotiable Documents and certificated Capital Stock owned by Borrowers (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank) promptly after Borrowers receive same, (iii) notification to third parties of Agent's interest in Collateral at the request of Agent, (iv) preparation and delivery of all applications and other relevant actions to note Agent's Lien on any certificate of title, and (v) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrowers' and Agent's respective and several interests in the Collateral. If Borrowers retain possession of any Chattel Paper or Instruments with the consent of the Agent, then such Chattel Paper and Instruments shall be marked with the following legend: "THIS WRITING AND THE OBLIGATIONS EVIDENCED OR SECURED HEREBY ARE SUBJECT TO THE LIEN OF SALUS CAPITAL PARTNERS, LLC, AS AGENT." Borrowers shall promptly notify the Agent of any Commercial Tort Claim acquired by them and unless

otherwise consented to by the Agent, Borrowers shall enter into a supplement to this Agreement granting to the Agent a Lien in such Commercial Tort Claim.

(ii) Borrowers shall execute and deliver, and record or have recorded, any and all agreements, instruments, documents and papers as the Agent may reasonably request to evidence the Agent's security interest in any copyright or trademark owned by Borrowers, including, without limitation, any copyright or trademark registered outside of the United States, and Borrowers hereby constitute the Agent as their attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed.

3.2 Agent's Rights Concerning the Collateral

(a) **Account Verification and Notifying Account Debtors and Other Obligors.** During a Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent, or its agents, may (i) contact account debtors or any other Person obligated on the Collateral to verify Borrowers' Accounts; (ii) require Borrowers to send requests for verification of Accounts or send notices of assignment of Accounts to account debtors or other Persons obligated on the Collateral; and (iii) deliver a notice to an account debtor or other Person obligated on the Collateral that the amount due has been assigned to the Agent for security and must be paid directly to Agent. Borrowers shall join in giving such notice and shall execute the same upon Agent's request. Once any such notice has been given to any account debtor or other Person obligated on the Collateral, Borrowers shall not give any contrary instructions to such account debtor or other Person without the Agent's prior written consent.

(b) **Collection of Collateral.** During any Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent may, but need not, in the Agent or in any Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, or securing, any Account, General Intangible, or other amount due, or grant any extension to, make any compromise or settlement with or otherwise agree to waive, modify, amend or change the obligations (including, without limitation, collateral obligations) of any account debtor or other obligor. Following the occurrence of an Event of Default and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent shall have all rights of a secured party under the UCC, applicable law and at equity.

(c) **Performance by Agent of Borrowers' Obligations.** If any Borrower fails to perform or observe any of its obligations under this Agreement at any time, the Agent may, but need not, perform or observe such obligations on behalf of such Borrower and may, but need not, take any other actions which the Agent may reasonably deem necessary to cure or correct such failure; and Borrowers shall pay the Agent upon demand, all resulting Agent's Expenses, including without limitation, the amount of all out-of pocket costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Agent in performing such obligations, together with interest on all such amounts at the Default Rate.

(d) **Borrowers' Continuing Obligation under Contracts.** It is expressly agreed by each Borrower that it shall remain liable under each of its contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, and Agent (nor

any Lender) shall have no obligation or liability whatsoever to any Person under any contract (between such Borrower and any Person other than Agent) by reason of or arising out of the execution, delivery or performance of this Agreement, and Agent shall not be required or obligated in any manner (i) to perform or fulfill any of the obligations of such Borrower thereunder, (ii) to make any payment or inquiry, or (iii) to take any action of any kind to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times under or pursuant to any contract.

(e) Access and Inspections of the Collateral.

(i) Borrowers shall, with respect to each owned, leased, or controlled property or facility, during normal business hours and upon reasonable advance notice (unless a Default or an Event of Default has occurred and is continuing, in which event no prior notice shall be required and the Agent shall have access at any and all times): (i) provide access to such facility or property to Agent and any of its officers, employees and agents, as frequently as Agent reasonably determines to be appropriate, but subject to the terms and provisions of any applicable leases; (ii) permit Agent and any of its officers, employees and agents to inspect, audit and make extracts from Borrowers' books and records; and (iii) permit Agent to inspect, review, evaluate and make physical verifications, appraisals and examinations of the Inventory and other Collateral, all at Borrowers' cost and expense. Borrowers shall make available to Agent and its advisors and representatives, as quickly as practicable under the circumstances, originals or copies of Borrowers' books and records and any other instruments and documents that Agent may reasonably request. Borrowers shall deliver any document or instrument reasonably necessary for Agent, as it may from time to time reasonably request, to obtain records from any service bureau or other Person that maintains records for Borrowers.

(ii) Agent shall have the right to have the Borrowers' Intellectual Property Rights appraised by an appraiser reasonably satisfactory to the Agent at any time and from time to time.

(f) Background Investigations. Agent may obtain, from time to time at Borrowers' cost and expense, background investigations and verifications relative to Borrowers, its senior management employees and material holders of Capital Stock, which investigations may include, without limitation, information regarding business affiliations, background verification, verification of education and certifications, civil and criminal litigation histories, judgments, tax liens, bankruptcies, credit histories, verification of information provided and other possible public records information available.

(g) Authorization to Borrowers' Agents to Make Disclosures to Agent. Borrowers authorize all accountants and other Persons acting as their agent to disclose and deliver to Agent's employees, accountants, attorneys and other Persons acting as its agent, at Borrowers' expense, all financial information, books and records, work papers, management reports and other information in their possession regarding Borrowers, their business and assets. Borrowers, at their own expense, shall cause its independent certified public accountants to deliver to Agent the results of (i) any physical verifications of all or any portion of the Inventory made or observed by such accountants and (ii) any verifications of Borrowers' Accounts, in each case when and if any such verifications are conducted. Agent shall be permitted to observe and

consult with Borrowers and Borrowers' certified public accountants in the performance of these tasks.

3.3 Power of Attorney. Borrowers hereby irrevocably make, constitute, and appoint Agent (and any of Agent's officers, employees or agents designated by Agent) as Borrowers' true and lawful attorney-in-fact, with power to: (a) sign the name of Borrowers on any document to be executed, recorded or filed in order to perfect or continue perfected the Agent's Lien upon the Collateral if Borrowers fail to do so promptly after request therefor by Agent; (b) sign any Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts and notices to account debtors; (c) send requests for verification of Accounts; (d) endorse any Borrower's name on any checks, notices, acceptances, money orders, drafts, or other forms of payment or security that may come into Agent's possession; and (e) during any Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable (i) notify the post office authorities to change the address for delivery of any Borrower's mail to an address designated by the Agent, to receive and open all mail addressed to Borrowers, and to retain all mail relating to the Collateral and forward all other mail to Borrowers last known address, (ii) make, settle, and adjust all claims under Borrowers' policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (iii) settle and adjust disputes and claims respecting the Accounts directly with account debtors, for amounts and upon terms which the Agent determines to be reasonable, and Agent may cause to be executed and delivered any documents and releases which Agent or any Lender determines to be necessary. The appointment of Agent as Borrowers' attorney-in-fact, and each and every one of the rights and powers of Agent, being coupled with an interest, is irrevocable until the Termination Date. NEITHER AGENT NOR ANY LENDER, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWERS FOR ANY ACT OR FAILURE TO ACT PURSUANT TO THE POWERS GRANTED UNDER THE POWER OF ATTORNEY HEREIN OR OTHERWISE, EXCEPT FOR ITS OR THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

3.4 Assignment of Insurance. As additional security for the Obligations, Borrowers hereby assign to Agent all rights of Borrowers under every policy of insurance covering the Collateral and all business records and other documents relating thereto, and all monies (including, without limitation, all proceeds and refunds) that may be payable to Borrowers under any such policy, and Borrowers hereby direct the issuer of each such policy to pay all such monies directly to Agent. During any Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent may (but need not), in Agent's or any Borrower's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment under any policy of insurance, and adjust, litigate, compromise or release claims against the issuer of any policy. Any monies received under any insurance policy assigned to Agent, other than liability insurance policies, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Agent and, as determined by Agent in its Permitted Discretion, either be applied to prepayment of the Obligations or on Borrowers' reasonable request so long as no Event of Default has occurred and is continuing, disbursed to Borrowers under staged

payment terms reasonably satisfactory to Agent for application to the cost of repairs, replacements, or restorations which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.5 Borrowers' Premises.

(a) **Agent's Right to Occupy Borrowers' Premises.** During any Default Period and without notice or consent but subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, Borrowers hereby grant to Agent the right to take exclusive possession of all locations where Borrowers conduct their business or have any rights of possession, including without limitation the locations described on Schedule 5.1 attached hereto (the "Premises"), until the earlier of (i) payment in full and discharge of the Obligations, or (ii) final sale or disposition of all items constituting Collateral and delivery of those items to purchasers. During any Default Period subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent may use the Premises to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, and for any other incidental purposes deemed appropriate by Agent in good faith.

(b) **Borrowers' Obligation to Reimburse Agent.** Agent shall not be obligated to pay rent or other compensation for the possession or use of any Premises, but if Agent elects to pay rent or other compensation to the owner of any Premises in order to have access to the Premises, then Borrowers shall promptly reimburse the Agent all such amounts, as well as all taxes, fees, charges and other expenses at any time payable by Agent with respect to the Premises by reason of the execution, delivery, recordation, performance or enforcement of any terms of this Agreement, and all such amounts incurred or expended by Agent shall constitute Obligations hereunder.

3.6 License to Use Intellectual Property Rights. During any Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, Borrowers hereby grant to the Agent a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property Rights of Borrowers for the purpose of selling, leasing or otherwise disposing of any or all Collateral during any Default Period.

3.7 Financing Statements.

(a) **Authorization to File.** Borrowers hereby (i) authorize the Agent to file any financing statements, continuation statements or amendments thereto that (A) indicate the Collateral as all assets of Borrowers or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or as being of an equal or lesser scope or with greater detail, and (B) contain any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether any Borrower is an organization, the type of organization and any organization identification number issued to such Borrower, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates, (ii) agree to furnish any such information to the Agent promptly upon request by Agent, and (iii) ratify their authorization for Agent to have filed any initial financial statements, or amendments thereto if filed prior to the Closing Date.

(b) **Amendments to Financing Statements.** Each Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement evidencing or perfecting the Agent's Lien in the Collateral without the prior written consent of Agent and agrees that it will not do so without the prior written consent of Agent, subject to such Borrower's rights under Section 9-509(d)(2) of the UCC.

(c) **Termination.** Agent shall, at Borrowers' expense, release or terminate any filings or other agreements that perfect the Agent's Lien in Collateral (provided that there are no suits, actions, proceedings or claims pending or threatened against any Indemnitee under this Agreement with respect to any Indemnified Liabilities), upon Agent's receipt of the following, in form and content reasonably satisfactory to Agent: (i) indefeasible payment in full in cash of all monetary Obligations and completed performance by Borrowers with respect to their other monetary obligations under this Agreement, (ii) a release of all claims against the Agent and each Lender by Borrowers relating to the Agent and Lender's performance and obligations under the Loan Documents, and (iii) an agreement by Borrowers and any new lender to Borrowers to indemnify Agent for any payments received by Agent that are applied to the Obligations as a final payoff that may subsequently be returned or otherwise not paid for any reason.

3.8 Collateral Related Matters. This Agreement does not contemplate a sale of Accounts or Chattel Paper and, as provided by law, Borrowers are entitled to any surplus and shall remain liable for any deficiency. Agent's duty of care with respect to Collateral in its possession (as imposed by law) will be deemed fulfilled if it exercises reasonable care in physically keeping such Collateral, or in the case of Collateral in the custody or possession of a bailee or other third Person, exercises reasonable care in the selection of the bailee or third Person, and Agent need not otherwise preserve, protect, insure or care for such Collateral. Agent shall not be obligated to preserve rights Borrowers may have against prior parties, to liquidate the Collateral at all or in any particular manner or order or apply the Proceeds of the Collateral in any particular order of application. The Agent has no obligation to clean up or prepare Collateral for sale. Borrowers waive any right they may have to require Agent to pursue any third Person for any of the Obligations.

3.9 Notices Regarding Disposition of Collateral. If notice to Borrowers of any intended disposition of Collateral or any other intended action is required by applicable law in a particular situation, such notice will be deemed commercially reasonable if given in the manner specified in Section 9.4 hereof at least ten (10) calendar days before the date of intended disposition or other action.

4. CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Loan. Agent's and Lenders' obligations to consummate the transactions contemplated by this Agreement and make the initial Loan hereunder shall be subject to the following conditions precedent (with each such document, instrument or agreement required to be executed or delivered to be in form and substance satisfactory to Agent in its Permitted Discretion):

(a) **Executed Loan Documents.** Agent shall have received from each party hereto and thereto either (i) a counterpart of this Agreement and all other Loan Documents signed on

behalf of such party or (ii) written evidence (which may include telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and all other Loan Documents to which it is a party.

(b) **Constituent Documents.** Agent shall have received the Constituent Documents and such other documents and certificates as Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Borrower.

(c) **Closing Certificate.** Agent shall have received a certificate certifying that, as of the Closing Date, the representations and warranties made by Borrowers in the Loan Documents are true and correct as of the Closing Date and the date of such initial Loan and that no Default or Event of Default exists.

(d) **Note.** If requested by a Lender, Agent shall have received the Note executed by the Borrowers in favor of such Lender.

(e) **Insurance.** Agent shall have received, and be satisfied with, evidence of Borrowers' insurance coverage satisfying the requirements of Section 6.7 hereof, together with such endorsements as are required by the Loan Documents.

(f) **Credit Party Expenses.** Borrowers shall have paid to Agent all Credit Party Expenses whether incurred prior to or after the Petition Date and invoiced through the date of the initial Loan hereunder, including, without limitation, all reasonable legal expenses of Agent incurred through the Closing Date.

(g) **Good Standing, Foreign Qualification.** Agent shall have received evidence that each Borrower is in good standing in the jurisdiction of its incorporation or formation, and is licensed or qualified to transact business in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary or where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

(h) **Patriot Act Compliance.** Agent shall have received the Customer Identification Information Form and such other forms and verification with respect to Borrowers as Agent may reasonably require in order to comply with the U.S.A. Patriot Act.

(i) **Approved Budget.** The Agent shall have received and be satisfied with the Approved Budget and such other information (financial or otherwise) reasonably requested by the Agent.

(j) **Litigation.** There shall not be pending any litigation or other proceeding (other than the Chapter 11 Cases), the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(k) **Material Contracts.** There shall not have occurred any default of any Material Contract of any Borrower (other than any default that arises as a result of the filing of the Chapter 11 Cases).

(l) **No Violation.** The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organizational Document.

(m) **Participation Agreement.** The Participation Agreement shall be in full force and effect and FSR shall not have defaulted on its obligations thereunder or terminated its obligations to fund under Section 5 of the Participation Agreement.

(n) **Additional Documents.** There shall have been delivered to Agent such additional instruments and documents as Agent or its counsel reasonably may require or request.

(o) **Schedules.** The Schedules to this Agreement shall have been delivered and shall be acceptable in form and substance to the Agent.

(p) **Bankruptcy Matters.** The Petition Date shall have occurred. The Bankruptcy Court shall have entered the Cash Management Order and the Wage Order. The Stalking Horse Purchase Agreement shall be in full force and effect subject only to approval of the Bankruptcy Court. The Bidding Procedures Motion and all related documents shall have been filed in form and substance satisfactory to the Agent.

4.2 Additional Conditions Precedent to All Loans. Lenders' obligation to make any Loan hereunder (including, without limitation, the initial Loan) shall be subject to the following further additional conditions precedent:

(a) **Truth and Accuracy of Representations and Warranties.** Each of the representations and warranties set forth in Section 5 hereof and elsewhere in this Agreement shall be true and correct in all material respects on the date of such Loan, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date) and except for changes in factual circumstances not prohibited under this Agreement or the other Loan Documents.

(b) **No Default.** No event has occurred and is continuing, or would result from the requested Loan, which is or would constitute a Default or Event of Default.

(c) **Loan Request.** The Agent and the Lenders shall have received a Request for a Loan in accordance with the requirements hereof.

(d) **Participation Agreement.** The Participation Agreement shall be in full force and effect and FSR shall not have defaulted on its obligations thereunder or terminated its obligations to fund under Section 5 of the Participation Agreement.

(e) **No Material Adverse Effect.** Since the Closing Date, in Agent's reasonable determination, there has not been a Material Adverse Effect.

(f) **Final Financing Order.** The Bankruptcy Court shall have entered the Interim Financing Order and, if such proposed funding date is more than 30 days after the Petition Date, the Final Financing Order, entered on notice to such parties as may be reasonably satisfactory to the Agent, which Interim Financing Order or Final Financing Order, as the case may be, shall be

in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Agent.

(g) **Stalking Horse Asset Purchase Agreement.** The Stalking Horse Purchase Agreement shall be in full force and effect (subject only to required approval of the Bankruptcy Court) without amendment or modification; provided, that if the Stalking Horse Purchase Agreement has terminated because of the acceptance of a higher or otherwise better offer pursuant to the Bidding Procedures Order, this condition shall be deemed to be satisfied.

