

EXHIBIT B

DIP Credit Agreement

**SENIOR SECURED AND SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of

January 18, 2017

LIMITED STORES, LLC

The Lead Borrower

For

THE BORROWERS NAMED HEREIN

THE GUARANTORS

CERBERUS BUSINESS FINANCE, LLC

As Administrative Agent and Collateral Agent

And

THE LENDERS

NAMED HEREIN

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EXHIBITS

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**SENIOR SECURED AND SUPERPRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT** dated as of January 18, 2017 among:

- (a) **LIMITED STORES, LLC** (in such capacity, the “**Lead Borrower**”), a limited liability company organized under the laws of the State of Delaware, with its principal executive offices at Three Limited Parkway, Columbus, Ohio 43230, for itself and as agent for the other Borrowers; and
- (b) the **BORROWERS** now or hereafter party hereto; and
- (c) the **GUARANTORS** now or hereafter party hereto; and
- (d) **CERBERUS BUSINESS FINANCE, LLC**, a Delaware limited liability company (“**Cerberus**”), with offices at 875 Third Avenue, New York, NY 10022, as administrative agent (in such capacity, the “**Administrative Agent**”) for its own benefit and the benefit of the other Credit Parties; and
- (e) **CERBERUS**, as collateral agent (in such capacity, the “**Collateral Agent**”) for its own benefit and the benefit of the other Credit Parties; and
- (f) The **LENDERS** party hereto.

RECITALS

The Borrowers and the Guarantors have commenced cases (the “**Chapter 11 Cases**”) under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and the Borrowers and the Guarantors have retained possession of their assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession.

The Borrowers and the Guarantors have asked the Lenders to make post-petition loans and advances to the Borrowers consisting of senior secured priming and superpriority revolving loans in an aggregate principal amount not to exceed \$6,000,000 at any time outstanding as provided herein. The proceeds of the revolving loans shall be used, subject to the other terms and conditions of this Agreement, to (a) pay fees and expenses related to this Agreement and the Chapter 11 Cases, and consistent with the Budget, (b) repay the Loans or any other Obligations and (c) fund working capital of the Loan Parties consistent with the Budget and subject to the variances set forth herein. The Lenders are severally, and not jointly, willing to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

In consideration of the mutual covenants herein contained and benefits to be derived herefrom, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS; CERTAIN TERMS

SECTION 1.01 **Definitions.**

As used in this Agreement, the following terms have the meanings specified below, such meanings to be applicable equally to both the singular and plural forms of such terms:

“**Account(s)**” means “accounts” as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, or (iii) arising out of the use of a credit or charge card or information contained on or for use with the card. The term “Account” does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

“**Account Debtor**” means each debtor, customer or obligor in any way obligated on or in connection with any Account.

“**Acquisition**” means (a) an Investment in or a purchase of 50% or more of the Equity Interests of a Person, (b) a purchase or acquisition of all or substantially all of the assets or properties of a Person or of any business unit of a Person, (c) any merger or consolidation of any Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets or 50% or more of the Equity Interests of any Person, in each case in any transaction or group of transactions which are part of a common plan.

“**Additional Amount**” has the meaning provided therefor in Section 2.17.

“**Adjusted LIBOR Rate**” means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum determined by the Administrative Agent (rounded upwards, if necessary, to the next 1/100 of one percent) by dividing (a) LIBOR Rate for such Interest Period by (b) 100% minus the Reserve Percentage. The Adjusted LIBOR Rate shall be adjusted on and as of the effective date of any change in the Reserve Percentage.

“**Administrative Agent**” has the meaning provided in the preamble to this Agreement.

“**Administrative Agent’s Account**” means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

“**Affiliate**” means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under

common Control with the Person specified. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an “Affiliate” of any Loan Party.

“**Agents**” means, collectively, the Administrative Agent and the Collateral Agent.

“**Agreement**” means this Senior Secured and Superpriority Debtor-In-Possession Credit Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing.

“**Applicable Law**” means as to any Person: (a) all laws, statutes, rules, regulations, orders, codes, ordinances or other requirements having the force of law; and (b) all court orders, decrees, judgments, injunctions, notices, binding agreements and/or rulings, in each case of or by any Governmental Authority which has jurisdiction over such Person, or any property of such Person.

“**Applicable Lenders**” means the Required Lenders or all Lenders, as applicable.

“**Asset Purchase Agreement**” means an asset purchase agreement approved by the Bankruptcy Court, and consented to by the Agents and the Lenders, as the stalking-horse purchase agreement (or other purchase agreement approved by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code and consented to by the Agent and the Lenders) in respect of the proposed Sale, as the same may be amended or otherwise modified from time to time with the consent of the Agents and the Required Lenders.

“**Assignment and Acceptance**” means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“**Available Commitment**” means the amount by which, from time to time, (a) the Total Commitment applicable at such time, exceeds (b) the aggregate outstanding principal amount of Loans such time.

“**Avoidance Proceeds**” has the meaning provided in the DIP Orders.

“**Bankruptcy Code**” means the United States Bankruptcy Code (11 U.S.C. § 101, et seq.) and any successor statute.

“**Bankruptcy Court**” has the meaning provided in the recitals to this Agreement, or any other court having jurisdiction over the Chapter 11 Cases from time to time.

“**Blocked Account**” has the meaning provided in Section 2.13(c).

“**Blocked Account Banks**” means the banks with whom deposit accounts in which funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“**Board of Governors**” means the Board of Governors of the Federal Reserve System of the United States of America.

“**BofA Cash**” has the meaning provided in the DIP Orders.

“**Borrowers**” means, collectively, the Lead Borrower, the Persons named on Schedule 1.1 annexed hereto, and each other Person who shall from time to time enter into a Joinder Agreement.

“**Borrowing**” means the incurrence of a Loan.

“**Breakage Cost**” has the meaning provided in Section 2.11(b).

“**Budget**” means (a) means a cash flow forecast setting forth all projected cumulative and line-item cash receipts and disbursements on a weekly basis for the period beginning as of the week of the Petition Date through and including the 13th week after the Petition Date, broken down by week, including the anticipated weekly uses of the proceeds of the Loans for such period, which shall include, among other things, available cash, cash flow, payment of trade payables and ordinary course expenses, total cash expenditures, fees and expenses relating to the Loan Documents and the Chapter 11 Cases, and working capital and other general corporate needs, which forecast shall be in form and substance reasonably satisfactory to the Agents and the Required Lenders and (b) any updated Budget delivered to the Agents pursuant to Section 5.01(a), which shall have a duration and otherwise be in form and substance satisfactory to the Agents and the Required Lenders.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, however, that when used in connection with a LIBOR Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“**Capital Expenditure**” means, with respect to any Person for any period, the aggregate of all cash expenditures by such Person and its Subsidiaries during such period for the acquisition, construction, replacement, repair, substitution or improvement of fixed or capital assets or additions to equipment, in each case required to be capitalized under GAAP, plus reserve deposits made in such period in respect of any such items and minus reserve releases made in such period in respect of any such items.