The request by Borrowers for, and the acceptance by Borrowers of, each Loan hereunder shall be deemed to be a representation and warranty by Borrowers that the conditions specified in Section 4.1 and/or Section 4.2 have been satisfied at that time and after giving effect to such Loan. The conditions set forth in this Section 4 are for the sole benefit of Agent and the Lenders and may be waived by Agent, in whole or in part, without prejudice to Agent or the Lenders.

5. REPRESENTATIONS AND WARRANTIES

Any request for an Loan will be deemed a representation by Borrowers that all such representations and warranties are true, correct, and complete in all material respects (or in all respects with respect to any Loan on the Closing Date) as of the time of the request, unless such representation or warranty relates exclusively to an earlier date (in which case such representation and warranty shall have been true and correct on and as of such earlier date) and except for changes in factual circumstances not prohibited under this Agreement and the other Loan Documents. Borrowers shall promptly deliver to Agent and the Lenders notice of any change in circumstance that would affect the accuracy of any representation or warranty, unless the representation and warranty specifically relates to an earlier date.

5.1 Corporate Existence and Power Name; Chief Executive Office; Inventory and Equipment Locations; Identification Numbers. Each Borrower is a corporation or limited liability company duly organized or formed, validly existing and in good standing under the laws of the applicable state of incorporation or formation as described on Schedule 5.1 attached hereto, and is licensed or qualified to transact business in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary, or where the failure to so qualify could have a Material Adverse Effect. Each Borrower has all requisite power and authority to conduct its business as presently conducted and as proposed to be conducted after the Closing Date, to own its properties, and to execute and deliver and to perform all of its obligations under, this Agreement, the other Loan Documents and any other documents or agreements that it has entered into with Agent or any Lender related to this Agreement. During its existence, each Borrower has done business solely under the names set forth on Schedule 5.1 attached hereto in addition to its correct legal name. As the Closing Date, each Borrower's chief executive office and principal place of business is located at the address set forth on Schedule 5.1 attached hereto, and all of its records relating to its business or the Collateral are kept at that location. As of the Closing Date, all Inventory and Equipment is located at that location or at one of the other locations set forth on Schedule 5.1 attached hereto. As of the Closing Date, each Borrower's name, Federal Employer Identification Number and Organization Identification Number are correctly set forth at the end of this Agreement next to Borrower's signature.

5.2 Subsidiaries; Joint Ventures; Affiliates; Capitalization. As of the Closing Date, no Borrower has any Subsidiaries, is engaged in any joint venture or partnership with any other Person, or is an Affiliate of any other Person, except in each case as set forth on Schedule 5.2 attached hereto. The capitalization chart set forth on Schedule 5.2 attached hereto constitutes a correct and complete list of all of the issued and outstanding Capital Stock of each Borrower and each of its Subsidiaries, including without limitation, each record holder of Capital Stock of any of the Borrowers, and the amount and percentage interest of Capital Stock of each Borrower owned by such Person on a fully diluted basis. As of the Closing Date, the organizational chart on Schedule 5.2 attached hereto shows the ownership structure of each Borrower and each of its Subsidiaries. Except as disclosed on Schedule 5.2 attached hereto, there are no outstanding rights to purchase options, warrants or similar rights, or agreements pursuant to which any Borrower may be required to issue, sell, repurchase or redeem any of its Capital Stock or any Capital Stock of its Subsidiaries.

5.3 Authorization; No Conflict as to Law or Agreements. The execution, delivery and performance by each Borrower of this Agreement and the other Loan Documents, all borrowing under this Agreement, and the creation of Liens provided for therein: (i) have been duly authorized by all necessary corporate action or limited liability company action on the part of each Borrower; (ii) do not contravene any provision of any Borrower's Constituent Documents; (iii) other than the entry of the Interim Financing Order or Final Financing Order, as applicable, do not require the authorization, consent or approval by, or registration, declaration or filing with, or notice to, any Governmental Authority, whether domestic or foreign, or any other Person, except to the extent obtained, accomplished or given prior to the date of this Agreement; (iv) do not violate any provision of any law, rule or regulation (including, without limitation, Regulation X of the Board of Governors of the Federal Reserve System) or of any order, writ, injunction or decree presently in effect having applicability to any Borrower; (v) do not result in a breach of or constitute a default or event of default under any indenture or loan or credit agreement or any other material agreement, lease or instrument to which any Borrower is a party or by which it or its properties may be bound or affected; provided, that, this Agreement shall not constitute a breach or default of the Prepetition Credit Agreement; or (vi) do not result in, or require, the creation or imposition of any Lien upon or with respect to any of the property of any Borrower, other than the Lien in favor of Agent.

5.4 Enforceable Obligations. This Agreement and the other Loan Documents have been duly executed and delivered by each Borrower, and constitutes the legal, valid and binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, subject to (a) bankruptcy, reorganization, insolvency, moratorium and/or similar laws of general application relating to or affecting the rights and remedies of creditors and the obligations of debtors and (b) equitable principles of general application including principles of commercial reasonableness, good faith and fair dealing (regardless of whether such equitable principles are considered in an action or proceeding at law or in equity).

5.5 Financial Statements; No Material Adverse Effect. Borrowers have furnished to Agent their unaudited financial statements for the fiscal-year-to-date period ended March 28, 2015, and those statements fairly present Borrowers' financial condition as of such dates and the results of Borrowers' operations and cash flows for the periods then ended, and were prepared in accordance with GAAP (subject, in the case of unaudited financial statements to the absence of

footnotes and ordinary year end adjustments). Since the date of Borrowers' most recent financial statements delivered to Agent, there has been no Material Adverse Effect other than the filing of the Chapter 11 Cases.

5.6 Litigation. As of the Closing Date, except as disclosed on Schedule 5.7 attached hereto, there are no actions, suits or proceedings pending or, to Borrowers' knowledge, threatened against or affecting any Borrower or any of its Subsidiaries or the properties of any Borrower or any of its Subsidiaries, before any court or Governmental Authority, commission, board, bureau or agency, domestic or foreign, which, if determined adversely to such Borrower or any of its Subsidiaries, (i) would result in a judgment or judgments against such Borrower or any of its Subsidiaries in an amount in excess of \$200,000, or (ii) could reasonably be expected to have a Material Adverse Effect.

5.7 Intellectual Property Rights.

(a) **Owned Intellectual Property.** As of the Closing Date, set forth on Schedule 5.8(a) attached hereto is a complete list of all patents, applications for patents, trademarks, applications to register trademarks, service marks, applications to register service marks, mask works, trade dress, domain names, and copyrights of which any Borrower is the owner of record (the "Owned Intellectual Property"). As of the Closing Date, except as set forth on Schedule 5.8(a) attached hereto, (i) Borrowers own all of the Owned Intellectual Property free and clear of all restrictions (including, without limitation, covenants not to sue any Person), court orders, injunctions, decrees, writs or Liens, whether by written agreement or otherwise, (ii) no Person other than Borrowers own or has been granted any right in the Owned Intellectual Property (other than the license granted to Agent under this Agreement), (iii) all Owned Intellectual Property is valid, subsisting and enforceable, and (iv) Borrowers have taken all commercially reasonable action necessary to maintain and protect all items of Owned Intellectual Property that are necessary for Borrowers' business as presently conducted or as Borrowers reasonably foresee conducting it.

(b) **Intellectual Property Rights Licensed from Others.** As of the Closing Date, set forth on Schedule 5.8(b) attached hereto is a complete list of all agreements under which Borrowers have licensed Intellectual Property Rights from another Person ("Licensed Intellectual Property") other than readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks ("Off-the-shelf Software") and a summary of any ongoing payments Borrowers are obligated to make with respect to Licensed Intellectual Property. As of the Closing Date, except as set forth on Schedule 5.8(b) attached hereto, Borrowers' licenses to use the Licensed Intellectual Property are free and clear of all restrictions, Liens, court orders, injunctions, decrees, or writs, whether agreed to in a written agreement or otherwise. As of the Closing Date, except as disclosed on Schedule 5.8(b) attached hereto, Borrowers are not contractually obligated to make royalty payments of a material nature, or pay fees to any owner of, licensor of, or other claimant to, any Intellectual Property Rights.

(c) **Other Intellectual Property Needed for Business.** Except for Off-the-shelf Software, the Owned Intellectual Property and the Licensed Intellectual Property constitute all Intellectual Property Rights used or necessary to conduct Borrower's business as it is presently conducted or as Borrowers reasonably foresee conducting it.

(d) **Infringement.** As of the Closing Date, except as disclosed on Schedule 5.8(d) attached hereto, Borrowers have no knowledge of, and have not received notice either orally in writing alleging, any Infringement of another Person's Intellectual Property Rights (including, without limitation, any claim set forth in writing that Borrowers must license or refrain from using the Intellectual Property Rights of any Person) nor, to Borrowers' knowledge, is there any threatened claim or any reasonable basis for any such claim, in either case, that could reasonably be expected to have a Material Adverse Effect.

5.8 Taxes. Borrowers and their Subsidiaries have paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by each of them. Borrowers and their Subsidiaries have filed all federal, state and local tax returns which to the knowledge of the Responsible Officers of Borrowers or any Subsidiary, as the case may be, are required to be filed, and Borrowers and their Subsidiaries have paid or caused to be paid to the respective taxing authorities all taxes as shown on those returns or on any assessment received by any of them to the extent such taxes have become due, except to the extent the same are currently being contested in good faith by appropriate proceedings and for which Borrowers have set aside on their books adequate reserves in accordance with GAAP.

5.9 Title and Liens. Borrowers have good and absolute title to all Collateral free and clear of all Liens, other than Permitted Liens. None of the Collateral is or will become a fixture on real estate, unless a sufficient fixture filing has been filed with respect to such Collateral. No financing statement naming a Borrower as debtor is on file in any office except to perfect Permitted Liens. The Liens granted to Agent pursuant to this Agreement and the other Loan Documents will at all times be fully perfected first priority Liens (subject only to Permitted Liens) in and to the Collateral described therein.

5.10 No Defaults. Except as set forth on Schedule 5.10 attached hereto and as a result of the filing of the Chapter 11 Cases, each Borrower is in compliance with all provisions of all agreements, instruments, decrees and orders to which it is a party or by which it or its property is bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect.

5.11 Full Disclosure. All financial and other information provided to Agent by or on behalf of Borrowers in connection with this Agreement (i) is true and correct in all material respects, and (ii) does not omit any material fact that would cause such information to be misleading.

5.12 Labor Matters. As of the Closing Date, except as set forth on Schedule 5.12 attached hereto: (a) no strikes or other material labor disputes against any Borrower or any of its Subsidiaries are pending or, to any Borrower's knowledge, threatened; (b) hours worked by and payment made to any Borrower's or any of its Subsidiaries' employees comply with the Fair Labor Standards Act and each other federal, state, local or foreign law applicable to such matters; (c) all payments due from any Borrower or any of its Subsidiaries for employee health and welfare insurance have been paid or accrued as a liability on the books of such Borrower or such Subsidiary; (d) no Borrower nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, management agreement, consulting agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement; (e) there is no organizing activity involving any

Borrower or any of its Subsidiaries pending or, to any Borrower's knowledge, threatened by any labor union or group of employees; (f) there are no representation proceedings pending or, to any Borrower's knowledge, threatened with the National Labor Relations Board, and no labor organization or group of employees of any Borrower or any of its Subsidiaries has made a pending demand for recognition; and (g) there are no material complaints or charges against any Borrower or any of its Subsidiaries pending or, to any Borrower's knowledge, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by any Borrower or any of its Subsidiaries of any individual, in each case, which could reasonably be expected to have a Material Adverse Effect.

5.13 Rights to Payment. Each right to payment and each instrument, document, Chattel Paper and other agreement in excess of \$10,000 constituting or evidencing Collateral is (or, in the case of all future Collateral, will be when arising or issued) the valid, genuine and legally enforceable obligation of the account debtor or other obligor named in that instrument, subject to no defense, setoff or counterclaim.

5.14 Employee Benefit Plans.

(a) **Maintenance and Contributions to Plans.** As of the Closing Date, except as disclosed on Schedule 5.14 attached hereto, no Borrower nor any ERISA Affiliate (i) maintains or has maintained any Pension Plan, (ii) contributes or has contributed to any Multiemployer Plan, or (iii) provides or has provided post-retirement medical or insurance benefits to employees or former employees (other than benefits required under Section 601 of ERISA, Section 4980B of the IRC, or applicable state law).

(b) **Knowledge of Plan Noncompliance with Applicable Law.** Except as disclosed on Schedule 5.14 attached hereto, no Borrower nor any ERISA Affiliate has (i) knowledge that any Borrower or any ERISA Affiliate is not in full compliance with the requirements of ERISA, the IRC, or applicable state law with respect to any Plan, (ii) knowledge that a Reportable Event occurred or continues to exist in connection with any Pension Plan, or (iii) sponsored a Plan that it intends to maintain as qualified under the IRC that is not so qualified, and no fact or circumstance exists which may have an adverse effect on such Plan's tax qualified status.

(c) **Funding Deficiencies and Other Liabilities.** No Borrower nor any ERISA Affiliate has liability for any (i) accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the IRC) under any Plan, whether or not waived, (ii) withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan under Section 01 or 43 of ERISA, or (iii) event or circumstance which could result in financial obligation to the Pension Benefit Guaranty Corporation, the Internal Revenue Service, the Department of Labor or any participant in connection with any Plan (other than routine claims for benefits under the Plan).

5.15 Environmental Matters.

(a) **Hazardous Substances on Premises.** As of the Closing Date, except as disclosed on Schedule 5.15 attached hereto, there are not present in, on or under the Premises any Hazardous Substances in such form or quantity as to create any material liability or

obligation for any Borrower, any of its Subsidiaries, or Agent under the common law of any jurisdiction or under any Environmental Law, and, to the knowledge of any Borrower, no Hazardous Substances have ever been stored, buried, spilled, leaked, discharged, emitted or released in, on or under the Premises in such a way as to create a material liability.

(b) **Disposal of Hazardous Substances.** Except as disclosed on Schedule 5.15 attached hereto, no Borrower or any of its Subsidiaries has disposed of Hazardous Substances in such a manner as to create any material liability under any Environmental Law.

(c) **Claims and Proceedings with Respect to Environmental Law Compliance.** Except as disclosed on Schedule 5.15 attached hereto, to the knowledge of the Borrowers, there have not existed in the past, nor are there any threatened or impending requests, claims, notices, investigations, demands, administrative proceedings, hearings or litigation relating in any way to any Premises or any Borrower or any of its Subsidiaries, alleging liability under, violation of, or noncompliance with any Environmental Law or any license, permit or other authorization issued pursuant to such an Environmental Law that could reasonably be expected to have a Material Adverse Effect.

(d) **Compliance with Environmental Law; Permits and Authorizations.** Except as disclosed on Schedule 5.15 attached hereto, each Borrower and each of its Subsidiaries (i) conducts its business at all times in compliance with applicable Environmental Laws, except where failure to do so would not have a Material Adverse Effect, (ii) possesses valid licenses, permits and other authorizations required under all applicable Environmental Laws for the lawful and efficient operation of its business, none of which are scheduled to expire, or subject to withdrawal, or material limitation within the next twelve (12) months, except for such permits the absence of which could not reasonably be expected to have a Material Adverse Effect, and (iii) has not been denied insurance on grounds related to potential environmental liability.

(e) **Status of Premises.** Except as disclosed on Schedule 5.15 attached hereto, to Borrowers' knowledge, no Premises is and or ever has been listed on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System or any similar federal, state or local list, schedule, log, inventory or database.

(f) **Environmental Audits, Reports, Permits and Licenses.** Borrowers have delivered to Agent all material environmental assessments, audits, reports, permits, licenses and other documents describing or relating in any way to the Premises or Borrowers' business.

5.16 Material Agreements. Borrowers have made available to Agent or its counsel accurate and complete copies (or summaries) of all of the Material Contracts which they are subject, each of which is listed on Schedule 5.16 attached hereto. Except as set forth on Schedule 5.18 attached hereto, Borrowers are not aware that any such Material Contract has been terminated or is not in full force and effect, or of any default or event of default that has occurred and continues to exist under any such Material Contract except defaults resulting from the filing of the Chapter 11 Cases. Borrowers maintain in effect all licenses, permits and governmental approvals, the absence of which could reasonably be expected to have a Material Adverse Effect.

5.17 Bankruptcy Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice of (i) the motion seeking approval of the Loan Documents and the Interim Financing Order and Final Financing Order, (ii) the hearing for the entry of the Interim Financing Order, and (iii) the hearing for the entry of the Final Financing Order has been or will be given. The Borrowers shall give, on a timely basis as specified in the Interim Financing Order or the Final Financing Order, as applicable, all notices required to be given to all parties specified in the Interim Financing Order or Final Financing Order, as applicable.

(b) After the entry of the Interim Financing Order, and pursuant to and to the extent permitted in the Interim Financing Order and the Final Financing Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrowers now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve-Out and the Prior Permitted Senior Liens.

(c) After the entry of the Interim Financing Order and pursuant to and to the extent provided in the Interim Financing Order and the Final Financing Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral subject, as to priority only, to the Carve-Out and Prior Permitted Senior Liens.