“**Capital Lease Obligations**” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP; for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Carve-Out Expenses**” means:

(a) statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6);

(b) fees payable to the Clerk of the Bankruptcy Court;

(c) all reasonable fees and expenses up to \$50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code; and

(d) subject to the terms and conditions of the DIP Orders, as applicable, (i) the unpaid and outstanding reasonable fees and expenses actually incurred on or after the Petition Date and prior to the Carve-Out Trigger Date, and approved and allowed by a final order of the Bankruptcy Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code by Professionals, in an amount not to exceed the amounts set forth for such Professional (on a Professional-by-Professional basis) for the periods prior to the Carve-Out Trigger Date in the Budget (ii) the “Transaction Fee” (as defined in that certain engagement letter, dated October 1, 2016, between Guggenheim and the Loan Parties in an amount not to exceed \$1,500,000 (subject to credits for monthly fees) that (a) becomes due and owing upon the consummation of a sale of the IP Sale Assets and (b) is permitted to be paid by order of the Bankruptcy Court, and (iii) the reasonable fees and expenses actually incurred, and approved and allowed by a final order of the Bankruptcy Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code, by the Professionals during the Carve-Out Expense Reduction Period in an aggregate sum not to exceed the Professional Expense Carve-Out Cap.

“**Carve-Out Expense Reduction Period**” means any period on and after a Carve-Out Trigger Date.

“**Carve-Out Trigger Date**” means a date on which a Carve-Out Trigger Notice is delivered.

“**Carve-Out Trigger Notice**” means a notice delivered by the Administrative Agent to the Borrowers, or its lead counsel, the U.S. Trustee, and lead counsel to the Committee indicating that an Event of Default under this Agreement or any other Loan Document or a default by any Loan Party in any of its obligations under any of the DIP Orders, in either case, has occurred.

“**Cash Receipts**” has the meaning provided therefor in Section 2.13(c).

“**Cerberus**” has the meaning provided in the preamble to this Agreement.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

“**Change in Control**” means, at any time:

(a) a change in the Control of the Parent such that the Loan Parties are not Controlled by the Sponsor; or

(b) the Parent fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party free and clear of all Liens (other than those Liens specified in clauses (a), (d) and (m) of the definition of Permitted Encumbrances and the Liens in favor of the Collateral Agent, for its own benefit and the ratable benefit of the other Credit Parties), except where such failure is as a result of a transaction permitted by the Loan Documents.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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.

“**Chapter 11 Cases**” has the meaning provided in the recitals to this Agreement.

“**Charges**” has the meaning provided therefor in Section 9.13.

“**Charter Document**” means as to any Person, its partnership agreement, joint venture agreement, certificate or articles of incorporation, certificate or articles of formation or organization, operating agreement, membership agreement or similar constitutive document or agreement, its by-laws, and other agreements with the Sponsor relating to the Control of such Person.

“**Closing Fee**” has the meaning provided in Section 2.14.

“**Collateral**” has the meaning specified therefor in Section 2.20(a), and includes all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any other Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

“**Collateral Agent**” has the meaning provided in the preamble to this Agreement.

“**Commitment**” means, with respect to each Lender, the aggregate commitment(s) of such Lender hereunder to make Loans to the Borrowers in the amount set forth opposite its name on Schedule 1.2 hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced in accordance with the terms of this Agreement.

“**Commitment Percentage**” means, with respect to each Lender, that percentage of the Commitments of all Lenders hereunder to make Loans to the Borrowers, in the amount set forth opposite such Lender’s name on Schedule 1.2 hereto or in the Assignment and Acceptance

pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced in accordance with the terms of this Agreement.

“**Committee**” means, collectively, any official committee of unsecured creditors and any other official committee appointed in any of the Chapter 11 Cases under Section 1102 of the Bankruptcy Code.

“**Control**” means the possession, directly or indirectly, of the power (a) to vote at least a majority of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms “Controlling” and “Controlled” have meanings correlative thereto.

“**Control Agreement**” means a control agreement, in form and substance reasonably satisfactory to the Agents, executed and delivered by a Loan Party, the Collateral Agent and the applicable securities intermediary with respect to a securities account or a bank with respect to a deposit account.

“**Credit Party**” means (a) the Agents, (b) the Lenders and their Affiliates, (c) the beneficiaries of each indemnification obligation undertaken by any Borrower under Section 9.03 hereof, (d) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (e) the successors and assigns of each of the foregoing.

“**Credit Party Expenses**” means, without limitation, (all of the following to the extent incurred in connection with this Agreement and the other Loan Documents) (i) all reasonable documented out-of-pocket expenses incurred by the Agents and their Affiliates, and the Lenders, including the reasonable fees, charges and disbursements of counsel for the Agents and the Lenders, outside consultants for the Agents and the Lenders (including, without limitation, inventory appraisers, commercial finance examiners and credit rating agency), in connection with (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including the preparation of any additional Loan Documents or the review of any related agreements, instruments and documents and in connection with the Chapter 11 Cases, (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents’ or any of the Lenders’ rights under this Agreement or the other Loan Documents including through participation in the Chapter 11 Cases, any successor cases under Chapter 11 or Chapter 7 of the Bankruptcy Code, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents’ or the Lenders’ claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, including any contested matters or adversary proceedings in or related to any of the Chapter 11 Cases, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking

possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, including through participation in the Chapter 11 Cases, (i) any attempt to collect from any Loan Party, including through participation in the Chapter 11 Cases, (j) all liabilities and costs arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property, (k) any Environmental Liabilities incurred in connection with the investigation, removal, cleanup and/or remediation of any Hazardous Materials present or arising out of the operations of any facility of any Loan Party, (l) any Environmental Liabilities incurred in connection with any environmental Lien, (m) the rating (whether public or private) of the Loans by one or more rating agencies in connection with any Lender's securitization, or (n) the preparation, delivery and review of pleadings, documents and reports related to the Chapter 11 Cases and any subsequent cases under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Chapter 11 Cases and any subsequent cases under Chapter 7 of the Bankruptcy Code, and general monitoring of the Chapter 11 Cases and any subsequent cases under Chapter 7 of the Bankruptcy Code, and (o) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing.

"DDAs" means any checking or other demand deposit account maintained by the Loan Parties, including without limitation, those listed on Schedule 2.13(a). All funds in such DDAs shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agents and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the DDAs.

"Default" means any event or condition that upon notice, lapse of any cure period or both would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning provided in Section 2.08.

"Delinquent Lender" has the meaning provided in Section 8.15.

"DIP Orders" means the Interim DIP Order and the Final DIP Order.

"Disbursement Accounts" shall have the meaning set forth in Section 2.13(e).

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.05(a).

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person.

"Dollars," "dollars" or "\$" refers to lawful money of the United States of America.

“**Enforcement Notice**” has the meaning provided for in the DIP Orders, as applicable.

“**Environmental Laws**” means all Applicable Laws issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the protection of human health or the environment, to the handling, treatment, storage, disposal of Hazardous Materials or to the assessment or remediation of any Release or threatened Release of any Hazardous Material or to the environment.

“**Environmental Liability**” means any liability, contingent or otherwise (including, without limitation, any liability for damages, natural resource damage, costs of environmental remediation, administrative oversight costs, fines, penalties or indemnities), of any Loan Party directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equipment**” means equipment (as that term is defined in the UCC), and includes machinery, machine tools, motors, furniture, furnishings, vehicles (including motor vehicles), computer hardware, tools, parts, and goods (other than consumer goods, farm products, Inventory or fixtures), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

“**Equity Interests**” shall mean, as to any Person, all of the authorized shares of capital stock of (or other ownership or profit interests in) such Person, including all classes of common and preferred capital stock, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), rights to receive distributions of cash and other property, and to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether voting or nonvoting, whether or not such interests include rights entitling the holder thereof to exercise control over such Person, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Parent, is treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code or, solely for purposes of Section 302 of ERISA and Section 412 of the

Internal Revenue Code, is treated as a single employer under Section 414 of the Internal Revenue Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived; (c) the filing, pursuant to Section 412(d) of the Internal Revenue Code or Section 303(d) of ERISA, of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Parent or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Parent or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Parent or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Event of Default” has the meaning provided therefor in Section 7.01. An “Event of Default” shall be deemed to have occurred and to be continuing unless and until that Event of Default has been duly waived in writing in accordance with the terms of this Agreement.

“Existing Control Agreements” means the Control Agreements in effect as of the Petition Date between the Pre-Petition Collateral Agent and the Blocked Account Banks in respect of the Blocked Accounts.

“Extraordinary Receipts” means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Sections 2.12(a) and (b) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (excluding, so long as no Event of Default has occurred and is continuing, business interruption insurance), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (excluding, so long as no Event of Default has occurred and is continuing, the portion thereof that represents out-of-pocket losses of such Person), (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (excluding, so long as no Event of Default has occurred and is continuing, the portion thereof that represents out-of-pocket losses of such Person) (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Parent or any of its Subsidiaries or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person) and (g) any purchase price adjustment received in connection with any purchase agreement (other than working capital purchase price adjustments).

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight

Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Final DIP Order**” means the final order of the Bankruptcy Court with respect to the Loan Parties, substantially in the form of the Interim DIP Order and otherwise in form and substance satisfactory to the Agents, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agents and the Borrowers.

“**Final DIP Order Entry Date**” means the date on which the Final DIP Order shall have been entered by the Bankruptcy Court.

“**Final Effective Date**” has the meaning specified therefor in Section 4.02.

“**Final Period**” means the period commencing on the Final Effective Date and ending on the Termination Date.

“**Financial Officer**” means, with respect to any Loan Party, the chief financial officer, treasurer, assistant treasurer, controller or assistant controller of such Loan Party.

“**GAAP**” means principles which are consistent with those promulgated or adopted by the Financial Accounting Standards Board and its predecessors (or successors) in effect and applicable to that accounting period in respect of which reference to GAAP is being made.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, tribunal, 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).

“**Guarantee**” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“**Guaranteed Obligations**” has the meaning specified therefor in Section 10.01

“**Guarantor**” and “**Guarantors**” means the Parent, the Borrower, each Subsidiary of the Borrowers and each other Person which guarantees all or any part of the Obligations.

“**Guaranty**” means (a) the guaranty of each Guarantor party hereto contained in Article X hereof and (b) each other guaranty made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders by execution of a Joinder Agreement or otherwise.

“**Guggenheim**” means Guggenheim Securities, LLC.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, mold, or fungi, and all other substances or wastes of any nature regulated pursuant to any Environmental Law because of their dangerous or deleterious properties, including any material listed as a hazardous substance under Section 101(14) of CERCLA.

“**Indebtedness**” of any Person means, without duplication:

(a) All obligations of such Person for borrowed money (including any obligations which are without recourse to the credit of such Person) or with respect to deposits or advances of any kind;

(b) All obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) All obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;

(d) All obligations of such Person in respect of the deferred purchase price of property or services (excluding accrued expenses and current accounts payable incurred after the Petition Date and not outstanding for more than 30 days after the date such payable was created) except to the extent contested in good faith and with respect to which adequate reserves have been set aside for the payment thereof;

(e) 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) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed;

(f) All Guarantees by such Person of Indebtedness of others;

(g) All Capital Lease Obligations of such Person;

(h) All obligations, contingent or otherwise, of such Person as an obligor in respect of letters of credit and letters of guaranty with respect to Indebtedness;

(i) All obligations, contingent or otherwise, of such Person in respect of bankers' acceptances;

(j) All Swap Contracts; and

(k) The principal and interest portions of all rental obligations of such Person under any Synthetic Lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

Indebtedness shall not include (A) any sale-leaseback transactions to the extent the lease or sublease thereunder is not required to be recorded under GAAP as a Capital Lease, (B) any obligations relating to overdraft protection and netting services, or (C) any preferred stock required to be included as Indebtedness in accordance with GAAP and FAS 150.

The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnitee" has the meaning provided therefor in Section 9.03(b).

"Information" has the meaning provided therefor in Section 9.15.

"Interest Payment Date" means, with respect to any Prime Rate Loan or LIBOR Loan, the first day of each calendar month.

"Interest Period" means, with respect to any LIBOR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one (1), two (2) or three (3) months thereafter, as the Lead Borrower may elect by notice to the Administrative Agent in accordance with the provisions of this Agreement; provided, however, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month during which such Interest Period ends) shall end on the last Business Day of the calendar month of such Interest Period, (c) any Interest Period that would otherwise end after the Termination Date shall end on the Termination Date, and (d) notwithstanding the provisions of clause (c), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBOR Borrowing would be for a shorter period, such Interest Period shall not be available hereunder. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“**Interim DIP Order**” means the order of the Bankruptcy Court with respect to the Loan Parties, substantially in the form of Exhibit B and otherwise in form and substance satisfactory to the Collateral Agent, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agents, the Required Lenders and the Borrowers.

“**Interim DIP Order Entry Date**” means the date on which the Interim DIP Order shall have been entered by the Bankruptcy Court.

“**Interim Effective Date**” means the date on which all of the conditions precedent set forth in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“**Interim Period**” means the period commencing on the Interim Effective Date and ending on the earlier to occur of (a) the Final Effective Date and (b) the Termination Date.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986 and the Treasury regulations promulgated thereunder, as amended from time to time.

“**Inventory**” means, with respect to any Person, all goods and merchandise of such Person, including, without limitation, all raw materials, work-in-process, packaging, supplies, materials and finished goods of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account Receivable or cash, but excluding Equipment.

“**Investment**” means with respect to any Person:

(a) any Equity Interests, evidence of Indebtedness or other security of another Person, including any option, warrant or right to acquire the same;

(b) any loan, advance, contribution to capital, extension of credit (except for current trade and customer accounts receivable for inventory sold or services rendered in the ordinary course of business and payable in accordance with customary trade terms) to another Person;

(c) any Acquisition; and

(d) any other investment or interest in any Person, including any Capital Expenditure,

in all cases whether now existing or hereafter made. For purposes of calculation, the amount of any Investment outstanding at any time shall be the aggregate cash Investment less all cash returns, cash dividends and cash distributions (or the fair market value of any non-cash returns, dividends and distributions) received by such Person.

“**IP Sale Assets**” has the meaning provided in the DIP Orders.

“**Lead Borrower**” has the meaning provided in the preamble to this Agreement.

“**Lease**” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“**Lenders**” means the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement as set forth in Section 9.04(b).

“**LIBOR Borrowing**” means a Borrowing comprised of LIBOR Loans.

“**LIBOR Loan**” shall mean each portion of a Term Loan that bears interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of ARTICLE II.

“**LIBOR Rate**” means, with respect to each day during each Interest Period pertaining to a LIBOR Loan, the greater of (a) 1.50% per annum and (b) the rate per annum rate appearing on Bloomberg L.P.’s (the “**Service**”) Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) two Business Days prior to the beginning of such Interest Period, in an amount approximately equal to the principal amount of the LIBOR Loan to which such Interest Period is to apply and for a period of time comparable to such Interest Period, which determination shall be conclusive absent manifest error.

“**Lien**” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Loan**” means a loan made by a Lender to the Borrowers pursuant to Article II or any other loan made or deemed made by any Agent or Lender hereunder.

“**Loan Account**” has the meaning provided therefor in Section 2.15.