(d) The Interim Financing Order (with respect to the period on and after entry of the Interim Financing Order and prior to entry of the Final Financing Order) or the Final Financing Order (with respect to the period on and after entry of the Final Financing Order), as the case may be, is in full force and effect and has not been vacated.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Financing Order or Final Financing Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Loans, the Agent, on behalf of the Lenders, shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, without further application to or order by the Bankruptcy Court.

(f) Proper notice for (i) the Sale Motion, Sale Procedures Order and the Sale Order, and (ii) the hearing for the approval of Sale Procedures Order and the Sale Order will be given. Borrower will give on a timely basis all notices required to be given to all parties specified in the Sale Motion, Sale Procedures Order and Sale Order.

(g) The applicable Approved Budget shall include all reasonable, necessary and foreseeable expenses to be included for the period set forth in the applicable Approved Budget.

6. AFFIRMATIVE COVENANTS

So long as this Agreement has not been terminated and any Obligations remain unpaid, Borrowers shall comply with each of the following covenants:

6.1 Reporting Requirements. Borrowers shall deliver to Agent the following information, compiled where applicable using GAAP, consistently applied, and all in form and content reasonably acceptable to Agent:

(a) **Monthly Financial Statements.** As soon as available and in any event within (i) thirty (30) days after the end of each of the first two fiscal monthly periods in each fiscal quarterly period, (ii) forty-five (45) days after the end of the last fiscal monthly period in each of the first three fiscal quarterly periods, and (iii) ninety (90) days after the end of the last fiscal monthly period in each fiscal year, Borrowers' internally prepared monthly financial statements which shall include Borrowers' balance sheet, income statement and statement of cash flows prepared for the monthly period then ended and for the year-to-date period then ended and stating in comparative form the figures for the corresponding date and periods in the prior fiscal year, and if requested by Agent, prepared on a consolidated and consolidating basis to include Borrowers and their Subsidiaries.

(b) **Collateral Reports.** No later than fifteen (15) days after each fiscal month end (or more frequently if Agent shall request it), Borrowers shall provide Agent with (i) a detailed aging of Borrowers' accounts payable and (ii) a detailed inventory report (including an inventory certification report and inventory aging report), which agings and calculations are to be submitted electronically to Agent. In addition, no later than Wednesday of each week (or more frequently if Agent shall reasonably request it), Borrowers shall provide Agent with a weekly stock ledger report as of the close of business on Saturday of the immediately preceding week.

(c) **Litigation.** Promptly upon discovery by a Responsible Officer, notice of any litigation commenced or threatened against Borrowers or any Subsidiary that (i) seeks damages in excess of \$200,000, (ii) seeks injunctive relief that could reasonably be expected to result in a Material Adverse Effect, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets or against Borrower or any ERISA Affiliate in connection with any Plan, (iv) alleges criminal misconduct by Borrowers or any of the Responsible Officers, (v) alleges the violation of any Environmental Law or seeks remedies in connection with any Environmental Law that could reasonably be expected to result in a Material Adverse Effect, or (vi) which, if adversely determined, could have a Material Adverse Effect.

(d) **Intellectual Property.** With respect to any Borrower and each of its Subsidiaries, (i) no later than thirty (30) days before any such Person acquires material Intellectual Property Rights, notice to Agent of such Person's intention to acquire such rights; (ii) except for transfers permitted under Section 7.7 hereof, no later than thirty (30) days before any such Person disposes of material Intellectual Property Rights, notice to Agent of such Person's intention to dispose of such rights, along with copies of all proposed documents and agreements concerning the disposal of such rights as requested by Agent; (iii) promptly upon discovery, notice to Agent of (A) any Infringement of any Intellectual Property Rights necessary for Borrowers' and its Subsidiaries' business by any Person, (B) claims that Borrowers or any Subsidiary is infringing upon or violating another Person's Intellectual Property Rights, and (C) any threatened cancellation, termination or material limitation of Borrowers' or any of its Subsidiaries' Intellectual Property Rights; and (iv) promptly upon receipt, copies of all registrations and filings with respect to Borrowers' and its Subsidiaries' Intellectual Property Rights.

(e) **Defaults.** No later than one (1) Business Day after any Responsible Officer learns of the occurrence of any Default or Event of Default, notice to Agent of such Default or Event of Default and the steps being taken by Borrowers to cure the Default.

(f) **Disputes.** Promptly upon discovery by a Responsible Officer, notice to Agent of (i) any dispute, claim or return of goods, which singly or in the aggregate is or could reasonably be expected to be material to the business operations of Borrowers; and (ii) credit memos in excess of \$25,000 not previously reported in Section 6.1(i) hereof.

(g) **Changes in Officers and Directors.** Promptly following occurrence, notice to Agent of any change in the persons constituting Borrowers' Officers and Directors.

(h) **Collateral.** Promptly upon discovery by a Responsible Officer, notice to Agent of any loss of or material damage to the Collateral or of any substantial adverse change in the Collateral or the prospect of payment of any material Accounts.

(i) **Reports to Holders of Indebtedness and Capital Stock.** Promptly after the sending or filing thereof, copies of all statements, reports and other information Group or any other Borrower sends to any holders of its Indebtedness, its Capital Stock or files with any national (domestic or foreign) securities exchange provided that the Borrowers may redact confidential information contained in any such statement, report or other information if it provides a summary of the nature of the information redacted to Agent.

(j) **Violations of Law.** No later than two (2) Business Days after discovery by a Responsible Officer, notice to Agent of any violation by Borrowers or any of their Subsidiaries of any law, rule or regulation, which violation could reasonably be expected to have a Material Adverse Effect, identifying such violation in reasonable detail and the steps being taken by Borrowers relative thereto.

(k) **Pension Plans.** (i) Promptly upon discovery by a Responsible Officer, and in any event within thirty (30) days after any Borrower knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, written notice to Agent of the Reportable Event in detail and the actions which Borrowers propose to take to correct the deficiency, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; (ii) promptly upon discovery by a Responsible Officer, and in any event within ten (10) days after Borrowers fail to make a required quarterly Pension Plan contribution under Section 412(m) of the IRC, written notice to Agent notifying Agent of the failure in detail and the actions that Borrowers will take to cure the failure, together with a copy of any related notice sent to the Pension Benefit Guaranty Corporation; and (iii) promptly upon discovery by a Responsible Officer, and in any event within ten (10) days after Borrowers know or have reason to know that they may be liable or may be reasonably expected to have liability for any withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan under Sections 4201 or 4243 of ERISA, written notice to Agent notifying Agent of the details of the event and the actions that Borrowers proposes to take in response.

(l) **Leases.** (i) Promptly upon receipt thereof, copies of any material amendment to the terms of any lease of real property; (ii) promptly upon receipt from any landlord, notice of a breach of a lease by any Borrower or Subsidiary; (iii) promptly upon receipt from any landlord,

notice of legal action of any landlord to evict any Borrower or Subsidiary from any Premises or to terminate or limit the right of any Borrower or Subsidiary to use, possess or lease any Premises; (iv) promptly upon receipt from any landlord, any cancellation or termination of any lease for any Premises; and (v) promptly upon entering into any new lease or establishment of any new Premises, or upon Borrowers' obtaining knowledge of the transfer of ownership by an existing landlord of any Premises leased by any Borrower or Subsidiary at which any Borrower or Subsidiary maintains any material amount of Inventory, notice to Agent of the establishment of such new Premises, including the location, identity of and contact information for any new landlord and, if requested by Agent, a copy of such new lease.

(m) **Casualty Notices.** Promptly upon discovery by a Responsible Officer, notice to Agent identifying any loss, damage, or destruction to the Collateral in the amount of \$100,000 or more, whether or not covered by insurance.

(n) **Tax Returns.** No later than twenty (20) days after Borrowers' state and federal income tax returns are required to be filed (including any applicable extension requests), certification as to such filing by a Responsible Officer and, upon request of Agent, copies of all filed returns all related schedules and copies of any extension requests, (and copies of any extension requests); and

(o) **Other Reports.** From time to time, with reasonable promptness, all material inventory reports, collection reports, deposit records, equipment schedules, and such other materials, reports, records or information as Agent may reasonably request.

6.2 Preservation of Existence. Each Borrower shall, and shall cause each Subsidiary to, preserve and maintain its existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business, and shall conduct its business in an orderly, efficient and regular manner.

6.3 Books and Records. Each Borrower shall, and shall cause each Subsidiary to, keep complete and accurate books and records with respect to the Collateral, its business, financial condition and any other matters that Agent may request, all in accordance with GAAP and on a basis consistent with the financial statements delivered pursuant to Section 5.5 hereof.

6.4 Payment of Indebtedness and Charges.

(a) **Payment of Indebtedness and Charges.** Subject to Section 6.4(b) hereof and the limitations imposed by the Chapter 11 Cases, each Borrower shall, and shall cause each Subsidiary to, pay and discharge or cause to be paid and discharged promptly (i) all Charges payable by it, (ii) all Taxes imposed upon it, its income and profits, or any of its property (real, personal or mixed), and including social security and unemployment withholding taxes with respect to its employees, (iii) all lawful claims for labor, materials, supplies and services or otherwise, (iv) all storage or rental charges payable to landlords, warehousemen and bailees, in each case, before any thereof shall become past due, and (v) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness

(b) **Contest of Indebtedness and Charges.** Each Borrower and its Subsidiaries may in good faith contest, by appropriate proceedings, the validity or amount of any Charges, Taxes, Indebtedness or claims described in Section 6.4(a) hereof; provided, that (i) adequate reserves with respect to such contest are maintained on the books of such Borrower or such Subsidiary, in accordance with GAAP, (ii) no Lien shall be imposed to secure payment of such Charges, Taxes or Indebtedness (other than statutory Liens securing payments to landlords, warehousemen or bailees) that is superior to any of the Liens securing payment of the Obligations and such contest is maintained and prosecuted continuously and with diligence and operates to suspend collection or enforcement of such Charges, Taxes or Indebtedness, (iii) no material portion of the Collateral becomes subject to forfeiture or loss as a result of such contest, and (iv) such Borrower or such Subsidiary shall promptly pay or discharge such contested Charges, Taxes, Indebtedness or claims and all additional charges, interest, penalties and expenses, if any, and shall deliver to Agent evidence reasonably acceptable to Agent of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to such Borrower or the conditions set forth in this Section 6.4(b) are no longer met.

6.5 Compliance with Laws.

(a) **Compliance with Applicable Law; Use of Collateral.** Each Borrower shall, and shall cause each Subsidiary to, (i) comply with the requirements of all applicable laws and regulations, the non-compliance with which could reasonably be expected to have a Material Adverse Effect, and (ii) use and keep the Collateral, and request that others use and keep the Collateral (if applicable), only for lawful purposes, without violation of any applicable federal, state or local law, statute or ordinance the non-compliance with which could reasonably be expected to have a Material Adverse Effect.

(b) **Compliance with Federal Regulatory Laws.** Each Borrower shall, and shall cause each Subsidiary to, (i) prohibit any Person that is an Officer or Director from being listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, (ii) not permit the proceeds of the Loans or any other financial accommodation extended by the Agent or any Lender to be used in a manner that violates any foreign asset control regulations of OFAC or other applicable law, (iii) comply with all applicable Bank Secrecy Act laws and regulations, as amended from time to time, and (iv) otherwise comply with the USA Patriot Act and Agent’s related policies and procedures.

(c) **Compliance with Environmental Laws.** Each Borrower shall, and shall cause each Subsidiary to, (i) comply with the requirements of applicable Environmental Laws and obtain and comply with all permits, licenses and similar approvals required under such by Environmental Laws, and (ii) not generate, use, transport, treat, store or dispose of any Hazardous Substances in such a manner as to create any material liability or obligation under the common law of any jurisdiction or any Environmental Law.

6.6 Maintain Collateral; Defend Collateral.

(a) **Maintain Collateral.** Each Borrower shall, and shall cause each Subsidiary to, keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted); provided, that any

Borrowers may discontinue the operation and maintenance of any properties if Borrowers believes that such discontinuance is desirable to the conduct of its business and not disadvantageous in any material respect to Agent or Lenders.

(b) **Defend Collateral.** Each Borrower shall, and shall cause each Subsidiary to, defend the Collateral against all Liens, claims and demands of all third Persons claiming any interest in the Collateral, and keep all Collateral free and clear of all Liens, except Permitted Liens.

6.7 Protect Intellectual Property Rights.

(a) Each Borrower (either itself or through licensees) will, and will cause each licensee thereof to, take all action necessary to maintain all of the Intellectual Property Rights in full force and effect, including, without limitation, using the proper statutory notices and markings and using the Trademarks on each applicable trademark class of goods in order to so maintain the Trademarks in full force, free from any claim of abandonment for non-use, and no Borrower will (nor permit any licensee thereof to) take any act or knowingly omit to take any act whereby any Intellectual Property Rights may be abandoned or cancelled or otherwise become invalidated; provided, however, that so long as no Event of Default has occurred and is continuing, no Borrower shall have any obligation to use or to maintain any Intellectual Property Rights (i) that relate solely to any product or work, that has been, or is in the process of being, discontinued, abandoned or terminated, (ii) that are being replaced with Intellectual Property Rights substantially similar to the Intellectual Property Rights that may be abandoned, cancelled or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property Rights does not materially adversely affect the validity of such replacement Intellectual Property Rights and so long as such replacement Intellectual Property Rights are subject to the Lien and security interest created by this Agreement or (iii) that are substantially the same as other Intellectual Property Rights that are in full force and effect, so long as the failure to use or maintain such Intellectual Property Rights could not reasonably be expected to have a Material Adverse Effect or on the validity of such replacement Intellectual Property Rights and so long as such other Intellectual Property Rights are subject to the Lien and security interest created by this Agreement.

(b) If any Intellectual Property Rights are infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, Borrowers shall (i) upon learning of such infringement, misappropriation, dilution or other violation, promptly notify the Agent and (ii) to the extent Borrowers shall deem appropriate under the circumstances, promptly sue for infringement, misappropriation, dilution or other violation, seek injunctive relief where appropriate and recover any and all damages for such infringement, misappropriation, dilution or other violation, or take such other actions as Borrowers shall deem appropriate under the circumstances to protect such Intellectual Property Rights.

(c) The Borrowers shall furnish to the Agent from time to time (but, unless an Event of Default has occurred and is continuing, no more frequently than quarterly) statements and schedules further identifying and describing the Owned Intellectual Property and Licensed Intellectual Property and such other reports in connection with the Owned Intellectual Property and Licensed Intellectual Property as the Agent may reasonably request, all in reasonable detail and promptly upon request of the Agent. Following receipt by the Agent of any such statements,

schedules or reports, Borrowers shall modify this Agreement by amending Schedule 5.8(a) and Schedule 5.8(b), as the case may be, to include any Owned Intellectual Property and Licensed Intellectual Property which become part of the Collateral under this Agreement, and shall execute and authenticate such documents and do such acts as shall be necessary or, in the judgment of the Agent, desirable to subject such Owned Intellectual Property and Licensed Intellectual Property to the Lien and security interest created by this Agreement.

(d) The Borrowers will cause to be taken all necessary and appropriate steps in any proceeding before the United States Patent and Trademark Office and the United States Copyright Office or any similar office or agency in the United States or any other country or political subdivision thereof to maintain each registration of the Owned Intellectual Property, including, without limitation, filing of renewals, affidavits or declarations of use, affidavits or declarations of incontestability, opposition, interference and cancellation proceedings, and payment of maintenance fees, filing fees, taxes and/or other governmental fees. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, the Borrowers may not abandon or otherwise permit any Intellectual Property Right to become invalid without the prior written consent of the Agent, and if any Intellectual Property Right is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, the Borrowers will take such action as the Agent shall deem appropriate under the circumstances to protect such Intellectual Property Right.

(e) The Borrowers shall apply for registration of Owned Intellectual Property to the extent it deems necessary or advisable in its reasonable business judgment as such Owned Intellectual Property is created, adopted or used and diligently prosecute such applications; provided, however, that in no event shall any Borrower, either itself or through any agent, employee, licensee or designee, file an application for the registration of any Owned Intellectual Property unless it gives the Agent prior written notice thereof in accordance with Section 6.1(d) hereof. The Borrowers shall take such actions as the Agent may request from time to time to perfect or continue the perfection of the Agent's Lien and security interest in the Owned Intellectual Property. Upon request of the Agent, the Borrowers, as appropriate, shall execute, authenticate and deliver any and all agreements, instruments, documents and papers as the Agent may reasonably request to evidence the Agent's Lien and security interest hereunder in such Owned Intellectual Property and the General Intangibles of Borrowers relating thereto or represented thereby, and each Borrower hereby appoints the Agent as its attorney-in-fact to execute and/or authenticate and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, and such power (being coupled with an interest) shall be irrevocable until the termination of this Agreement, the repayment or satisfaction of all of the Obligations in full and the termination of each of the Loan Documents. Upon request of the Agent, Borrowers shall provide the Agent with copies of all filings made with respect to any of the Owned Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, and any similar office or agency of the United States or any country or any political subdivision thereof.