“**Loan Documents**” means this Agreement, the Notes, the Interim DIP Order, the Final DIP Order, any Control Agreements, any guaranty, any security agreement or any pledge agreement entered into by any Loan Party with respect to the Obligations, and any other agreement, instrument, certificate, report and other document executed and delivered by the Loan Parties in favor of any Agent or Lender pursuant hereto or thereto or otherwise evidencing, pertaining to or securing any Loan or any other Obligation.

“**Loan Party**” or “**Loan Parties**” means the Borrowers and the Guarantors.

“**Management Services Agreement**” means that certain Management Services Agreement dated as of August 3, 2007 by and between the Parent and Sun Capital Partners Management V, L.L.C.

“**Margin Stock**” has the meaning provided therefor in Regulation U.

“Material Adverse Effect” means any event, fact, or circumstance, which has a material adverse effect on, (a) the ability of the Loan Parties taken as a whole to repay the Loans or to perform any of their obligations under the Loan Documents, (b) the legality, validity or enforceability of this Agreement or any other Loan Documents taken as a whole, (c) any of the rights or remedies of the Credit Parties under this Agreement or any other Loan Documents or (d) the Collateral (taken as a whole), Agent’s Liens on the Collateral (taken as a whole) or the priority or perfection of any such Lien.

“Material Indebtedness” means (i) the Pre-Petition Term Loan Obligations and (ii) any other Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$500,000. For purposes of determining the amount of Material Indebtedness at any time, the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof.

“Measurement Period” means the trailing four-week period ending on Sunday of each week; provided, that, with respect to the Measurement Periods ending on the first, second, third and fourth Sundays following the Petition Date, the Measurement Period shall mean the period from the Petition Date to such Sunday, as applicable.

“Maximum Rate” has the meaning provided therefor in Section 9.13.

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

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, in each case net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses (including appraisal, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party or a Subsidiary to third parties (other than Affiliates, except to the extent permitted under Section 6.07 hereof) in connection with such event, (ii) in the case of a sale or other disposition of an asset (including pursuant to a casualty or condemnation), the amount of all payments required to be made by any Loan Party as a result of such event to repay (or to establish an escrow for the repayment of) any Indebtedness (other than the Obligations) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, or a Permitted Encumbrance that is senior to the Lien of the Collateral Agent, and (iii) as long as no Event of Default then exists or would arise therefrom, capital gains or other income taxes paid or payable as a result of any such sale or disposition (after taking into account any available tax credits or deductions).

“New Lending Office” has the meaning provided therefor in Section 2.17(d).

“Non-U.S. Lender” has the meaning provided therefor in Section 2.17(d).

“Notice of Borrowing” has the meaning specified therefor in Section 2.02(a).

“**Obligations**” means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders under the Loan Documents and, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by the Chapter 11 Cases. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation to pay principal, interest, charges, fees, Credit Party Expenses, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person pursuant to the Loan Documents to reimburse any amount in respect of any of the foregoing that any Agent or any Lender may elect to pay or advance on behalf of such Person.

“**Other Taxes**” has the meaning provided there in Section 2.17(b).

“**Parent**” means Limited Stores Company, LLC, a Delaware limited liability company.

“**Participant**” shall have the meaning provided therefor in Section 9.04(e).

“**Participation Register**” has the meaning provided therefor in Section 9.04(e)(vii).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Permitted Disposition**” means any of the following:

- (a) Dispositions of any assets other than the IP Sale Assets;
- (b) sales or other transfers of assets to another Loan Party;
- (c) the expiration of any contract, contract right or other agreement in accordance with its terms; and
- (d) the entry into and performance of the agreements under the Asset Purchase Agreement with respect to the Sale.

“**Permitted Encumbrances**” means:

- (a) liens imposed by law for Taxes that are not yet due and payable or are being contested in compliance with Section 5.05;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than forty-five (45) days or are being contested in compliance with Section 5.05;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) judgment Liens (other than for the payment of taxes, assessments or other governmental charges) in respect of judgments that do not constitute an Event of Default under Section 7.01(g);

(e) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way, development, site plan or similar agreements and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or minor survey matters that are disclosed by current surveys that, in each case, do not materially detract from the value of the affected property and do not materially interfere with the current use of the Real Estate in any material respect;

(f) any Lien on any property or asset of any Loan Party set forth in Schedule 6.02, but not the extension of coverage thereof to other property or the extension of maturity, refinancing or other modification of the terms thereof or the increase of the Indebtedness secured thereby;

(g) Liens in favor the Collateral Agent, for its own benefit and the benefit of the other Credit Parties;

(h) Liens of landlords and mortgagees of landlords existing as of the Petition Date, (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(j) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Disposition until such deposits are earned

(k) Liens on insurance proceeds incurred in the ordinary course of business in connection with the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness and consistent with the Budget;

(l) security given to a public or private utility or any Governmental Authority as required in the ordinary course of business;

(m) Liens created pursuant to the Pre-Petition Term Loan Documents securing the Pre-Petition Term Loan Obligations; provided that, such Liens are and will remain junior and subordinate in all respects to the Liens securing the Obligations with respect to all Collateral pursuant to the DIP Orders;

(n) the Pre-Petition Replacement Liens; and

(o) Permitted Priority Liens to the extent not covered in clauses (a) through (l) above.

“Permitted Indebtedness” means each of the following:

(a) Indebtedness created under the Loan Documents;

(b) Indebtedness set forth in Schedule 6.01 but not any increase in the amount of any such Indebtedness, as set forth in such Schedule, or any other modification of the terms thereof;

(c) Indebtedness of any Loan Party to any other Loan Party;

(d) Indebtedness incurred in connection with the financing of insurance premiums and consistent with the Budget; and

(e) the Pre-Petition Term Loan Obligations.

“Permitted Investments” means each of the following:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America) or any state or state agency thereof, in each case maturing within one (1) year from the date of acquisition thereof;

(b) Investments in commercial paper maturing within 360 days from the date of acquisition thereof and having, at the date of acquisition, the highest or next highest credit rating obtainable from S&P or from Moody’s;

(c) Investments in certificates of deposit, banker’s acceptances and time deposits maturing within 360 days from the date of acquisition thereof which are issued or guaranteed by, or placed with, and demand deposit and money market deposit accounts issued or offered by, any Lender or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer;

(e) shares of any money market mutual fund that has substantially all of its assets invested in the types of investments referred to in clauses (a) through (d), above and which mutual fund has assets in excess of \$2,500,000,000;

(f) Investments existing on the Petition Date and set forth on Schedule 6.04, but not any increase in the amount of any such Investment, as set forth in such Schedule or any other modification of the terms thereof; and

(g) advances to employees for the purpose of travel in the ordinary course of business consistent with the Budget and in an aggregate outstanding amount not to exceed \$25,000 at any time.

“Permitted Priority Liens” means valid, perfected and unavoidable Liens permitted under the applicable Pre-Petition Term Loan Documents, but only to the extent that (a) such Liens are in existence as of the Petition Date and are permitted by the applicable Pre-Petition Term Loan Documents to be senior to the Liens granted therein, and (b) such Liens are actually senior to the Liens granted to secure the Pre-Petition Term Loan Obligations under law; provided, for the avoidance of doubt, that (1) the Lien in the BofA Cash is a Permitted Priority Lien and (2) the Liens in clause (m) and (n) of the definition of Permitted Encumbrances shall not be Permitted Priority Liens.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” means the date on which the Loan Parties filed voluntary petitions under Chapter 11 of the Bankruptcy Code.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which the Lead Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Prepayment Event” means, individually, each of the events listed in Section 2.12 (a)-(c).

“Pre-Petition Adequate Protection Claim” has the meaning provided in the DIP Orders, as applicable.

“Pre-Petition Administrative Agent” means, the administrative agent under the Pre-Petition Term Loan Agreement.

“Pre-Petition Agents” means, collectively, the Pre-Petition Administrative Agent and the Pre-Petition Collateral Agent.

“Pre-Petition Collateral Agent” means, the collateral agent under the Pre-Petition Term Loan Agreement

“Pre-Petition Lenders” means, the lenders under the Pre-Petition Term Loan Agreement.

“Pre-Petition Liabilities” means all outstanding indebtedness, obligations (including obligations in respect of any letters of credit but excluding the Pre-Petition Term Loan Obligations) and liabilities of the Loan Parties incurred prior to the Petition Date plus fees, expenses, and indemnities due thereunder and interest thereon accruing both before and after the Petition Date to the extent allowable under the Bankruptcy Code, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

“Pre-Petition Replacement Liens” has the meaning provided in the DIP Orders, as applicable.

“Pre-Petition Term Loan Agreement” means, the Loan Agreement dated as of December 20, 2011, among Borrowers, Parent, Pre-Petition Lenders and the Pre-Petition Agents, as amended, restated, supplemented or otherwise modified from time to time.

“Pre-Petition Term Loan Documents” means, the Pre-Petition Term Loan Agreement, all guaranties, pledges, security agreements and similar agreements entered into in connection therewith to guaranty or secure any Pre-Petition Term Loan Obligation and each other certificate, agreement and other document entered into in connection therewith, and as further amended, restated, supplemented or otherwise modified from time to time.

“Pre-Petition Term Loan Obligations” means, the “Obligations” under and as defined in the Pre-Petition Term Loan Agreement.

“Prime Rate” means, for any period, the greatest of (a) 3.5% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime shall be effective from and including the date such change is publicly announced as being effective.

“Prime Rate Loan” means each portion of the Loan that bears interest at a rate determined by reference to the Prime Rate in accordance with the provisions of ARTICLE II.

“Professional Expense Carve-Out Cap” means \$200,000; provided that any payment made during the Carve-Out Expense Reduction Period (in respect of fees and expenses that relate to such period) shall reduce the Professional Expense Carve-Out Cap (on a Professional-by-Professional basis) on a dollar-for-dollar basis.

“**Professionals**” means the attorneys, accountants, and other professionals retained, with the approval of the Bankruptcy Court, by the Loan Parties and the Committee and each referred to herein as a “Professional.”

“**Real Estate**” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

“**Register**” has the meaning provided in Section 9.04(c).

“**Regulation U**” means Regulation U of the Board of Governors as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board of Governors as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Related Fund**” shall mean, with respect to any Credit Party which is a fund that invests in loans, any other such fund managed by the same investment advisor as such Credit Party or by an Affiliate of such Credit Party or such advisor under common Control with such Credit Party or advisor, as applicable.

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

“**Release**” has the meaning provided in Section 101(22) of CERCLA.

“**Reports**” has the meaning provided in Section 8.13(b).

“**Required Lenders**” means as of any date, Lenders holding more than 50.1% or more of the Outstanding Term Loans.

“**Reserve Percentage**” means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“**Responsible Officer**” of any Person shall mean the chief executive officer or president of such Person or any other officer having substantially the same authority and responsibility as a chief executive officer or president, or a Financial Officer.

“**Restricted Payment**” means (i) any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Person, (ii) any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value,

direct or indirect, of any Equity Interests of any Person, (iii) any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Person, (iv) any return to any shareholders or other equity holders of any Person on account of their Equity Interests, or any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto on account of their Equity Interests.

“**Sale**” means the sale of the IP Sale Assets pursuant to the Asset Purchase Agreement.

“**Sale Milestones**” means the following milestones with respect to the sale of the IP Sale Assets, in each case, in a manner satisfactory to the Agents, the Lenders, the Pre-Petition Agents and the Pre-Petition Lenders:

(a) entry of an order of the Bankruptcy Court, satisfactory to the Agents, the Lenders, the Pre-Petition Agents and the Pre-Petition Lenders, approving certain bid protections and sale procedures (the “**Sale Procedures Order**”) no later than 21 days after the Petition Date;

(b) entry of a final order of the Bankruptcy Court, satisfactory to the Agents, the Lenders, the Pre-Petition Agents and the Pre-Petition Lenders, approving the Sale (the “**Sale Order**”) no later than 42 days after the Petition Date or such later date agreed to by the Agents and the Pre-Petition Agents (provided that if the purchaser of all or substantially all of the IP Sale Assets waives the requirement that the Sale Order become a final order, the Agents and the Pre-Petition Agents shall be deemed to have waived such condition as well); and

(c) close the Sale no later than the earlier of: (i) 5 days after entry of the Sale Order if the purchaser of all or substantially all of the IP Sale Assets waives the requirement that the Sale Order become a final order and (ii) 15 days after entry of the Sale Order if the purchaser of all or substantially all of the IP Sale Assets does not waive the requirement that the Sale Order become a final order; provided that the time periods in clauses (i) and (ii) may be extended to such later date as agreed to by the Agents and the Pre-Petition Agents in their sole and absolute discretion.

“**S&P**” means Standard & Poor’s.

“**SEC**” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“**Sponsor**” means Sun Capital Partners, Inc. or one or more of its Affiliates.

“**Sponsor Affiliated Lender**” means financial institutions (including commercial finance companies), investment funds or managed accounts with respect to which any Sponsor or an Affiliate of such Sponsor is an Affiliate or an advisor or manager in the ordinary course of business.

“**Store**” means any retail store (which includes any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

“**Subsidiary**” means with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which Equity Interests representing more than 50% of the Equity Interests or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as reasonably determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Synthetic Lease**” means any lease or other agreement for the use or possession of property creating obligations which do not appear as Indebtedness on the balance sheet of the lessee thereunder but which, upon the insolvency or bankruptcy of such Person, may be characterized as Indebtedness of such lessee without regard to the accounting treatment.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Termination Date**” means the date which is the earliest of (a) the date which is 30 days following the date of entry of the Interim DIP Order if the Final DIP Order has not been entered by the Bankruptcy Court on or prior to such date, (b) the date that is four (4) months from the date of this Agreement, (c) the effective date or the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of any plan of reorganization or liquidation in the Chapter 11 Cases; (d) the date on which the Sale is consummated or any other sale of all or substantially all of the Loan Parties’ assets and/or Equity Interests is consummated under Section 363 of the Bankruptcy Code; and (e) such earlier date on which all Loans and other Obligations for the payment of money shall become due and payable in accordance with the terms of this Agreement, the DIP Orders and the other Loan Documents.

“**Total Commitment**” means the sum of the Commitments; provided that (a) prior to the Final Effective Date, such amount shall not exceed \$4,600,000 and (b) on and after the Final Effective Date, such amount shall not exceed \$6,000,000.

“**Transferee**” has the meaning provided therefor in Section 2.17(a).

“**Type**”, when used in reference to any portion of a Term Loan, refers to whether the rate of interest on such portion of a Term Loan is determined by reference to the Adjusted LIBOR Rate or the Prime Rate, as applicable.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“**U.S. Trustee**” means the United States Trustee for the District of Delaware.

“**Unanimous Consent**” means the consent of Lenders (other than Delinquent Lenders) holding 100% of the Commitments (other than Commitments held by a Delinquent Lender).

“**Variance Report**” has the meaning provided in Section 5.01(b).