(f) The Borrowers will (i) maintain their Websites in continuous operation, providing at least the current level of functionality with respect to Borrowers' business operations, (ii) maintain the Website Collateral and related Equipment at the Hosting Agent's premises and, notwithstanding anything herein to the contrary, obtain the Agent's prior written consent, which

consent shall not be unreasonably withheld, conditioned or delayed, prior to any removal from or change in such location, (iii) permit the Agent, and cause the Hosting Agent to permit the Agent, to inspect such Website Collateral and related Equipment at any time, (iv) promptly upon request by the Agent, cause the administrative contact for the Domain Names to be changed to a person designated by the Agent, and not permit any other change or revision in such information without the prior written consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed, (v) maintain with the records of the applicable domain name registrar a billing contact who has a position within a Borrower and has actual responsibility for taking whatever action is necessary for the maintenance of such Domain Names, (vi) pay all fees and charges required for the maintenance of such Domain Names at least thirty (30) days before any such fee or charge is due, and (vii) not obtain any license, whether of Software or Intellectual Property Rights, for use in connection with any of the Websites, without the prior written consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed. The Borrowers shall furnish to the Agent, promptly upon request, (A) a waiver and consent agreement executed by the Hosting Agent in connection with the Website Collateral, such waiver and consent to be in such form and upon such terms as are reasonably acceptable to the Agent, and (B) an executed Registrant Name Change Agreement (or such other document required by the applicable domain name registrar in connection with the change of registrant for a Domain Name) providing for the naming of the Agent as registrant for each of the Domain Names, to be held in escrow by the Agent until the occurrence of an Event of Default.

(g) The Borrowers will promptly notify the Agent in writing if Borrowers reasonably believe that: (i) any party to a License other than a Borrower is in breach or default of any material obligations under such License; or (ii) Borrowers have a material claim against any other party to a License; or (ii) any party to a License has a claim against any Borrower which, if adversely determined against such Borrower, could result in a Material Adverse Effect. Upon the occurrence and during the continuance of any such breach or default under any License by any party thereto other than any Borrower, (A) Borrowers will, promptly after obtaining knowledge thereof, give the Agent written notice of the nature and duration thereof, specifying what action, if any, it has taken and proposes to take with respect thereto, (B) no Borrower will, without the prior written consent of the Agent, declare or waive any such breach or default or affirmatively consent to the cure thereof or exercise any of its remedies in respect thereof, and (C) Borrowers will, upon written instructions from the Agent and at Borrowers' expense, take such action as the Agent may deem necessary or advisable in respect thereof. In any matter described in the first sentence of this paragraph, Borrowers will, at their expense, promptly deliver to the Agent a copy of each notice or other communication received by them by which any other party to any License purports to exercise any of its rights or affect any of its obligations thereunder, together with a copy of any reply by Borrowers thereto. Each Borrower will exercise promptly and diligently each and every right which it may have under each License (other than any right of termination) and will duly perform and observe in all respects all of its obligations under each License and will take all actions necessary to maintain the Licenses in full force and effect.

(h) No Borrower will enter into any Material License without the prior written consent of the Agent (which consent shall be granted or denied in Agent's reasonable discretion and no later than three (3) Business Days following written request therefor by Borrowers (any such request to be accompanied by a summary in reasonable detail of the applicable proposed

license arrangement). No Borrower will, without the prior written consent of the Agent, cancel, terminate, amend or otherwise modify in any respect, or waive any provision of, any Material License. If any Material License is subject to renewal, Borrowers shall give the Agent written notice of its intentions regarding such renewal at least ninety (90) days prior to the renewal date.

6.8 Insurance.

(a) **Maintain Insurance.** Each Borrower shall, and shall cause each Subsidiary to, at all times, maintain policies of insurance with insurers, in such amounts and on such terms reasonably acceptable to Agent including, as applicable and without limitation, business interruption insurance, hazard coverage on an “all risks” basis for all tangible Collateral, products liability and general liability insurance. Such policies of insurance (or the loss payable and additional insured endorsements delivered to Agent) shall contain provisions pursuant to which the insurer agrees to provide no less than thirty (30) days prior written notice to Agent in the event of any non-renewal, cancellation or amendment of any such insurance policy. Borrowers shall deliver to Agent, in form and substance reasonably satisfactory to Agent, endorsements to (i) all casualty insurance naming Agent as loss payee, and (ii) all general liability and other liability policies naming Agent as additional insured. If Borrowers at any time shall fail to obtain or maintain any of the policies of insurance required above or to pay all premiums relating thereto, Agent may at any time thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that Agent deems advisable. Agent shall have no obligation to obtain insurance for Borrowers or pay any premiums therefor. By doing so, Agent shall not be deemed to have waived any Default or Event of Default arising from Borrowers’ failure to maintain such insurance or pay any premiums therefor and shall have no liability to Borrowers for failing to do so. All sums so disbursed by Agent, including premiums, reasonable attorneys’ fees, court costs and other charges related thereto, shall be payable on demand by Borrowers to Agent in accordance with Section 3.2(c) hereof.

(b) **Change in Risk Profile.** Agent reserves the right at any time upon any change in Borrowers’ risk profile (including any change in the product mix maintained by Borrowers or any laws affecting the potential liability of Borrowers) to require additional forms and limits of insurance to, in the opinion of Agent, adequately protect Agent’s interests in all or any portion of the Collateral and to ensure that Borrowers are protected by insurance in amounts and with coverage customary for its industry and geographic region. If reasonably requested by Agent, Borrowers shall deliver to Agent from time to time a report of a reputable insurance broker reasonably satisfactory to Agent, with respect to its insurance policies.

6.9 Further Assurances. Each Borrower shall, and shall cause each Subsidiary to, at Borrowers’ expense and upon the reasonable request of Agent, duly execute and deliver, or cause to be duly executed and delivered, to Agent such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents.

6.10 Approved Budget; Approved Budget Variance Report. Deliver to Agent in form and substance satisfactory to the Agent:

(a) Any Loan to the Borrowers under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to any variances permitted under this Agreement or the Interim Financing Order or the Final Financing Order, as applicable). The initial Approved Budget shall depict, on a weekly basis, cash revenues, receipts, expenses and disbursements, professional fees, and other information for the first 13-week period from the Closing Date and such initial Approved Budget shall be approved by, and in form and substance satisfactory to, the Agent in its sole discretion. The Approved Budget shall be updated, modified or supplemented not less than on a weekly basis (with the delivery to the Agent on or before Wednesday of each week), and each such updated, modified or supplemented budget shall be approved by, and in form and substance satisfactory to, the Agent in its sole discretion and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget; provided, however, that in the event that the Agent, on the one hand, and the Borrowers, on the other hand, cannot, while acting in good faith, agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default hereunder once the period covered by the most recent Approved Budget has terminated. Each Approved Budget delivered to the Agent shall be accompanied by such supporting documentation as requested by the Agent in its Permitted Discretion. Each Approved Budget shall be prepared in good faith based upon assumptions which the Borrowers believe to be reasonable and are satisfactory.

(b) Simultaneously with delivery by the Borrower to the Agent of each updated proposed amendment to the then applicable Approved Budget in accordance with this Section 6.11, commencing with the first such updated proposed amendment following the Closing Date, the Borrowers shall also deliver to the Agent the current Approved Budget Variance Report. In all events, however, the Borrowers shall deliver an Approved Budget Variance Report to the Agent on a weekly basis, to be delivered on Wednesday of each week.

(c) Borrowers shall conduct their business in a manner consistent with the Approved Budget most recently delivered pursuant to this Agreement and accepted by the Agent in its sole discretion.

6.11 Sale Pleadings; Notices to Agent

(a) The Borrowers shall as soon as reasonably practicable, upon any such information becoming available to the Borrowers, provide the Agent copies of any informational packages provided to potential bidders in accordance with the Bidding Procedures, the Sale Motion, and any order approving same, draft agency or sale agreements, the deadlines established as to receipt of bids and, upon request of the Agent, a status report and updated information relating to such motions and permitted store closings, and copies of any bids received from any proposed bidder for all or any portion of the Borrowers' assets and any updates, modifications or supplements to such information and materials.

(b) The Borrowers shall comply in all respects with the Stalking Horse Purchase Agreement, the Bidding Procedures, the Sale Motion and any related documents and shall promptly notify Agent of any noncompliance or default thereunder.

6.12 Bankruptcy Covenants

(a) Sale Process. The Borrowers shall conduct a process for a Sale. In connection with the Sale, the Borrowers shall as soon as reasonably practicable, upon any such information becoming available to the Borrowers, provide the Agent copies of any informational packages provided to potential bidders, and any draft order approving the Sale, all draft agency or sale agreements, the deadlines established as to receipt of bids and, upon request of the Agent, a status report and updated information relating to such motions and permitted store closings, and copies of any bids received from any proposed bidder for all or any portion of the Borrowers' assets and any updates, modifications or supplements to such information and materials.

(b) Sale and Bidding Procedures. (i) On the Petition Date, the Borrower shall file the Sale Motion seeking approval of the Bidding Procedures Order and the Stalking Horse Purchase Agreement and the sale of substantially all the assets, which motion shall be in form and substance acceptable to the Agent. (ii) On or before twenty one (21) days after the Petition Date, the Bankruptcy Court shall hold the Bidding Procedures Hearing and enter the Sale Procedures Order, which order shall be in form and substance acceptable to the Agent.

(c) Winning Bidder; Sale. The Borrowers shall, in the case of a Sale conduct an auction and choose a winning bidder for the right to conduct a Sale no later than forty (40) days after the Petition Date. The Bankruptcy Court must enter the Sale Order no later than forty five (45) days after the Petition Date, which order shall be in form and substance acceptable to the Agent with the closing of the Sale to occur no later than sixty (60) days after the Petition Date.

(d) Sale Proceeds. Upon the closing of the Sale, all liens securing the Obligations and the Prepetition Obligations related to the Line of Credit (other than those participated to the FSR) (in their respective priority) shall be transferred to the net proceeds of such sale and such proceeds shall be remitted directly by the successful bidder in the following order: first, to permanently and indefeasibly repay the Line of Credit (as defined in the Prepetition Credit Agreement) (other than any portion of the Line of Credit which has been participated to the Term Lender (as defined in the Prepetition Credit Agreement)); and second, to permanently and indefeasibly repay the Obligations.

(e) Financial Consultants. To the extent funds are available in the Approved Budget the Borrowers shall retain and continue to employ a financial advisor consultant, or officer reasonably acceptable to the Agent.

6.13 Financing Orders. The Borrowers shall comply with the Interim Financing Order and the Final Financing Order, as then in effect, in all respects.

7. NEGATIVE COVENANTS

So long as the Obligations remain unpaid, or this Agreement has not been terminated, Borrowers shall comply with each of the following covenants:

7.1 Indebtedness. No Borrower shall, or permit any Subsidiary to, incur, create, assume or permit to exist any Indebtedness or liability on account of deposits or letters of credit issued on its behalf, or advances or any Indebtedness for borrowed money of any kind, whether or not evidenced by an instrument, except:

- (a) the Obligations described in this Agreement and the other Loan Documents;
- (b) the Obligations under the Prepetition Credit Agreement and other Loan Documents (as therein defined);
- (c) Indebtedness in existence as of the date of this Agreement and described in Schedule 7.1 attached hereto;
- (d) Indebtedness in respect of Capitalized Leases and/or purchase money Indebtedness incurred in connection with the acquisition of Equipment and other capital assets in an aggregate amount outstanding at any time not to exceed \$1,000,000;
- (e) (i) unsecured Indebtedness consisting of trade payables arising in the ordinary course of business and (ii) unsecured Indebtedness consisting of trade payables that were owing as of the Petition Date;
- (f) unsecured Contingent Liabilities arising by endorsement of instruments or deposit or collection in the ordinary course of business; and
- (g) unsecured intercompany debt owing by any Borrower to another Borrower, or from a Borrower to a Subsidiary, provided that all such intercompany Indebtedness shall be subordinated to the Obligations on terms satisfactory to the Agent in its sole discretion.

7.2 Liens. No Borrower shall, or permit any Subsidiary to, create, incur or suffer to exist any Lien upon any of its assets, including, without limitation, licenses of patents, trademarks and other Intellectual Property Rights, as security for any Indebtedness or obligations, with the exception of the following (each a “Permitted Lien” and collectively, “Permitted Liens”):

- (a) the Liens in favor of Agent created by this Agreement and the other Loan Documents;
- (b) the Liens in favor of the Prepetition Agent created under the Prepetition Credit Agreement and other Loan Documents (as therein defined);
- (c) Liens in existence on the date of this Agreement that are described in Schedule 7.2 attached hereto securing Indebtedness permitted under Section 7.1(c) hereof;
- (d) Liens on fixed or capital assets acquired, constructed or improved by Borrowers or a Subsidiary; provided, that (i) such Liens secured Indebtedness permitted under Section 7.1(c) hereof; (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or completion of such construction or improvement; (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets; and (iv) such Liens shall not apply to any other property or assets of Borrowers or such Subsidiary;
- (e) Liens for taxes, assessments or other governmental charges not delinquent or being properly contested by appropriate proceedings and for which proper reserves have been established and that do not have priority over Agent’s Liens in the Collateral;

(f) deposits or pledges to secure bids, tenders, contracts, leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business;

(g) pledges or deposits to secure payment of worker's compensation, unemployment insurance and similar obligations and deposits or indemnities to secure public or statutory obligations for similar purposes and pledges or deposits to secure the performance of bids, tenders, trade contracts (other than for borrowed money), leases (other than Capitalized Leases), utility purchase obligations, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) Liens imposed by law, such as carriers, warehouseman's and mechanic's liens and other similar Liens arising in the ordinary course of business which secure payment of obligations which are not past due or which are being contested in good faith and by appropriate proceedings and Liens securing judgments (including pre-judgment attachments) so long as such Liens do not result in an Event of Default;

(i) Liens consisting of bankers' liens and rights of setoff, in each case, arising by operation of law, and Liens on documents presented in letter of credit drawings;

(j) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder; and

(k) in the case of real property, covenants, restrictions, rights, easements and minor irregularities in title which do not materially interfere with such Person's business or operations as presently conducted.

7.3 Investments. No Borrower shall, or permit any Subsidiary to, make or permit to exist any loans or advances to, or make any investment or acquire any interest whatsoever in, any Person or Affiliate, including without limitation any partnership or joint venture, nor purchase or hold beneficially any stock or other securities or evidence of Indebtedness of any Person or Affiliate (collectively, the "Investments"), except:

(a) (i) Investments in direct obligations of the United States of America or any of its political subdivisions whose obligations constitute the full faith and credit obligations of the United States of America and have a maturity of one year or less, (ii) commercial paper issued by U.S. corporations rated "A 1" or "A 2" by Standard & Poor's Ratings Services or "P 1" or "P 2" by Moody's Investors Service, (iii) certificates of deposit, bankers' acceptances or time deposits having a maturity of one year or less issued by members of the Federal Reserve System having deposits in excess of \$500,000,000 (which certificates of deposit, bankers' acceptances or time deposits are fully insured by the Federal Deposit Insurance Corporation) or (iv) money market funds that (x) comply with the criteria set forth in the Securities and Exchange Commission's Rule 2a-7 under the Investment Company Act of 1940, (y) are rated "AAA" by Standard & Poor's Ratings Services and "Aaa" by Moody's Investors Service and (z) have portfolio assets of at least \$5,000,000,000;

(b) Investments consisting of travel advances or loans to Borrowers' Officers and employees not exceeding at any one time \$10,000 for any single advance or loan, and an aggregate of \$50,000 for all such loans and advances;

(c) Checking and deposit accounts with banks used in the ordinary course of business;

(d) Investments (i) in any securities received in the ordinary course of business consistent with past practices in satisfaction or partial satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business;

(e) Prepaid rent not exceeding one month or security deposits securing performance under leases of real or personal property; and

(f) Current Investments in Subsidiaries in existence on the date of this Agreement which are identified in Schedule 7.3 attached hereto and Investments made after the Closing Date in any Subsidiary of a Borrower that become a Borrower hereunder.

7.4 Restricted Payments. No Borrower shall, or permit any Subsidiary to make, any Restricted Payment, except each Subsidiary may make Restricted Payments to any Borrower.

7.5 Transactions with Affiliates. No Borrower shall, or permit any Subsidiary to enter into or permit to exist any transaction with any Affiliate of any Borrower or any of its Subsidiaries except for:

(a) any Affiliate who is an individual may serve as a director, officer, manager, member, employee or consultant of a Borrower or Subsidiary of a Borrower, receive reasonable compensation for his or her services in such capacity;

(b) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between any Borrower or any of its Subsidiaries, on the one hand, and any Affiliate of any Borrower or any of its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by any Borrower or any of its Subsidiaries in excess of \$100,000 for any single transaction or series of related transactions, and (ii) are no less favorable, taken as a whole, to any Borrowers or any of its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate; and

(c) transactions permitted by Section 7.4 hereof.

7.6 Sale of Assets. No Borrower shall, or permit any Subsidiary to sell, lease, assign, transfer or otherwise dispose of (i) the Capital Stock of any Borrower or any Subsidiary, (ii) all or a substantial part of its assets (and, for purposes of this Section 7.6, without limiting the generality of the foregoing, the sale or transfer (including by way of a transaction with a liquidator in any one or a series of transactions occurring over a period of twelve (12) months) of twenty (20) or more retail store locations or all or substantially all of the Inventory located therein shall be deemed a "substantial part" of Borrowers' assets, or (iii) any Collateral, any

interest in Collateral (whether in one transaction or in a series of transactions) or any other assets to any other Person, except:

- (a) the sale of Inventory in the ordinary course of business; and
- (b) the disposition or transfer of obsolete, damaged and worn-out Equipment, provided that the proceeds thereof are used to acquire replacement Equipment or other capital assets used or useful in Borrower's business; and
- (c) the Sale; and
- (d) transactions permitted under Section 7 hereof.