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other

document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) all financial statements and other financial information provided by the Borrowers to the Agents or any Lender shall be provided with reference to dollars, (g) all references to "\$" or "dollars" or to amounts of money shall be deemed to be references to the lawful currency of the United States of America, and (h) this Agreement and the other Loan Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Borrowers and the Agents and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Loan Documents are not intended to be construed against the Agents or any of the Lenders merely on account of the Agents' or any Lender's involvement in the preparation of such documents.

SECTION 1.03 **Certain Matters of Construction** References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation

or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

SECTION 1.04 Accounting and Other Terms.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect on the Interim Effective Date but without giving effect to FASB ASC 840; provided, however, that if the Lead Borrower notifies the Administrative Agent that the Lead Borrower requests an amendment to any provision hereof to reflect the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then the Lead Borrower and the Agents shall enter into negotiations in order to amend such provision so as to equitably reflect such accounting change with the desired result that the provision be substantially similar to that provision prior to the accounting change, provided that such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such provision shall have been amended in accordance herewith.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the UCC and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the UCC shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Collateral Agent may otherwise determine.

SECTION 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided, however, that with respect to a computation of fees or interest payable to any Agent or any Lender, such period shall in any event consist of at least one full day.

**ARTICLE II
LOAN TERMS AND SECURITY**

SECTION 2.01 Commitments.

(a) Loans. Subject to the terms and conditions of this Agreement, the DIP Orders and the Budget, and relying upon the representations and warranties herein set forth, each Lender severally agrees to make revolving loans to the Borrowers at any time and from time to time from the Interim Effective Date to the Termination Date, or until the earlier reduction of its Commitment to zero in accordance with the terms hereof, in an aggregate principal amount of Loans at any time outstanding not to exceed such Lender’s Commitment Percentage of the Available Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Loans outstanding at any time to the Borrowers shall not exceed the Available Commitment in effect at such time; provided, that, prior to the Final Effective Date, any Notice of Borrowing that would result in the aggregate principal amount of Loans then outstanding exceeding the Available Commitment, shall be funded only if and to the extent that the Administrative Agent and the Lenders consent to such Notice of Borrowing.

(ii) The Commitment of each Lender shall automatically and permanently be reduced to zero on the Termination Date. Within the limits set forth herein, the Borrowers may borrow, repay and reborrow, on or after the Interim Effective Date and prior to the Termination Date, subject to the terms, provisions and limitations set forth herein.

SECTION 2.02 Making the Loans.

(a) The Lead Borrower shall give the Administrative Agent prior written notice in substantially the form of Exhibit C hereto (a “**Notice of Borrowing**”) not later than 12:00 noon, New York City time, on the date which is one (1) Business Day prior to the date on which such Borrowing is to be made (or such shorter period as the Required Lenders and the Administrative Agent are willing to accommodate). Such notice shall be irrevocable, shall contain disbursement instructions and shall specify: (i) whether the proposed borrowing then being requested is to be a Prime Rate Loan or LIBOR Loan and, if it is a LIBOR Loan, the initial Interest Period with respect thereto, (ii) the amount of the proposed borrowing, (iii) the date of the proposed Borrowing (which must be a Business Day), and (iv) the disbursements to be funded with the proposed Loan, in accordance with the approved Budget. If no election of Interest Period is specified in such notice for a proposed Borrowing as a LIBOR Loan, such notice shall be deemed a request for an Interest Period of one (1) month. If no election is made as to the Type of Term Loan, such notice shall be deemed a request for proposed borrowing of Prime Rate Loans. The Administrative Agent and the Lenders may act without liability upon the basis of written or facsimile notice believed by the Administrative Agent in good faith to be from the Lead Borrower (or from any Responsible Officer thereof designated in writing purportedly from the Lead Borrower to the Administrative Agent). The Administrative Agent and each Lender shall be entitled to rely conclusively on any Responsible Officer’s authority to request a Loan on behalf of the Borrowers. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written notice of a proposed borrowing.

(b) The Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Commitment Percentage, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender’s obligations to make the Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender’s obligation to make the Loan requested hereunder, and each Lender shall be obligated to make the Loan required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

SECTION 2.03 Repayment of Loans; Notes.

(a) The outstanding unpaid principal amount of the Loans and other Obligations shall be due and payable on the Termination Date.

(b) Upon the request of any Lender, the Loans made by such Lender shall be evidenced by a Note, duly executed on behalf of the Borrowers, dated the Interim Effective Date, payable to the order of such Lender in an aggregate principal amount equal to such Lender's Commitment.

(c) Each Lender is hereby authorized by the applicable Borrowers to endorse on a schedule attached to each Note delivered to such Lender (or on a continuation of such schedule attached to such Note and made a part thereof), or otherwise to record in such Lender's internal records, an appropriate notation evidencing the date and amount of each payment and prepayment of principal of the Loan, each payment of interest on any such Loan and the other information provided for on such schedule; provided, however, that the failure of any Lender to make such a notation or any error therein shall not affect the obligation of any Borrowers to repay the portion of the Loan made by such Lender in accordance with the terms of this Agreement and the applicable Notes.

(d) Upon receipt of an affidavit and indemnity of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

SECTION 2.04 Interest on Loans.

(a) Subject to Section 2.08, each Prime Rate Loan shall bear interest at a rate per annum that shall be equal to the then Prime Rate, plus 8.75%.

(b) Subject to Section 2.05 through Section 2.08, each LIBOR Loan shall bear interest at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBOR Rate for such Interest Period, plus 10.0%.

(c) Accrued interest on the Loan shall be payable in arrears in cash on each Interest Payment Date applicable thereto, upon any repayment or prepayment thereof (on the amount prepaid) and on the Termination Date (whether by maturity, acceleration or otherwise), and after such termination, on demand.

(d) All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

SECTION 2.05 Conversion and Continuation of the Loan.

(a) The Lead Borrower shall have the right at any time, on three (3) Business Days' prior irrevocable (except to the extent provided in Section 2.06 or Section 2.07 hereof) notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative Agent not later than 11:00 a.m., New York City time, on the third Business Day

preceding the date of any conversion), (i) to convert the outstanding Borrowing of Prime Rate Loans to a Borrowing of LIBOR Loans, or (ii) to continue the outstanding Borrowing of LIBOR Loans for an additional Interest Period, or (iii) to convert the outstanding Borrowing by the Borrowers of LIBOR Loans to a Borrowing of Prime Rate Loans, subject in each case to the following:

(i) At any time that an Event of Default has occurred and is continuing, none of the Loans may be converted into, or continued as, LIBOR Loans.

(ii) If less than all of the Loans are converted, such conversion shall be made pro rata among the Lenders based upon their Commitment Percentages in accordance with the respective principal amounts of the Loans held by such Lenders immediately prior to such conversion;

(iii) The aggregate principal amount of Prime Rate Loans being converted into or continued as LIBOR Loans shall be in an integral of \$100,000 and at least \$500,000;

(iv) The Interest Period with respect to LIBOR Loans effected by a conversion or in respect to LIBOR Loans being continued as LIBOR Loans shall commence on the date of conversion or the expiration of the current Interest Period applicable thereto, as the case may be;

(v) LIBOR Loans may be converted only on the last day of an Interest Period applicable thereto unless the Borrowers pay all Breakage Costs incurred in connection with such conversion; and

(vi) Each request for a conversion or continuation of LIBOR Loans which fails to state an applicable Interest Period shall be deemed to be a request for an Interest Period of one (1) month.