7.7 Transfer of Intellectual Property Rights. No Borrower shall, or permit any Subsidiary to, transfer any part of its ownership interest in any Owned Intellectual Property Rights, or permit its rights as licensee of Licensed Intellectual Property to lapse, or license any other Person to use any of Borrowers' Intellectual Property Rights except (i) as set forth in Section 6.6(h) hereof, and (ii) any Borrower and its Subsidiaries may transfer such rights or permit them to lapse if such Borrower has reasonably determined that such Intellectual Property Rights are no longer required or useful in its business or the business of the applicable Subsidiary.

7.8 Mergers, Subsidiaries; Asset Acquisitions. No Borrower shall, or permit any Subsidiary to, directly or indirectly, by operation of law or otherwise, form or acquire any Subsidiary, or merge with, consolidate with, acquire all or substantially all of the assets or Capital Stock of, or otherwise combine with or acquire, any Person.

7.9 Sale and Leaseback. No Borrower shall, or permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any other Person pursuant to which such Borrower shall sell or transfer any real or personal property, whether owned now or acquired in the future, and then rent or lease all or part of such property or any other property which such Borrower intends to use for substantially the same purpose or purposes as the property being sold or transferred.

7.10 Restrictions on Nature of Business. No Borrower shall, or permit any Subsidiary to, engage in any line of business materially different from that presently engaged in by such Borrower and its Subsidiaries or substantially related thereto and as reflected in the Business Plan, and will not purchase, lease or otherwise acquire assets not related to their business.

7.11 Accounting; Fiscal Year. No Borrower shall, or permit any Subsidiary to, adopt any material change in accounting principles except as required by GAAP. No Borrower shall change its fiscal year.

7.12 Discounts. No Borrower shall, or permit any Subsidiary to, grant any discount, credit or allowance to any customer, or accept any return of goods sold, except in the ordinary course of business and consistent with historical practices. No Borrower shall, and shall not

permit any Subsidiary to, modify, amend, subordinate, cancel or terminate any Account, except in the ordinary course of business and consistent with historical practices.

7.13 Pension Plans. No Borrower shall, or permit any ERISA Affiliate to (a) adopt, create, assume or become party to any Pension Plan, (b) become obligated to contribute to any Multiemployer Plan, (c) incur any obligation to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required by law), or (d) amend any Plan in a manner that would materially increase its funding obligations.

7.14 Change to Place of Business; Premises. No Borrower shall, or permit any Subsidiary to, change the location of its chief executive office, principal place of business, corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral, in each case, without providing Agent thirty (30) days prior written notice and delivering to Agent a duly executed collateral access agreement, landlord's waiver or warehouseman's agreement, as applicable, in form and substance satisfactory to Agent.

7.15 Constituent Documents; Name Change. No Borrower shall, or permit any Subsidiary to, amend its Constituent Documents in a manner adverse to the Agent or any Lender. No Borrower shall, and shall not permit any Subsidiary to, (a) change its name as it appears in official filings in the state of its incorporation or formation, (b) change its entity type, (c) change its organization identification number, if any, issued by its state of incorporation or formation, or (d) change its state of incorporation or organization, in each case without at least thirty (30) days prior written notice to Agent and after Agent's written acknowledgment that any reasonable action requested by Agent in connection therewith, including to continue the perfection of the Liens in favor of Agent in any Collateral, has been completed or taken.

7.16 Deposit Accounts. No Borrower shall, or permit any Subsidiary to, open or maintain any deposit account, securities account, or investment account without the consent of Agent, except for (i) the Collection Account, the Credit Card Collection Account and Operating Account, each of which shall at all times be subject to a Control Agreement in form and substance reasonably satisfactory to Agent, (ii) the Store Accounts and other deposit accounts existing as of the Closing Date and described on Schedule 7.16 attached hereto, and (iii) a segregated account, which shall hold cash as adequate assurance for the Borrowers' utility providers.

7.17 Retail Stores.

(a) No Borrower shall, or permit any Subsidiary to, open or commit to open, any location at which it maintains, offers for sale or stores any Collateral (or intends to maintain, offer for sale or store any Collateral).

(b) No Borrower shall, or permit any Subsidiary to, close or commit to close, any location at which it maintains, offers for sale or stores any Collateral unless Agent has consented in advance, in writing to the manner and methods employed in connection with such location closing, including, without limitation, the terms of engagement of any third party as agent, consultant or otherwise proposed to be employed in connection therewith.

7.18 Changes in Terms of Subordinated Debt. Without the prior written consent of Agent, no Borrower shall effect or permit any modification or amendment to any Subordinated Debt including the Obligations under the Prepetition Credit Agreement, or any document, instrument or agreement evidencing or governing such Subordinated Debt including the Prepetition Credit Agreement and related documents, instruments and agreements.

7.19 Payments and Prepayments of Subordinated Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Subordinated Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness.

7.20 Approved Budget Variance Test. Permit actual (i) disbursements to exceed 110% of (A) the projected disbursements in the Approved Budget (as reflected in the Approved Budget line item labeled “Total Operating Disbursements”) as of the end of any Testing Period or (B) the projected disbursements in the Approved Budget for each line item set forth in the Approved Budget in the line items under the heading “Disbursements” (other than that item labeled “Salus Secured Lender Counsel”) as of the end of any Testing Period or (ii) the amount of actual receipts to be less than 90% of the projected receipts in the Approved Budget, (as reflected in the Approved Budget line item entitled “Total Operating Cash Receipts”) as of the end of any Testing Period (except in each case to the extent such actual results are more favorable).

7.21 Chapter 11 Claims. Other than the Carve-Out, incur, create, assume, suffer to exist or permit any other super-priority administrative claim which is pari passu with or senior to the claims of the Agent against the Borrowers.

7.22 Bankruptcy Actions. Seek, consent to, or permit to exist, without the prior written consent of the Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

8. EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default. An “Event of Default” means any of the following:

(a) Borrowers fail to pay the amount of any Obligations on the date that it becomes due and payable;

(b) Borrowers fail to observe or perform any covenant or agreement of Borrowers set forth in Section 3.2(e) or Section 7 hereof;

(c) Borrowers fail to observe or perform any covenant or agreement of Borrowers set forth in Section 6.1, Section 6.2, Section 6.3, Section 6.4, Section 6.6, Section 6.7, Section 6.9, Section 6.11, or Section 6.12 of this Agreement, and such failure, if capable of being remedied, shall remain unremedied for two (2) Business Days after the earlier of (A) the date upon which a Responsible Officer obtains knowledge of such failure, or (B) the date upon which Borrowers have received notice of such failure from Agent, or (iii) any other covenant or agreement contained in Section 6 or elsewhere in this Agreement or in any other Loan Document, and such

failure, if capable of being remedied, shall remain unremedied for five (5) days after the earlier of (A) the date upon which a Responsible Officer obtains knowledge of such failure, or (B) the date upon which Borrowers have received notice of such failure from Agent;

(d) Any representation or warranty made by Borrowers in this Agreement or any other Loan Document, or in any agreement, certificate, instrument or financial statement or other statement delivered to Agent in connection with this Agreement is untrue or misleading in any material respect when made or deemed made;

(e) A Change of Control shall occur;

(f) A final, non-appealable arbitration award, judgment, or decree or order for the payment of money in an amount in excess of \$50,000 which is not insured, is entered against any Borrower that is not immediately stayed or appealed;

(g) Except for defaults resulting from the filing of the Chapter 11 Cases, any Borrower is in default with respect to any bond, debenture, note or other evidence of material Indebtedness issued by such Borrower, or under any instrument under which any such evidence of Indebtedness has been issued or by which it is governed, or under any material lease or other contract having an aggregate outstanding amount of more than \$200,000, and all applicable grace periods, if any, have expired, regardless of whether such default has been waived by the holder of such Indebtedness;

(h) Any Borrower liquidates, dissolves, terminates or suspends its business operations or otherwise fails to operate its business in the ordinary course, or merges with another Person in a transaction which is not permitted under this Agreement; or sells or attempts to sell all or substantially all of its assets, except in each case in connection with the Sale;

(i) Borrowers fail to pay any obligation owed to Agent, the Lenders or their Affiliates that is unrelated to this Agreement as the same becomes due and payable (other than obligations under the Prepetition Credit Agreement and other Loan Documents (as therein defined));

(j) Any Borrower makes any payment on account of Subordinated Debt;

(k) Any event or circumstance occurs that Agent in good faith believes may impair the prospect of payment of all or part of the Obligations, or Borrowers' ability to perform any of their material obligations under any of the Loan Documents, or any other document or agreement described in or related to this Agreement or the Obligations, or there occurs any Material Adverse Effect;

(l) Any Director, Officer, or Owner of at least 20% of the issued and outstanding Capital Stock of any Borrower is indicted for a felony offence under state or federal law, or any Borrower hires an Officer or appoints a Director who has been convicted of any such felony offense, or a Person becomes an Owner of at least 20% of the issued and outstanding Capital Stock of such Borrower who has been convicted of any such felony offense;

(m) Any Reportable Event, which Agent in good faith believes to constitute sufficient grounds for termination of any Pension Plan or for the appointment of a trustee to administer any Pension Plan, has occurred and is continuing thirty (30) days after Borrowers give Agent notice of the Reportable Event; or a trustee is appointed by an appropriate court to administer any Pension Plan; or the Pension Benefit Guaranty Corporation institutes proceedings to terminate or appoint a trustee to administer any Pension Plan; or any Borrower or any ERISA Affiliate files for a distress termination of any Pension Plan under Title IV of ERISA; or Borrower or any ERISA Affiliate fails to make any quarterly Pension Plan contribution required under Section 412(m) of the IRC, which Agent in good faith believes may, either by itself or in combination with other failures, result in the imposition of a Lien on such Borrower's assets in favor of the Pension Plan; or any withdrawal, partial withdrawal, reorganization or other event occurs with respect to a Multiemployer Plan which could reasonably be expected to result in a material liability by Borrower to the Multiemployer Plan under Title IV of ERISA;

(n) Any casualty, loss or other event occurs, whether or not insured or insurable, as a result of which revenue-producing activities cease or are substantially curtailed at any facility or facilities of Borrowers generating more than twenty percent (20%) of Borrowers' revenues for Borrowers' fiscal year preceding such event and such cessation or curtailment continues for more than thirty (30) days;

(o) if the Borrower, without the Agent's prior written consent, files a motion with the Bankruptcy Court seeking the authority to liquidate all or substantially all of the Borrower's assets or capital stock unless the transactions that are the subject of the motion will result in payment in full in cash of the Obligations;

(p) other than in connection with the payment in full or refinancing of the Obligations hereunder, the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by or on behalf of the Borrower in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral that is pari passu with or senior to any Lien; (C) except as provided in the Interim Financing Order or Final Financing Order, as the case may be, to use cash collateral under Section 363(c) of the Bankruptcy Code, in each case without the prior written consent of the Agent; (D) that seeks to prohibit the Agent from credit bidding on any or all of the Borrower's assets during the pendency of the Chapter 11 Cases; or (E) any other action or actions materially adverse to the Agent or its rights and remedies hereunder or its interest in the Collateral;

(q) other than in connection with the payment in full or refinancing of the Obligations hereunder, (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by the Borrower to which the Agent does not consent or otherwise agree to treatment of its claims, (B) the entry of any order terminating the Borrower's exclusive right to file a plan of reorganization, or (C) the expiration of the Borrower's exclusive right to file a plan of reorganization;

(r) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization that (A) is not acceptable to the Agent or (B) does not contain a provision for

termination of the commitments of the Lenders hereunder and repayment in full in cash of all of the Obligations under this Agreement on or before the effective date of such plan or plans;

(s) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Interim Financing Order, the Final Financing Order or the Cash Management Order, the Bidding Procedures Order, the Sale Order or any other order of the Bankruptcy Court affecting this Agreement or any Loan Document, the Sale, without the written consent of the Agent or the filing of a motion for reconsideration with respect to the Interim Financing Order or the Final Financing Order or the Interim Financing Order, the Final Financing Order or the Cash Management Order are otherwise not in full force and effect;

(t) except as set forth in the “first day” motions which have been reviewed by the Agent, the payment of, or application for authority to pay, any claim arising prior to the Petition Date without the Agent’s prior written consent unless otherwise permitted under this Agreement or as requested in the “first day” motions;

(u) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Agent or the or any of the Collateral;

(v) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Borrower; or the sale without the Agent’s consent, of all or substantially all of the Borrower’s assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the Obligations and termination of the Aggregate Commitments;

(w) the dismissal of the Chapter 11 Cases, or the conversion of the Chapter 11 Cases from Chapter 11 to Chapter 7 of the Bankruptcy Code, or the Borrower files a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise;

(x) without the Agent’s prior written consent, the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (1) to allow any creditor to execute upon or enforce a Lien on any Collateral having a value of \$100,000 or more, or (2) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority;

(y) the commencement of a suit or action against either of the Agent or any other Credit Party by or on behalf of the Borrower, or its bankruptcy estate;

(z) the entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the Indebtedness owing under this Agreement or the other Loan Documents;

(aa) the failure of the Borrower to perform any of its obligations under the Interim Financing Order, the Final Financing Order or the Cash Management Order or any of its material obligations under the any other order of the Bankruptcy Court, which is not cured within two (2)

Business Days of written notice to the Borrower of same or any larger cure period provided in this Agreement;

(bb) if the Borrower or any of its Subsidiaries suspends or discontinues (except in connection with anticipated asset sales) or is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs the Borrower and its Subsidiaries, taken as a whole, or a trustee, receiver or custodian is appointed for the Borrower or any of its Subsidiaries, or any of their respective properties, except to the extent such suspension or discontinuance of business occurs in accordance with the terms of this Agreement;

(cc) the entry of an order in the Chapter 11 Cases granting any other super-priority administrative claim or Lien equal or superior to that granted to the Agent other than the Carve-Out;

(dd) the Participation Agreement is not in full force and effect or FSR has defaulted on its obligations thereunder;

(ee) absent the prior written consent of the Agent and the Lenders, the filing or approval of any proposed Sale Order, or draft thereof that does not provide for repayment in full in cash of all Obligations before or at the Sale Effective Date;

(ff) if the Borrower fails to pay, or causes to be paid, in full in cash all Obligations on or before the earlier of (i) the Sale Effective Date and (ii) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases;

(gg) the Final Financing Order is not entered prior to the expiration of the Interim Financing Order, and in any event within 28 days of the Petition Date;

(hh) the Borrower fails to file the Sale Motion within two (2) days of the Petition Date;

(ii) the Bidding Procedures Order is not entered on or before twenty one (21) days after the Petition Date;

(jj) an auction is not conducted for the purchase of the assets on or before forty (40) days after the Petition Date;

(kk) the Sale Order is not entered on or before forty five (45) days after the Petition Date;

(ll) the closing of the sale of all or substantially all of the Borrower's assets shall not have occurred on or before the date that is sixty (60) days after the Petition Date;

(mm) if any plan or reorganization or liquidation is executed, filed, delivered, or any confirmation order is entered which does not provide for repayment in full in cash of all Obligations before or upon the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; or

(nn) if there is a stay or injunction of the Sale Order or any order confirming a plan of reorganization or liquidation in the Chapter 11 Cases in effect precluding the consummation of the transactions contemplated thereby.