(b) If the Lead Borrower does not give notice to convert any LIBOR Loans, or does not give notice to continue, or does not have the right to continue, any of the Loans as LIBOR Loans, in each case as provided in Section 2.05(a) above, such Borrowing shall automatically be converted to, or continued as, Prime Rate Loans at the expiration of the then-current Interest Period. The Administrative Agent shall, after it receives notice from the Lead Borrower, promptly give each Lender notice of any conversion, in whole or part, of any of the Loans made by such Lender.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers shall have not more than 5 LIBOR Loans in effect at any given time.

SECTION 2.06 Alternate Rate of Interest for the Loans.

If, prior to the commencement of any Interest Period for a LIBOR Loan, the Administrative Agent:

(a) reasonably determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) is advised by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Required Lenders of making or maintaining their portion of the Loans;

then the Administrative Agent shall give notice thereof to the Lead Borrower and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Lead Borrower and the applicable Lenders that the circumstances giving rise to such notice no longer exist, any request for conversion of any of the Loans to, or continuation of any of the Loans as, LIBOR Loans shall be ineffective.

SECTION 2.07 Change in Legality.

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if (i) any Change in Law shall make it unlawful for a Lender to make or maintain a LIBOR Loan or to give effect to its obligations as contemplated hereby with respect to a LIBOR Loan or (ii) at any time the Required Lenders determine that the continuance of a LIBOR Loan has become impracticable as a result of a contingency occurring after the date hereof which materially and adversely affects the London interbank market or the position of such Required Lenders in the London interbank market, then, by written notice to the Lead Borrower, such Required Lenders may (x) declare that LIBOR Loans will not thereafter be made by such Lenders hereunder, whereupon any request by the Lead Borrower for a LIBOR Loan shall, as to such Lenders only, be deemed a request for a Prime Rate Loan unless such declaration shall be subsequently withdrawn; and (y) require that all outstanding LIBOR Loans made by such Lenders be converted to Prime Rate Loans, in which event all such LIBOR Loans shall be automatically converted to Prime Rate Loans as of the effective date of such notice as provided in Section 2.05(b). In the event any Lender shall exercise its rights under clause (i) or the Required Lenders shall exercise their rights under clause (ii) of this Section 2.07(a), all payments and prepayments of principal which would otherwise have been applied to repay the LIBOR Loans that would have been made by such Lenders or the converted LIBOR Loans of such Lenders, shall instead be applied to repay the Prime Rate Loans made by such Lenders in lieu of, or resulting from the conversion of, such LIBOR Loans. Notwithstanding the foregoing, to the extent a determination by the Required Lenders described herein relates to a LIBOR Loan then being requested by the Borrowers, the Borrowers shall have the option to rescind any notice given by the Lead Borrower pursuant to Section 2.05 with respect to the portion of the Loan in respect of which such determination was made by giving notice to the Administrative Agent of such rescission on the date on which such Lenders give notice of their determination (which notice of rescission the Administrative Agent shall promptly transmit to such Lenders).

(b) For purposes of this Section 2.07, a notice to the Lead Borrower pursuant to Section 2.07(a) above shall be effective, if lawful, and if any LIBOR Loans shall then be outstanding, on the last day of the then-current Interest Period; and otherwise such notice shall be effective on the date of receipt by the Lead Borrower.

SECTION 2.08 Default Interest.

Notwithstanding anything in this Agreement to the contrary, after the occurrence of any Event of Default and at all times thereafter until such Event of Default is waived in writing in accordance with the terms of this Agreement, interest shall accrue on the outstanding Loans, fees, indemnities and any other Obligations (after as well as before judgment, as and to the extent permitted by law) at a rate per annum (the “**Default Rate**”) equal to the rate otherwise in effect from time to time pursuant to this Agreement plus two percent (2.00%) per annum and such interest shall be payable on each Interest Payment Date and the Termination Date.

SECTION 2.09 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any holding company of any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate); or

(ii) impose on any Lender or the London interbank market any other condition affecting LIBOR Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost in excess of those incurred for similarly situated lenders to such Lender or maintaining any LIBOR Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or any of the Loans made by such Lender to a level below that which such Lender or such Lender’s holding company would have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.09 and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Lead Borrower and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.09 shall not constitute a waiver of such Lender’s right to demand such

compensation, provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor, and provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.10 Optional Termination or Reduction of Commitments.

(a) The Total Commitment shall terminate on the Termination Date without further notice to or order of the Bankruptcy Court. The Borrowers may, without premium or penalty, reduce the Total Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Loans then outstanding and (B) the aggregate principal amount of all Loans not yet made as to which a Notice of Borrowing has been given by the Lead Borrower under Section 2.02. Each such reduction (1) shall be in an amount which is an integral multiple of \$100,000 (unless the Total Credit Commitment in effect immediately prior to such reduction is less than \$100,000), (2) shall be made by providing not less than three (3) Business Days prior written notice to the Administrative Agent and (3) shall be irrevocable unless such notice is conditioned on a specified transaction, in which case such notice may be revoked if the specified transaction does not occur. Once reduced, the Total Commitment may not be increased. Each such reduction of the Total Commitment shall reduce the Commitment of each Lender proportionately in accordance with its Commitment Percentage.

(b) The Borrowers may, upon at least five (5) days prior written notice to the Administrative Agent (which notice may be revoked if the underlying transaction financing the repayment does not occur), terminate this Agreement by paying to the Administrative Agent, in cash, the outstanding Obligations, in full.

SECTION 2.11 Optional Prepayment of Term Loan; Reimbursement of Lenders.

(a) The Borrowers shall have the right at any time and from time to time to prepay the outstanding Loans in whole or in part, upon at least 5 Business Days' prior notice to the Administrative Agent. Each prepayment made pursuant to this clause (a) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Each notice of prepayment shall specify the prepayment date and the principal amount of Loans to be prepaid. Each notice of prepayment shall, except as set forth in the proviso hereto, be irrevocable and shall commit the Borrowers to prepay such Loans by the amount and on the date stated therein provided that such notice may be revoked if the Borrowers shall reimburse the Lenders for all Breakage Costs within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. The Administrative Agent shall, promptly after receiving notice from the Lead Borrower hereunder, notify each Lender of the principal amount of the Loans held by such Lender which will be prepaid, the prepayment date and the manner of application of the prepayment.

(b) The Borrowers shall reimburse each Lender for any actual loss incurred or to be incurred by the Lenders in the reemployment of the funds resulting from any prepayment (for any reason whatsoever, including, without limitation, conversion to Prime Rate Loans or acceleration by virtue of, and after, the occurrence of an Event of Default) of any LIBOR Loan required or permitted under this Agreement, if such Loan is prepaid other than on the last day of the Interest Period for such Loan. Such loss shall be the amount (herein, collectively, “**Breakage Costs**”) as reasonably determined by such Lender as the excess, if any, of (A) the amount of interest which would have accrued to such Lender on the amount so paid at a rate of interest equal to the Adjusted LIBOR Rate for such Loan, for the period from the date of such payment to the last day in the case of a payment or refinancing of a LIBOR Loan with Prime Rate Loans other than on the last day of the Interest Period for such Loan, of the then current Interest Period for such Loan, over (B) in the case of a LIBOR Loan, the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market. Any Lender demanding reimbursement for such loss shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined and such amounts shall be due within five (5) Business Days after receipt of such notice.

SECTION 2.12 Mandatory Prepayment; Application of Payments.