8.2 Rights and Remedies. During any Default Period and subject to the terms of the Interim Financing Order or Final Financing Order, as applicable, the Agent may in its sole discretion exercise any or all of the following rights and remedies:

- (a) Decline to make any additional Loans;
- (b) Agent may declare the Obligations to be immediately due and payable and accelerate payment of the Note, and the Obligations shall immediately become due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which Borrowers hereby expressly waive;
- (c) Agent may, without notice to Borrowers, set off and apply any monies owing by Lenders to Borrowers to payment of the Obligations;
- (d) Agent may exercise and enforce any rights and remedies available upon default to a secured party under the UCC, including, without limitation, the right to take possession of Collateral (without posting a bond or other form of security, which Borrowers hereby waive), to proceed with or without judicial process (without a prior hearing or notice of hearing, which Borrowers hereby waive), and to sell, lease or otherwise dispose of Collateral for cash or on credit (with or without giving warranties as to condition, fitness, merchantability or title to Collateral, and in the event of a credit sale in such manner and at such places (including Borrowers' Premises) as Agent determines is commercially reasonable, including, conducting one or more going out of business or liquidation sales, in Agent's own right or by one or more agents or contractors, which sales may be conducted upon any Premises owned, leased, or occupied by Borrowers. To the extent permitted by applicable law, Agent and any such agent or contractor, in conjunction with any such sale, may augment Borrowers' inventory with other goods (all of which other goods shall remain the sole property of Agent or such agent or contractor). Borrowers will upon Agent's demand assemble the Collateral and make it available to Agent or its agents or representatives at any place designated by Agent which is reasonably convenient to both parties. Borrowers' Obligations to Agent shall be reduced only to the extent that payments are actually received by Agent;
- (e) Without notice to or demand upon Borrowers, make such payments and do such acts as Agent considers necessary or reasonable to protect its Lien in the Collateral. Borrowers authorize Agent or its agents to enter any premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien that in Agent's determination appears to conflict with Agent's Lien and to pay all expenses incurred in connection therewith and to charge Borrowers' loan account therefor. With respect to any of Borrowers' owned or leased Premises, Borrowers hereby grant Agent a license to enter into possession of such Premises and to occupy the same, without charge, in order to exercise any of Agent's rights or remedies provided herein, at law, in equity, or otherwise;

(f) Agent may exercise and enforce any of its rights and remedies under any of the Loan Documents and any other document or agreement described in or related to this Agreement or the Obligations, or at law or in equity;

(g) Agent may for any reason apply for the appointment of a receiver for the Collateral (to which appointment Borrowers hereby consent) without the necessity of posting a bond or other form of security (which Borrower hereby waives);

(h) The Agent or any Lender may purchase, in any public or private sale conducted under the provision of the UCC (including pursuant section 9-610 and 9-620 of the UCC), the provisions of the Bankruptcy Code (including pursuant to section 363 of the Bankruptcy Code) or at any sale or foreclosure conducted by the Agent (whether by judicial action or otherwise) in accordance with Applicable Law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Agent, upon written consent of the Required Lenders, to Credit Bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders; and

(i) Agent may exercise any other rights and remedies available to it by law or agreement.

8.3 [Intentionally Omitted].

8.4 Application of Funds. At any time following the occurrence of an Event of Default hereunder, including after the exercise of remedies provided for in Section 8.2 hereof any amounts received on account of the Obligations shall be applied by the Lenders and Prepetition Lenders in the following order:

(a) First, to payment of that portion of the Obligations constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Section 9.7 and Section 9.8 hereof) payable to the Agent and Lenders;

(b) Second, to pro rata payment of that portion of the Obligations constituting accrued and unpaid interest and fees on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause payable to them;

(c) Third, to payment of that portion of the Obligations constituting unpaid principal of the outstanding Loans, ratably among the Lenders in proportion to the respective amounts described in this clause held by them;

(d) Fourth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations), ratably among the Lenders in proportion to the respective amounts described in this clause held by them; and

(e) Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, shall be provided to the Prepetition Agent for application under the Prepetition Credit Agreement, or as otherwise directed by the Bankruptcy Court or required by Law.

9. MISCELLANEOUS

9.1 No Waiver; Cumulative Remedies. No delay or any single or partial exercise by Agent of any right, power or remedy under the Loan Documents, or under any other document or agreement described in or related to this Agreement, shall constitute a waiver of any other right, power or remedy under the Loan Documents or granted by Borrowers to Agent under other agreements or documents that are unrelated to the Loan Documents. No notice to or demand on Borrowers in any circumstance shall entitle Borrowers to any additional notice or demand in any other circumstances. The remedies provided in the Loan Documents or in any other document or agreement described in or related to this Agreement or the Obligations are cumulative and not exclusive of any remedies provided by law. Agent may comply with applicable law in connection with any disposition of Collateral, and such compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

9.2 Amendment; Consents and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by Borrowers therefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent and Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall (a) unless in writing and signed by each Lender directly affected thereby, do any of the following: (i) increase the amount or extend the expiration date of any Lender's Commitment; (ii) reduce the principal of, or interest on, the Loans or any fees or other amounts payable hereunder; or (iii) postpone any date fixed for any payment of principal of, or interest on, the Loans or any fees or other amounts payable hereunder; (b) unless in writing and signed by all of the Lenders, do any of the following: (i) amend or modify the definition of "Required Lenders", (ii) release all or substantially all of the Collateral or release any Guarantor from its obligations under any Guaranty, (iii) amend this Section 9.2, or (iv) release any Borrower from its obligations hereunder; (c) unless in writing and signed by all of the Lenders, (i) increase the amount of any Loans; (ii) reduce the principal of, or interest on, any Loan or any fees or other amounts payable hereunder; or (iii) postpone any date fixed for any payment of principal of, or interest on any Loan or any fees or other amounts payable hereunder; and (d) unless in writing and signed by the Agent, modify any provision of Section 10 hereof.

9.3 Execution in Counterparts; Delivery of Counterparts. This Agreement and all other Loan Documents, or any other document or agreement described in or related to this Agreement or the Obligations, and any amendment or modification to any such document or agreement may be executed by the parties in any number of counterparts, each of which, once executed and delivered in accordance with the terms of this Section 9.3, will be deemed an original, and all such counterparts, taken together, shall constitute one and the same instrument. Delivery by fax or by electronic mail or e-mail file attachment of any counterpart to any Loan Document executed by an authorized signature will be deemed the equivalent of the delivery of the original instrument. Borrowers shall send the original counterpart to Agent by first class U.S. mail or by overnight courier, but any party's failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement or the other Loan Documents, or any other document or agreement described in or related to this Agreement or the Obligations.

9.4 Notices, Requests, and Communications. Except as otherwise expressly provided in this Agreement:

(a) **Delivery of Notices, Requests and Communications.** Any notice, request, demand, or other communication by any party that is required under the Loan Documents, or any other document or agreement described in or related to this Agreement, shall be in writing and shall be delivered (i) in person, (ii) by first class U.S. mail, (iii) by overnight courier of national reputation, (iv) by fax, or (v) may be delivered by electronic mail and confirmed by delivery via overnight courier or postal service; provided, however, that requests for Loans shall not require such confirmation delivery.

(b) **Addresses for Delivery.** Delivery of any notice under this Section 9.4 shall be made to the appropriate address set forth on the signature pages of this Agreement (which any party may modify by notifying the other party in writing).

(c) **Date of Receipt.** Each notice sent pursuant to the terms of this Section 9.4 will be deemed to have been received on (i) the date of delivery if delivered in person, (ii) the date two (2) Business Days after deposit in the mail if sent by mail, (iii) the date one (1) Business Day after delivery to the courier if sent by overnight courier, (iv) the date of transmission if sent by fax, or (v) the date of transmission if sent by electronic mail; except that any request for a Loan or any other notice, request, demand or other communication from Borrowers required under Section 2 hereof, and any request for an accounting under Section 9-210 of the UCC, will not be deemed to have been received until actual receipt by Agent on a Business Day by an authorized employee of Agent.

9.5 Borrowers Information Reporting; Confidentiality. Except as otherwise expressly provided in this Agreement:

(a) **Delivery of Borrowers' Information Records.** Any information that Borrowers are required to deliver under Section 6.1 hereof may be delivered to Agent (i) in person, or (ii) by first class U.S. mail, (iii) by overnight courier of national reputation, (iv) by fax, or (v) by electronic mail.

(b) **Addresses for Delivery.** Delivery of any notice to Agent under this Section 9.5 shall be made to the appropriate address set forth on the signature pages of this Agreement (which Agent may modify by notice sent to Borrowers).

(c) **Date of Receipt.** Each notice sent pursuant to this Section 9.5 will be deemed to have been received on (i) the date of delivery if delivered in person to an authorized employee of Agent, (ii) the date two (2) Business Days after deposit in the mail if sent by mail, (iii) the date one (1) Business Day after delivery to the courier if sent by overnight courier, (iv) the date of transmission if sent by fax, or (v) the date of transmission, if sent by electronic mail.

(d) **Authentication of Borrowers' Information Records.** Borrowers shall execute any notice delivered (i) in person, or by U.S. mail, overnight courier, or fax, by the signature of the Officer or employee of Borrowers who prepared the notice; or (ii) sent via electronic mail, by the signature of the Officer or employee of Borrowers who prepared the notice by any file format signature that is acceptable to Agent, or by a separate certification signed and sent by fax.

(e) **Certification of Borrowers Information Records.** Any notice executed and delivered to Agent under this Section 9.5 will be deemed to have been certified as materially true, correct, and complete by Borrowers and each Officer or employee of Borrowers who prepared and executed the notice on behalf of Borrowers, and may be legally relied upon by Agent without regard to method of delivery or transmission.

(f) **Confidentiality of Borrowers Information Records Sent by Unencrypted E-mail.** Each Borrower acknowledges that if it sends an e-mail or an e-mail file attachment, there is a risk that such e-mail or an e-mail file attachment may be received by unauthorized Persons, and that by so doing it will be deemed to have accepted this risk and the consequences of any such unauthorized disclosure.

(g) **Publicity.** Subject to Borrowers' consent, which shall not be unreasonably withheld or conditioned, Agent or Lenders may at its expense, publicize or otherwise advertise by press release, so called 'tombstone' advertising or otherwise this financing transaction with Borrowers and Borrowers consent to use of their names, logos or other trademarks in connection with the same; provided that if Borrowers do not respond to Agent or Lender's request for consent within two (2) Business Days, then Borrowers shall deemed to have consented to such press release.

9.6 Further Documents. Borrowers will from time to time execute, deliver, endorse and authorize the filing of any instruments, documents, conveyances, assignments, security agreements, financing statements, control agreements and other agreements that Agent may reasonably request in order to secure, protect, perfect or enforce the Agent's Liens in the Collateral or Agent's rights under the Loan Documents, or any other document or agreement described in or related to this Agreement or the Obligations (but any failure to request or assure that Borrowers execute, deliver, endorse or authorize the filing of any such item shall not affect or impair the validity, sufficiency or enforceability of the Loan Documents, or any other document or agreement described in or related to this Agreement or the Obligations, and the Agent's Lien in the Collateral, regardless of whether any such item was or was not executed, delivered or endorsed in a similar context or on a prior occasion).

9.7 Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

9.8 Indemnity. In addition to its obligation to pay Credit Party Expenses under the terms of this Agreement and any other indemnification provisions contained herein or in any other Loan Document, Borrowers shall indemnify, defend and hold harmless Agent, its parent, subsidiaries, any of their respective affiliates and successors, and all of their present and future Officers, Directors, employees, attorneys and agents (each an "Indemnitee") from and against any of the following (collectively, "Indemnified Liabilities"):

(a) Any and all transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of the Loan Documents, or any other document or agreement described in or related to this Agreement or any Loan or extension of credit hereunder;

(b) Any claims, loss or damage to which any Indemnitee may be subjected if any representation or warranty contained herein proves to be incorrect in any respect or as a result of any violation of the covenants contained in Section 6.6 hereof; and

(c) Any and all other reasonable out-of-pocket liabilities, losses, damages, penalties, judgments, suits, claims, costs and expenses of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel) in connection with this Agreement, the other Loan Documents, the Obligations, and any other investigative, administrative or judicial proceedings, whether or not such Indemnitee shall be designated a party to such proceedings, which may be imposed on, incurred by or asserted against any such Indemnitee, in any manner related to or arising out of or in connection with the Loans and the Loan Documents, or any other document or agreement described in or related to this Agreement, or the use or intended use of the proceeds of an Loan or other extension of credit hereunder, with the exception of any Indemnified Liability determined by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of an Indemnitee.

If any investigative, judicial or administrative proceeding described in this Section 9.8 is brought against any Indemnitee, upon the Indemnitee's request, Borrowers, or counsel designated by Borrowers and reasonably satisfactory to the Indemnitee, will resist and defend the action, suit or proceeding to the extent and in the manner directed by the Indemnitee, at Borrowers' sole cost and expense. Each Indemnitee will use its best efforts to cooperate in the defense of any such action, suit or proceeding at the expense of Borrowers. If this agreement to indemnify is held to be unenforceable because it violates any law or public policy, Borrowers shall nevertheless make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities to the extent permissible under applicable law. Borrowers' obligations under this Section 9.8 shall survive the termination of this Agreement and the discharge of Borrowers' other obligations under this Agreement.

9.9 Binding Effect; Assignment; Complete Agreement. The Loan Documents and any other document or agreement described in or related to this Agreement or the Obligations, shall be binding upon and inure to the benefit of Borrowers and Agent and their respective successors and assigns, except that no Borrower shall have the right to assign its rights under this Agreement or any interest in this Agreement without Agent's prior written consent. To the extent permitted by law, each Borrower waives and will not assert against any assignee any claims, defenses or set-offs which such Borrower could assert against Agent. This Agreement, together with the Loan Documents, or any other document or agreement described in or related to this Agreement, comprises the complete and integrated agreement of the parties on the subject matter of this Agreement and supersedes all prior agreements, whether oral or written. To the extent that any provision of this Agreement contradicts other provisions of the Loan Documents other than this Agreement, or any other document or agreement described in or related to this Agreement, this Agreement shall control.

9.10 Sharing of Information. Agent and each Lender shall hold all Confidential Information obtained from Borrowers in accordance with such party's customary procedures for handling confidential information of such nature. The Agent and each Lender may share any Confidential Information that it may have regarding Borrowers and their Affiliates with its accountants, lawyers, and other advisors, and each direct and indirect subsidiary of Agent or Lender.

9.11 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining terms of this Agreement.

9.12 Headings. Section and subsection headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9.13 Definitional Terms and Rules of Interpretation. All accounting terms not otherwise defined in this Agreement shall have the meanings given them in accordance with GAAP. Unless the context clearly requires otherwise, the word “or” has the inclusive meaning represented by the phrase “and/or”. Reference to any agreement (including, without limitation, the Loan Documents), document or instrument means the agreement, document or instrument as amended or supplemented, subject to any restrictions on amendment contained therein (and, if applicable, in accordance with the terms of this Agreement and the other Loan Documents). Unless otherwise specified, any reference to a statute or regulation means that statute or regulation as amended or supplemented from time to time, and any corresponding provisions of successor statutes or regulations.

9.14 Governing Law; Jurisdiction, Venue; Waiver of Jury Trial. The Loan Documents (other than real estate related documents, if any) shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of New York. The parties to this Agreement (a) consent to the personal jurisdiction of the United States District Court of the District of Delaware and the United States Bankruptcy Court for the District of Delaware in connection with any controversy related to this Agreement; (b) waive any argument that venue in any such forum is not convenient; (c) agree that any litigation initiated by Agent or Borrowers in connection with this Agreement or the other Loan Documents may be venued in federal courts for the District of Delaware; and (d) agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

9.15 WAIVER OF JURY TRIAL AND DAMAGES. BORROWERS, AGENT AND EACH OF THE LENDERS WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION AT LAW OR IN EQUITY OR IN ANY OTHER PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT. BORROWERS WAIVE ANY RIGHTS TO RECOVER SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN. BORROWERS REPRESENT THAT THEY HAVE REVIEWED THESE WAIVERS AND KNOWINGLY AND VOLUNTARILY WAIVES SUCH RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10. AGENCY PROVISIONS

10.1 Appointment and Authority. Each of the Lenders hereby irrevocably appoints SCP to act on its behalf as the Agent under the Credit Agreement and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Borrowers to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 10 are solely for the benefit of the Agent and the Lenders, and no Borrower shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the terms “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

10.2 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

10.3 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth in the Credit Agreement. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated in the Credit Agreement that the Agent is required to exercise as directed in writing by the Required Lenders, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay; and

(c) shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as

shall be necessary) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Borrowers or a Lender. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Lenders. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created hereunder or in connection with the Interim Financing Order or Final Financing Order, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Section 4 hereof or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

10.4 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub agents appointed by the Agent. The Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 10 shall apply to any such sub agent and to the Related Parties of the Agent and any such sub agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court

of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.6 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the written consent of the Borrowers so long as no Default or Event of Default exists, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section 10.6. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 10.6). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section 10 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

10.7 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon the Credit Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 10.11 hereof, the Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Borrower that may come into the possession of the Agent.

10.8 Agent May File Proofs of Claim. The Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or

otherwise and irrespective of whether the Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent under this Agreement and Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.5 and 10.04 hereof.

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

10.9 Collateral and Guaranty Matters. The Lenders irrevocably authorize the Agent, to

(a) release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.2;

(b) release any Guarantor from its obligations under any guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Required Lenders will confirm in writing the Agent's authority to release its interest in particular types or items of property, or to release any guarantor from its obligations under its guaranty pursuant to this Section 10.9. In each case as specified in this Section 10.9, the Agent will, at the Borrowers' expense, execute and deliver to the applicable Borrower such documents as such Borrower may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted pursuant to this Agreement or to release such guarantor from its obligations under its guaranty, in each case in accordance with the terms of the Loan Documents and this Section 10.9.

10.10 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.6 hereof.

10.11 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all financial statements and other materials required to be delivered by the Borrowers hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(b) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy or completeness of any Borrower materials, and shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Borrowers and will rely significantly upon the Borrowers' books and records, as well as on representations of the Borrowers' personnel; and

(d) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report and other Borrower materials in connection with any Loan that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

10.12 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders in assets which, in accordance with Article 9 of the UCC or any other applicable Law of the United States, can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

10.13 Indemnification of Agent. Without limiting the obligations of the Borrowers under the Credit Agreement, the Lenders hereby agree to indemnify the Agent and any Related Party, as the case may be, ratably according to their Commitments, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent and their Related Parties in any way relating to or arising out of the Credit Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent

and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

10.14 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

[Remainder of page intentionally left blank; signatures begin on following page.]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement under seal through its authorized officer on the date set forth above.

BORROWERS:

Frederick's of Hollywood Group Inc.
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935
State Organizational ID No.: None
Federal Employee ID No.: 13-2643042

FREDERICK'S OF HOLLYWOOD GROUP INC.

By: _____
Bill Soncini
Chief Operating Officer

FOH Holdings, Inc.
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935
State Organizational ID No.: 2749384
Federal Employee ID No.: 36-4155442

FOH HOLDINGS, INC.

By: _____
Bill Soncini
Chief Operating Officer

Frederick's of Hollywood, Inc.
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935
State Organizational ID No.: 0580404
Federal Employee ID No.: 95-2666265

FREDERICK'S OF HOLLYWOOD, INC.

By: _____
Bill Soncini
Chief Operating Officer

Frederick's of Hollywood Stores, Inc.
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935
State Organizational ID No.: C16109-98
Federal Employee ID No.: 95-4698882

FREDERICK'S OF HOLLYWOOD STORES, INC.

By: _____
Bill Soncini
Chief Operating Officer

Hollywood Mail Order, LLC
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating
Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935
State Organizational ID No.: LLC5354-99
Federal Employee ID No.: 95-4755205

HOLLYWOOD MAIL ORDER, LLC

By: _____
Bill Soncini
Chief Operating Officer

FOHG Holdings, LLC
6464 W. Sunset Blvd., Suite 1150
Los Angeles, CA 90028
Attention: Bill Soncini, Chief Operating
Officer
E-Mail: Bill.Soncini@fredericks.com
Facsimile: (323) 962-9935

FOHG HOLDINGS, LLC

By: _____
Bill Soncini
Chief Operating Officer

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, New York 10005
Attention: Tyson M. Lomazow, Esq.
E-Mail: TLomazow@milbank.com
Facsimile: (212) 822-5367

AGENT:

Salus Capital Partners, LLC
197 First Avenue, Suite 250
Needham, MA 02494
Attention: Brian T. Kennedy
E-Mail: bkennedy@saluscapital.com
Facsimile: (781) 459-0058

SALUS CAPITAL PARTNERS, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

With a copy to:

Greenberg Traurig, LLP
One International Place, 20th Floor
Boston, MA 02110
Attention: Jeffrey M. Wolf, Esq.
E-Mail: wolfje@gtlaw.com
Facsimile: (617) 310-6001

LENDER:

Salus CLO 2012-1, Ltd.
c/o Salus Capital Partners, LLC
197 First Avenue, Suite 250
Needham, MA 02494
Attention: Brian T. Kennedy
E-Mail: bkennedy@saluscapital.com
Facsimile: (781) 459-0058

SALUS CLO 2012-1, LTD.

By: Salus Capital Partners II, LLC,
Its: Collateral Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

With a copy to:

Greenberg Traurig, LLP
One International Place, 20th Floor
Boston, MA 02110
Attention: Jeffrey M. Wolf, Esq.
E-Mail: wolfje@gtlaw.com
Facsimile: (617) 310-6001

[SENIOR SECURED, SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT]

Exhibit C

Participation Agreement

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this “Agreement”), is entered into as of April [___], 2015, between (i) Salus CLO 2012-1, Ltd., as selling lender (in such capacity, the “Selling Lender”) and as DIP Lender (as hereinafter described), (ii) Front Street Re (Cayman) Ltd., as participant (in such capacity, the “Participant”), and (iii) Salus Capital Partners, LLC, in its capacities as the DIP Agent and Prepetition Agent (each as hereinafter defined), in each case as described below.

PRELIMINARY STATEMENTS:

(a) Reference is made to that certain Credit and Security Agreement, dated as of May 31, 2012 (as amended, restated, supplemented or otherwise modified and in effect from time to time, the “Prepetition Credit Agreement”), by and among Frederick’s of Hollywood Group, Inc., a New York corporation, FOH Holdings, Inc., a Delaware corporation, Frederick’s of Hollywood, Inc., a Delaware corporation, Frederick’s of Hollywood Stores, Inc., a Nevada corporation, and Hollywood Mail Order , LLC, a Nevada limited liability company (each individually, a “Borrower” and, collectively, the “Borrowers”), Selling Lender and Participant (each a “Lender” and collectively, the “Lenders”), and Salus Capital Partners, LLC, as administrative and collateral agent for the Lenders (in such capacity, the “Prepetition Agent”). All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Prepetition Credit Agreement or DIP Credit Agreement (as defined below), as applicable.

(b) On April 19, 2015, (i) the Borrowers filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware (such court, together with any other court having competent jurisdiction over such chapter 11 cases from time to time, the “Bankruptcy Court”) and commenced cases (each, a “Chapter 11 Case” and, collectively, the “Chapter 11 Cases”), and have continued in possession and operation of their assets and in the management of their business pursuant to sections 1107 and 1108 of the Bankruptcy Code, and (ii) the Borrowers, Selling Lender, as lender (in such capacity, the “DIP Lender”) and Salus Capital Partners, LLC, as agent for the DIP Lender (in such capacity, the “DIP Agent”) are entering into that certain Senior Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “DIP Credit Agreement”), pursuant to which the Selling Lender has agreed to make available to the Borrowers a secured, superpriority debtor-in-possession credit facility in a maximum principal amount of \$11,000,000 (the “DIP Facility”).

(d) In order to induce the DIP Lender to enter into the DIP Credit Agreement and provide the DIP Facility to the Borrowers, and in connection with each loan or advance made by the DIP Lender to or for the benefit of the Borrowers under the DIP Credit Agreement (each a “DIP Loan” and collectively, “DIP Loans”), the Participant has irrevocably agreed, on the terms and conditions set forth in this Agreement, to purchase from the Selling Lender an undivided, last-out participation interest in the FILO Advance under the Prepetition Credit Agreement in an amount equal to the Incremental DIP Exposure (as hereinafter defined) (any amount paid by Participant to Selling Lender hereunder on account of the purchase of such

participation interest being referred to herein as a "Participation Advance," and collectively, the "Participation Advances").

(e) This Agreement sets forth:

(i) the terms and conditions under which the Participant will make Participation Advances and participate in the FILO Advance under the Prepetition Credit Agreement;

(ii) the respective rights of the Selling Lender and the Participant with respect to the FILO Advance under the Prepetition Credit Agreement and any and all notes, instruments, guarantees, mortgages, security agreements or other agreements or documents now or hereafter executed and delivered pursuant to or in connection with the FILO Advance (collectively with the Prepetition Credit Agreement, the "Prepetition Loan Documents"); and

(iii) certain other terms and conditions concerning the Prepetition Credit Agreement and DIP Credit Agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

1. Sale and Purchase of Participation Interest; Participation Advances.

(a) Subject to the terms and conditions of this Agreement, in connection with and effective upon the funding of each DIP Loan made by Selling Lender in its capacity as the DIP Lender under the DIP Credit Agreement, the Selling Lender shall sell, transfer and convey to the Participant, and Participant shall purchase and acquire from the Selling Lender, an undivided, last-out participation interest in the FILO Advance (including, without limitation, all right, title and interest of the Selling Lender in, to or under the Prepetition Loan Documents with respect to the FILO Advance, and the Collateral securing the FILO Advance) (the "Participation Interest"), in an amount at any time equal to the Incremental DIP Exposure. The Participant acknowledges and agrees that subject to the provisions of Section 5 below, its obligation to fund its purchase of the Participation Interest under this Section 1 is absolute and unconditional. The Participation Interest evidenced by this Agreement shall not be construed as a loan by the Participant to the Selling Lender.

As used herein, "Incremental DIP Exposure" means, as of any date, an amount equal to (i) the then outstanding principal balance of the DIP Loans made by the DIP Lender under the DIP Credit Agreement (in an amount not to exceed 110% of all disbursement amounts contained in the Approved Budget (including for purposes of this Agreement the amount of any "Carve-Out" (including any Carve-Out available after the Carve Out Trigger Date as defined in the Interim Financing Order or Final Financing Order, as applicable) and any professional fee reserve, whether or not such amounts are actually funded with the proceeds of DIP Loans), minus (ii) the aggregate amount received by the Prepetition Agent from and after the Petition Date from "Total Operating Receipts" as reflected in the Budget and applied to the permanent repayment of the outstanding principal balance of the Obligations under the Prepetition Credit

Agreement in accordance with the terms of the DIP Credit Agreement, the Interim Financing Order or the Final Financing Order, as applicable (“Prepetition Paydown Amounts”).

(b) The Participation Interest shall at all times be deemed to be the “first in and last out” portion of the FILO Advance, and shall at all times be junior and subordinate to the interest retained by the Selling Lender in the FILO Advance (the “Retained Interest”) and the rights of the Selling Lender to receive payments of interest, principal and other amounts with respect to the Retained Interest in accordance with the provisions hereof.

(c) Notwithstanding the foregoing, in the event that the Selling Lender’s Retained Interest in the FILO Advance is repaid in full and at such time the Selling Lender’s obligation to provide DIP Loans remains outstanding, with respect to each DIP Loan thereafter made by the Selling Lender, the Selling Lender shall sell, transfer and convey to the Participant, and Participant shall purchase and acquire from the Selling Lender, a one-hundred percent (100%) participation interest in each such DIP Loan in an amount which, together with all preceding Participation Advances hereunder, does not exceed the then Incremental DIP Exposure.

2. Participation Advances; Weekly Settlement.

(a) Within two (2) Business Days following the date the initial DIP Loan(s) made by the DIP Lender under the DIP Credit Facility, the Participant shall pay to the Selling Lender an amount equal to the Incremental DIP Exposure on account of such initial DIP Loan(s). The required amount of the Participation Advances shall be calculated based upon the amount of DIP Loans from time to time made by the DIP Lender pursuant to the DIP Credit Agreement and the amount of Prepetition Paydown Amounts actually received by the Selling Lender.

(b) On each Thursday as of the close of business on the immediately preceding Wednesday (or more frequently in the Selling Lender’s sole discretion (each such date being referred to herein, as a “Settlement Date”), the Selling Lender shall reconcile (i) the applicable amount of DIP Loans funded by the DIP Lender under the DIP Credit Facility for the weekly period then ending, if any, and (ii) the applicable amount of Prepetition Paydown Amounts received by Selling Lender and actually applied to repay the principal of the Obligations under the Prepetition Credit Agreement as permitted under the DIP Credit Agreement, the Interim Order or the Final Order, as applicable, since the immediately preceding Settlement Date, if any, in order to determine the amount of Participation Advances required to be purchased by the Participant on account of the weekly period then ended and the aggregate balance of the Participation Interest (giving effect to any required Participation Advances required to be funded by Participant hereunder on account of such weekly period). In connection with each Settlement, the Selling Lender shall, on the applicable Settlement Date, furnish to the Participant a statement (a “Settlement Statement”) prepared as of the applicable Settlement Date. Absent manifest error, each Settlement Statement shall be considered conclusive and binding upon each of the Selling Lender and Participant unless the Participant shall object thereto in writing delivered no later than two (2) Business Days following the date of distribution of the Settlement Statement, which objection shall include a statement in reasonable detail of the basis of such objection. To the extent that there is a disagreement between the Selling Lender and

Participant as to the details of any Settlement Statement, the Selling Lender and Participant shall cooperate in good faith to resolve such dispute as soon as practicable.

(c) No later than two (2) Business Days following delivery of the Settlement Statement (unless Participant has objected in writing to the Settlement Statement and then as soon as practicable after Participant and Selling Lender have resolved the applicable objection), the Participant shall pay to the Selling Lender any additional Participation Advances required pursuant to the terms of this Agreement by the means set forth in Section 6 hereof. In the event that the aggregate Participation Interest amount declines as a result of the receipt of Prepetition Paydown Amounts in excess of any DIP Loans on account of any weekly period, an amount equal to the resulting decrease in the aggregate Participation Interest shall (unless otherwise agreed by Selling Lender and Participant) be held by the Selling Lender and credited against the next required Participation Advance(s) under this Agreement.

3. Payments on Account of Participation Interest.

(a) The Selling Lender will receive and hold in accordance herewith all payments on account of the FILO Advance for the benefit of itself and the Participant to the extent of their respective interests in the FILO Advance. In accordance with the terms hereof, all payments or distributions received in respect of the FILO Advance shall be applied first, to the Retained Interest until such time as the Retained Interest is repaid in full, and second, to the Participation Interest. Notwithstanding the foregoing, the Selling Lender shall pay to Participant Participant's percentage share (determined based upon the relative amounts of the Participation Interest and the Retained Interest in the balance of the FILO Advance in effect from time to time (the "Participant's Percentage Share")) of any post-petition interest attributable to the FILO Advance actually received by Selling Lender; provided, however, in the event that the Retained Interest and all accrued interest thereon is not paid in full upon the termination of the DIP Credit Facility, the Participant agrees to pay to the Selling Lender an amount equal to the lesser of (i) an amount sufficient to pay the Retained Interest and all interest thereon in full, or (ii) all post-petition interest on the portion of the FILO Advance represented by the Participation Interest actually received by Participant. Neither Selling Lender nor the Prepetition Agent makes any representation or warranty to Participant that post-petition interest on the FILO Advance will be paid to or recoverable by the Selling Lender.

(b) In the event that any amount received by the Selling Lender from or on behalf of the Borrowers under the Prepetition Credit Agreement or any other Prepetition Loan Document in connection with the FILO Advance is rescinded or is otherwise required to be returned by the Selling Lender to the Borrowers or any other Person, the Participant will, upon receipt of written notice from the Selling Lender, promptly remit to the Selling Lender such amount (to the extent the Selling Lender had previously distributed such amount to Participant in respect of its Participation Interest), together with interest thereon at such rate, if any, that Selling Lender shall be required to pay to the Borrowers or such other Person with respect thereto. The agreements of the Participant contained in this Section 3(b) shall survive the expiration or termination of this Agreement.

(c) If the Participant shall at any time receive payment on account of its Participation Interest in violation of this Agreement, whether received by voluntary payment, by

sale, disposition, or other realization upon or from any collateral security, by the exercise of the right of set-off, by counterclaim, cross-action or by the enforcement of any agreement of the Borrowers relating to the Prepetition Credit Agreement or any other Obligations, or in any proceeding under the United States Bankruptcy Code or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally involving a Borrower or other obligor in respect of the Obligations (any such proceeding, an “Insolvency Proceeding”) or otherwise, Participant shall receive and hold the same in trust, for the benefit of the Selling Lender, and shall forthwith deliver the same to Selling Lender in precisely the form received (except for the endorsement or assignment by Participant where necessary) for application to the FILO Advance in accordance with the terms of this Agreement, the Prepetition Credit Agreement and the Interim Financing Order or Final Financing Order (each as defined in the DIP Credit Agreement).

(d) Notwithstanding the foregoing to the contrary and for the avoidance of doubt, the Selling Lender and Participant hereby agree that the Selling Lender shall retain the entire amount of any Line of Credit termination fee attributable to the FILO Advance (as set forth in the Prepetition Loan Documents) to the extent paid or recovered under the Prepetition Credit Agreement. The foregoing does not alter any rights of the Participant in its capacity as a Lender under the Prepetition Credit Facility.

4. Actions Under and Modification of the Loan Documents.

(a) Subject to the provisions of Section 4(c) below, Participant agrees that in its capacity as owner of the Participation Interest and as Participant hereunder (and without limiting any other rights it may have as a Lender under the Prepetition Credit Agreement and related documents, instruments and agreements), Participant shall not have, and shall not be deemed to have been granted, any right to (i) take any action or exercise any rights, remedies or powers under the Prepetition Credit Agreement or any other Prepetition Loan Document on account of its ownership of the Participation Interest, or exercise or continue to exercise any other right or remedy at law or equity that Participant might otherwise possess, to collect any amount due and payable in respect thereof, (ii) vote on any matter pertaining to, or otherwise consent to, any amendment, waiver or modification of the Prepetition Credit Agreement or any other Prepetition Loan Document on account of its ownership of the Participation Interest, or (iii) separately vote on any matter or any claim relating to the Participation Interest or the Prepetition Credit Agreement in the Chapter 11 Cases or any other Insolvency Proceeding or to otherwise take any separate or independent action with respect to exercising rights or remedies under the Prepetition Loan Documents and/or applicable law (including a proceeding in equity) or with respect to the Obligations or the Collateral including, without limitation, in the Chapter 11 Cases or any other Insolvency Proceeding on account of its ownership of the Participation Interest. Furthermore, Participant (solely in its capacity as Participant and not in any other capacity) agrees that it shall not, in the Chapter 11 Cases or any other Insolvency Proceeding, (x) have or seek to assert a “claim” against the Borrowers or any other obligor in respect of the Obligations on account of its Participation Interest, or (y) seek or otherwise take any action to be treated as a separate class of creditors as the Selling Lender, as the holder of Obligations (in its capacity as such) and shall not oppose any pleading or motion by the Selling Lender for the Selling Lender

and Participant to be treated as the same class of creditors. Without limiting the foregoing, Participant agrees that (solely in its capacity as Participant and not in any other capacity) it shall consent to and not oppose any action taken by the Selling Lender in connection with any adequate protection or debtor in possession financing in the Chapter 11 Cases or any other Insolvency Proceeding.

(b) Without limiting any rights of Participant in its capacity as a Lender under the Prepetition Credit Agreement (but subject in all respects to the terms thereof), (i) Participant agrees that Selling Lender may, in its sole and absolute discretion, exercise or refrain from exercising any rights or take or refrain from taking any action which may be vested in Selling Lender or which Selling Lender may be entitled to take or assert under or with respect to the Obligations, the Prepetition Credit Agreement or any other Prepetition Loan Document, and (ii) that Selling Lender (x) may, without limiting the generality of the foregoing, take legal action to enforce Selling Lender's rights and interests with respect to the Obligations, Prepetition Credit Agreement or other Prepetition Loan Documents and (y) shall not be required to (1) consult with, obtain the consent of or inform Participant in connection with any such action or inaction or (2) inform Participant with respect to anything that Selling Lender may do or refrain from doing in the exercise of its judgment.

(c) Selling Lender may, in its sole and absolute discretion, without prior or other notice to Participant and without any consent of or other action by Participant, from time to time and at any time, take any action, enter into any amendment of, or waive compliance with the terms of, or grant any consent under, the Prepetition Credit Agreement and the other Prepetition Loan Documents without obtaining prior approval from Participant; provided that the Selling Lender agrees it shall not take any action, without the prior written consent of the Participant, to reduce the principal amount of the portion of the FILO Advance subject to the Participation Interest, or waive or excuse the payment thereof, or reduce the rate of interest thereon, or reduce any premium or fees payable by Borrowers to Selling Lender with respect to the FILO Advance in which Participant participates hereunder. Notwithstanding the foregoing, the Participant acknowledges and agrees that any action by the Selling Lender in connection with the day to day administration of the Prepetition Credit Agreement shall not be construed to require the consent of the Participant hereunder.

5. Termination of Participation Advances. The Participant's agreement to fund Participation Advances hereunder shall be irrevocable, provided, that upon the occurrence of any of the following events the Participant may, upon not less than two (2) Business Days prior written notice to the Selling Lender, cease to purchase additional Participation Advances under this Agreement (it being understood that any such termination shall not apply to any amounts required to be purchased by the Participant hereunder on account of DIP Loans made by Selling Lender prior to the expiration of such two (2) Business Day period):

(a) Receipt by the Borrowers of written notice by the purchaser under the Stalking Horse Purchase Agreement that the purchaser is electing to terminate such agreement;

(b) Failure of the transactions contemplated by the Stalking Horse Purchase Agreement or another agreement the Borrowers have designated as a higher or better bid

pursuant to the Bidding Procedures applicable to the Stalking Horse Purchase Agreement to be consummated on or before June 20, 2015;

(c) The Borrowers' actual aggregate disbursements shall exceed 110% of the projected aggregate disbursements or the Borrowers' Total Operating Receipts shall be less than 90% of the projected Total Operating Receipts, each as set forth in the Approved Budget with respect to any Testing Period;

provided, however, if the Participant desires to cease purchasing Participation Advances as a result of the condition described in the foregoing clause (c), such termination shall not be effective unless and until the Participant has funded Participation Advances hereunder in an aggregate amount of no less than \$2,000,000.

The Approved Budget shall be in form and substance reasonably satisfactory to each of the Prepetition Agent, the Participant and the DIP Agent for the time period set forth therein. Further, no amendment, supplement, extension or other modification to the Approved Budget shall be effective without the consent of the Participant, which consent shall not be unreasonably withheld or delayed. The rights of the Participant under this paragraph shall terminate and be of no further force and effect from and after notice by the Participant of its election to terminate its obligation to make Participation Advances under this Section 5.

6. Place and Manner of Payment.

(a) Except as otherwise provided herein all payments to be made by the parties under this Agreement shall be made as follows:

(i) the Selling Lender shall make each payment to be made by the Selling Lender to the Participant hereunder by transferring the amount of such payment in immediately available funds to Participant at the following account:

Name of Bank:	Bank of America, N.A. One Bryant Park New York, NY 10022
ABA:	026009593
Acct. #:	483043543811

(ii) Participant shall make each payment to be made by it to the Selling Lender hereunder by transferring the amount of such payment in immediately available funds to Selling Lender at the following account:

Bank Name:	Santander Bank 75 State Street Boston, MA 02109
ABA #:	011075150
Account Name:	Salus Capital Partners, LLC
Account #:	75860051418
Ref:	FOH

or, in each case, to such other address or account as the Participant or the Selling Lender may from time to time specify to the other such party by written notice.

(b) All payments to be made hereunder by the Participant to the Selling Lender or vice versa shall be made without setoff, deduction or counterclaim and, except to the extent required by applicable law, free and clear of and without deduction or withholding for any present or future taxes, levies, imposts, deductions or charges.

(c) Any determination of amounts to be paid and any transfer of funds which is to be made pursuant to this Agreement on any day on which Selling Lender or Participant is closed for business by reason of any applicable law or executive order shall be determined or made on the then next day on which both Selling Lender and Participant are open for business.

7. Limitation on the Liability of the Selling Lender.

(a) The Selling Lender shall not be liable to the Participant for any error in judgment or for any action taken or omitted to be taken by the Selling Lender relative to the administration of the FILO Advance, except for gross negligence or willful misconduct of the Selling Lender. Without limiting the foregoing, the Selling Lender may rely in good faith upon the advice of counsel concerning legal matters and upon any written document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons.

(b) The Selling Lender shall not be required to make any inquiry concerning the Borrowers or any of their affiliates or any other Person's obligations to the Selling Lender under the Prepetition Credit Agreement or any other Prepetition Loan Document, or to inspect the properties or books and records of the Borrowers or any such Person. The Selling Lender assumes no responsibility for the financial condition of the Borrowers or any party to the Prepetition Credit Agreement or any other Prepetition Loan Document, or for the performance of the Borrowers' or any other party's (other than the Selling Lender's) obligations under the Prepetition Credit Agreement or any other Prepetition Loan Document, or for the due execution, authenticity, validity or enforceability of any thereof. Except as set forth in Section 7(c) hereof, the Selling Lender shall not have any duty or responsibility to provide the Participant with any credit or other information concerning the affairs, financial condition or business of the Borrowers or any parties to the Prepetition Loan Documents which may come into the possession of the Selling Lender or any of its affiliates.

(c) The Selling Lender shall promptly furnish the Participant upon request copies of all financial statements reports and certificates received from the Borrowers pursuant to the Prepetition Loan Documents. The Selling Lender shall have no responsibility to the Participant for any errors or omissions in any such reports, financial statements or other information.

8. Reimbursement.

(a) Participant shall pay to the Selling Lender, to the extent not reimbursed by the Borrowers, promptly after demand therefor, an amount equal to Participant's pro rata share of any costs and expenses incurred by the Selling Lender and attributable to the FILO Advance required to be paid by Borrowers pursuant to Section 9.7 of the Prepetition Credit Agreement. If

the Selling Lender incurs any out-of-pocket costs or expenses (including, without limitation, reasonable out-of-pocket fees and expenses of legal counsel) in connection with an effort to enforce or protect the Selling Lender's rights or interests with respect to the FILO Advance under the Prepetition Loan Documents (including, without limitation, any amounts expended by Selling Lender to preserve or protect the Collateral), then Participant shall reimburse the Selling Lender, within three (3) Business Days of documented demand, in an amount equal to the Participant's Percentage Share of such costs and expenses to the extent the Selling Lender has not been reimbursed by or on behalf of the Borrowers therefor.

(b) The provisions of this Section 7 shall expressly survive the expiration or termination of this Agreement.

9. Transferability. Participant represents that it is acquiring the Participation Interest for its own account in the ordinary course of its business and not with a view to any sale or other distribution thereof. Without the prior written consent of Selling Lender, Participant shall not sell, pledge, assign, sub-participate or otherwise transfer its rights under this Agreement, other than to an affiliate of the Participant. Selling Lender agrees that it shall not sell, assign or transfer its interest in the FILO Advance unless the transferee expressly agrees in writing to assume all obligations of the Selling Lender under this Agreement (which consent shall not be unreasonably withheld or delayed).

10. Representations; Covenants.

(a) Participant represents to the Selling Lender that (i) the Participant has entered into this Agreement on the basis of its own credit evaluation of, or independent commercial relationship with, the Borrowers, (ii) except as specifically provided herein, the Selling Lender has not made any representations or warranties to the Participant in connection herewith and (iii) no act hereafter taken by the Selling Lender, including any review of the affairs of the Borrowers or any party to the Prepetition Credit Agreement or any other Prepetition Loan Document, shall be deemed to constitute any representation or warranty by the Selling Lender to the Participant. Participant represents and warrants to, and agrees with, the Selling Lender that (x) it has made and will continue to make, independently and without reliance upon the Selling Lender, and based on such documents and information as it has deemed appropriate, its own appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Borrowers and any party to the Prepetition Credit Agreement or any other Prepetition Loan Document and its own decision to enter into, and to take actions under, this Agreement, and (y) it has received and reviewed copies of the Prepetition Credit Agreement and each of the other Prepetition Loan Documents. Participant specifically acknowledges and agrees that the Participant's interest in the FILO Advance constitutes a "last out" portion of the FILO Advance and payment of the same is subject to limitations and conditions set forth in this Agreement, the Prepetition Credit Agreement and the Interim Financing Order or Final Financing Order (each as defined in the DIP Credit Agreement).

(b) Each of the Selling Lender and Participant represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by such party and that this Agreement has been duly executed and delivered by such party and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its

terms, except as enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally, as such laws may be applied in the event of the reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to any party hereto, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) The Selling Lender represents and warrants to the Participant that it is the sole legal owner and holder of the FILO Advance, free and clear of all liens, charges, encumbrances or other security interests.

11. Purchase Option.

(a) At any time, the Participant shall have the option to purchase all but not less than all of the Selling Lender's interest in the FILO Advance, provided that the Participant must also purchase all of the remaining Obligations owing to the Selling Lender as Lender under the Prepetition Credit Agreement (collectively, together with the Selling Lender's interest in the FILO Advance, the "Selling Lender Prepetition Indebtedness"). Such option shall be exercised by delivery of written notice by the Participant to the Selling Lender (a "Purchase Notice") to purchase all (but not less than all) of the outstanding Selling Lender Indebtedness from the Selling Lender. The Purchase Notice shall be irrevocable.

(b) On the date specified by the Participant in the Purchase Notice (which shall not be more than five (5) business days after the receipt by the Selling Lender of the Purchase Notice), the Selling Lender shall sell to the Participant the Selling Lender Indebtedness, and the Participant shall purchase from the Selling Lender, the Selling Lender Indebtedness.

(c) Upon the date of such purchase and sale, the Participant shall pay to the Selling Lender as the purchase price therefor, the full amount of all the Selling Lender Indebtedness then outstanding and unpaid (including, principal, accrued but unpaid interest, fees, expenses, charges and all other amounts then outstanding in respect of the Selling Lender Indebtedness), less then then outstanding principal balance of the Participation Interest and all accrued but unpaid interest thereon.

(d) Such purchase shall be expressly made without representation or warranty of any kind by the Selling Lender as to the Selling Lender Indebtedness so purchased or otherwise and without recourse to the Selling Lender, except that the Selling Lender shall represent and warrant: (i) the amount of the Selling Lender Indebtedness being sold, (ii) that Selling Lender owns the Selling Lender Indebtedness free and clear of any liens or encumbrances other than the Participation Interest and the rights of the Participant under this Agreement, and (iii) the Selling Lender has the right to assign the Selling Lender Indebtedness and the assignment is duly authorized by Selling Lender. Upon consummation of the purchase of the Selling Lender Indebtedness this Agreement shall automatically terminate and be of no further force and effect.

12. Notices. All notices and other communications provided to a party hereto under or in connection with this Agreement shall be in writing or a facsimile transmission and shall be addressed or delivered to such party at its address or facsimile number set forth below:

If to Participant, to the following address:

Front Street Re (Cayman) Ltd.
Sterling House
16 Wesley Street
PO Box HM 534
Hamilton HM CX
Bermuda
Attention: Chief Investment Officer
Email: treasury@frontstreetre.bm

With a copy to:

Drinker Biddle & Reath LLP
600 Campus Dr.
Florham Park, NJ 07932-1047
Attn: Robert K. Malone
Facsimile: 973-549-7080
Email: robert.malone@dbr.com

If to the Selling Lender, to the following addresses:

Salus CLO 2012-1, Ltd.
c/o Salus Capital Partners, LLC
197 First Avenue, Suite 250
Needham, MA 02494
Attention: Brian Kennedy
Facsimile: (781) 459-0058
Email: bkennedy@saluscapital.com

With a copy to:

Greenberg Traurig, LLP
One International Place, 20th Floor
Boston, MA 02110
Attn: Jeffrey M. Wolf, Esq.
Facsimile: (617) 279-8447
Email: wolfje@gtlaw.com

or at such other address (which may be a facsimile number) as may be designated by such party in a notice to the other parties. Any notice, if delivered and properly addressed or if mailed and properly addressed with postage prepaid, shall be deemed given when received, or, if delivered by facsimile, shall be deemed given when transmitted, receipt confirmed.

13. Amendments, etc. No amendment, modification or waiver of, and no consent to departure by the other party from, any provision of this Agreement shall be effective unless in writing and signed by the Selling Lender and the Participant, and then any such waiver or consent shall be effective only in the specific instance for the specific purpose for which given. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior discussions, understandings, term sheets or other writings or agreement, whether written or oral, with respect thereto.

14. Binding Effect; No Third-Party Beneficiaries. This Agreement shall become effective upon its execution and delivery by the Selling Lender and the Participant and thereafter shall be binding on and inure to the benefit of the Selling Lender and the Participant. All undertakings, agreements, representations and warranties contained herein are solely for the benefit of Selling Lender and Participant and there are no other parties who are intended to be benefited in any way by this Agreement.

15. Governing Law. This Agreement and the rights, interest and obligations of the Selling Lender and the Participant created hereunder (including, without limitation, the characterization of the participation interests of the Participant hereunder as an ownership interest rather than as indebtedness of the Selling Lender) shall be governed by and construed and interpreted in accordance with the laws of the State of New York, without reference to principles of conflicts of law.

16. Headings. Section headings are used in this Agreement for convenience of reference only and shall not affect the meaning of this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts, and by the parties hereto in separate counterparts, each of which shall be an original and all of which taken together will constitute one and the same agreement.

[Signature pages follow.]

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

SALUS CLO 2012-1, LTD.,
as Selling Lender

By: Salus Capital Partners II, LLC,
Its: Collateral Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

FRONT STREET RE (CAYMAN) LTD.,
as Participant

By: _____
Name:
Title:

Exhibit D

DIP Budget

Frederick's of Hollywood, Inc. et al.
 13 Week Cash Flow
 (\$000s)

Week Ending	Week													4/19-7/18 13 Weeks Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	
	APRIL 4/25/2015	5/2/2015	5/9/2015	MAY 5/16/2015	5/23/2015	5/30/2015	6/6/2015	JUN 6/13/2015	6/20/2015	6/27/2015	JULY 7/4/2015	7/11/2015	7/18/2015	Total
Total Cash from Sales	315	335	330	340	340	328								1,988
Lease Deposit return	290													290
Credit Card Processor Deposit Return												500		500
Total Operating Cash Receipts (A)	605	335	330	340	340	328						500		2,778
Disbursements														
Payroll	600		221	299	221		294			97		97	276	2,106
Employee Benefits	138	15	147	150	186	15	46	40	9		9		67	823
Rent		53						22						75
Sales Tax	275	275				37			115	76				778
Ecom Exp Freight	80	40	40	40	40	40	40							320
Ecom Exp Call Center Contractor		50				50								100
Ecom Exp Credit Card Processing fees	75	34	37	41	33	39	33							293
Ecom Exp Other	424	11	112	55	233	143	115							1,093
General Insurance	45	23			15	11	23			15		23	9	164
General Utility Adequate Assurance Deposit	20													20
General Contracts Cure						1,244								1,244
General Other	60	25	25	25	25	25	25	25	25	25	25	25	25	360
Bankruptcy Admin														
Debtor Counsel			392					364					212	968
Post Default Carveout	100													100
Debtor Claims/Noticing Agent			50					50					75	175
Debtor Restructuring Consultant	50					50				50			50	200
Unsecured Committee			98					91					53	242
Secured Lender Counsel - S			25									63	38	126
Secured Lender Counsel - FS			25									16	38	79
Committee Financial Advisor			66					117					36	218
US Trustee													30	30
Secured Loan Adequate Protection		143				143								285
DIP Fees & Interest	300	14				59							5	378
Opening Cash on Hand at Filing	(793)													(793)
Total Operating Expenses	1,373	683	1,237	610	842	1,770	1,219	180	272	104	154	25	915	9,383
Weekly DIP Loan Draw	1,373	683	1,237	610	842	1,770	1,219	180	272	104	154	25	915	9,383
Cumulative DIP Loan Drawn	1,373	2,056	3,292	3,902	4,744	6,514	7,733	7,913	8,185	8,289	8,443	8,468	9,383	

(A) All Cash receipts received post-petition will continue to be swept by the Pre-Petition Agent to pay down the Pre-Petition Revolver and Non-Participated FILO Advance.