(a) Dispositions. (i) Immediately upon consummation of the Sale and (ii) within one (1) Business Day after any other Disposition (other than the Sale) of any property or asset of a Loan Party (other than a Permitted Disposition of the type described in clauses (b) and (c) of the definition of Permitted Dispositions), in each case under clauses (i) and (ii) above, the Borrowers shall prepay the outstanding Obligations in accordance with Section 2.12(f) below in an amount equal to 100% of the Net Proceeds received by such Person in connection with such Disposition. Nothing contained in this clause (a) shall permit any Loan Party or any of its Subsidiaries to make any sale, transfer or other disposition other than a Permitted Disposition.

(b) Issuance of Indebtedness and Equity. Within one (1) Business Day after the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or upon an equity issuance by the Parent or any of its Subsidiaries, the Borrowers shall prepay the outstanding Obligations in accordance with Section 2.12(f) below in an amount equal to 100% of the Net Proceeds received by such Person in connection therewith. The provisions of this clause (b) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(c) Extraordinary Receipts. Within five (5) Business Days after the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding Obligations in accordance with Section 2.12(f) below an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts.

(d) DIP Orders. Without limiting any other provision of this Agreement or any other Loan Document permitting or requiring prepayment of the Loans in

whole or in part, the Borrowers shall prepay the Obligations in full on the date which is thirty (30) days following the entry of the Interim DIP Order in the event that the Final DIP Order shall not have been entered on or before such date.

(e) Overadvance. The Borrowers will immediately repay the Loans at any time when the aggregate principal amount of all outstanding Loans exceeds the Available Commitment, to the full extent of any such excess.

(f) Application of Payments. As long as no Event of Default exists and is then continuing, and the Obligations have not been accelerated (if an Event of Default shall have occurred and be continuing, and the Obligations have been accelerated, Section 7.03 shall apply), in the event and on each occasion that all payments made under Sections 2.10, 2.11 or 2.12(a)-(c) hereof shall be allocated by the Administrative Agent first, to repay the Loans among such of the Lenders as are entitled thereby in proportion to their Commitment Percentage, together with all accrued and outstanding interest on the amount so repaid, and second, to pay the other Obligations owing hereunder on a pro rata basis among all such other Obligations. All credits against the Obligations shall be conditioned upon final payment to the Administrative Agent of the items giving rise to such credits. If any item credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the Loan Account and the Borrowers shall indemnify the Credit Parties against all claims and losses resulting from such dishonor or return.

SECTION 2.13 Cash Management; Collection of Accounts.

(a) Annexed hereto as Schedule 2.13(a) is a list of all present DDAs maintained by the Borrowers as of the Petition Date, which Schedule includes, with respect to each depository (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

(b) [Intentionally omitted].

(c) Each Loan Party shall (i) assist the Collateral Agent in continuing (and to the extent necessary, establishing) and maintaining blocked accounts during the term of this Agreement, (together with any DDAs or securities accounts for which the Collateral Agent is the depository or securities intermediary, the “**Blocked Accounts**”) with respect to such Loan Party’s deposit accounts with the financial institutions set forth on Schedule 2.13(c) hereto or other deposit accounts opened after the Interim Effective Date with the prior written consent of the Agents (the “**Blocked Account Bank**”), and shall take such reasonable steps to enforce, collect and receive all amounts owing on the Accounts of the Loan Parties or any of their Subsidiaries, (ii) deposit or cause to be deposited promptly and in any event within one (1) Business Days after the receipt thereof, all proceeds in respect of any Collateral and all available cash receipts received by any Loan Party (including payments made by the Account Debtors directly to any Loan Party, the “**Cash Receipts**”) into a Blocked Account and (iii) with respect to each Blocked Account, use commercially reasonable efforts to deliver to the Collateral Agent within thirty (30) days after the Interim Effective Date an amendment to each Existing Control

Agreement with respect to such Blocked Account providing for the addition of the Collateral Agent as the “first priority” agent, in form and substance satisfactory to the Collateral Agent.

(d) The Blocked Accounts shall be cash collateral accounts, with all cash, checks and similar items of payment in such accounts securing payment of the Obligations, and in which the Loan Parties are hereby deemed to have granted a Lien to Collateral Agent for the benefit of the Agents and the Lenders. All checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness received directly by any Loan Party from any of its Account Debtors, as proceeds from Accounts of such Loan Party or as proceeds of any other Collateral shall be held by such Loan Party in trust for the Agents and the Lenders and if of a nature susceptible to a deposit in a bank account, upon receipt be deposited by such Loan Party in original form promptly and in any event within one (1) Business Day after receipt thereof into a Blocked Account.

(e) The Borrowers may also maintain one or more disbursement accounts (the “**Disbursement Accounts**”) to be used by the Borrowers for disbursements and payments (including payroll) in the ordinary course of business or as otherwise permitted hereunder. The only Disbursement Accounts as of the Petition Date are those described in Schedule 2.13(e).

(f) The Borrowers shall not close DDAs or Blocked Accounts and/or open any new DDAs or Blocked Accounts without the prior written consent of the Collateral Agent and, with respect to any new DDAs, subject to the execution and delivery to the Collateral Agent of appropriate Control Agreements reasonably satisfactory to the Collateral Agent.

(g) If any Account of any Loan Party includes a charge for any tax payable to any Governmental Authority, each Agent is hereby authorized (but in no event obligated) to pay the amount thereof to the proper taxing authority for such Loan Party’s account and to charge the Borrowers therefor. The Agents shall have the right during the continuance of an Event of Default to retain the full proceeds of such Accounts and shall not be liable for any taxes that may be due by reason of the sale and delivery creating such Account.

(h) Nothing herein contained shall be construed to constitute any Agent as agent of any Loan Party for any purpose whatsoever, and the Agents shall not be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof (other than from acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents shall not, under any circumstance or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Accounts of any Loan Party or any instrument received in payment thereof or for any damage resulting therefrom (other than acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents, by anything herein or in any assignment or otherwise, do not assume any of the obligations under any contract or agreement assigned to any Agent and shall not be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof. Notwithstanding any other terms set forth in the Loan Documents, the rights and remedies of the Agents and the

Lenders herein provided, and the obligations of the Loan Parties set forth herein, are cumulative of, may be exercised singly or concurrently with, and are not exclusive of, any other rights, remedies or obligations set forth in any other Loan Document or as provided by law.

SECTION 2.14 Closing Fee.

The Borrowers shall pay to the Administrative Agent for the account of the Lenders, in accordance with their Commitment Percentage, a closing fee (the “**Closing Fee**”) in an amount equal to 1.00% on the Total Commitment (as applicable on the Final Effective Date), which shall be fully earned, non-refundable and payable on the Interim Effective Date.

SECTION 2.15 Maintenance of Loan Account; Statements of Account.

(a) The Administrative Agent shall maintain an account on its books in the name of the Borrowers (the “**Loan Account**”) which will reflect (i) the amount of the Loans made hereunder, (ii) the amount of any principal or interest due and payable from the Borrowers to each Lender hereunder, and (iii) any and all other monetary Obligations that have become payable.

(b) The Loan Account will be credited with all amounts received by the Administrative Agent from the Borrowers or from others for the Borrowers’ account and the amounts so credited shall be applied as set forth in Sections 2.12(f) or 7.03, as applicable. After the end of each month, the Administrative Agent shall send to the Borrowers a statement accounting for the charges, loan and other transactions occurring among and between the Administrative Agent, the Lenders and the Borrowers during that month. The monthly statements shall, absent manifest error, and after 30 days after receipt by the Lead Borrower (to the extent that the Lead Borrower does not object thereto prior to the end of such 30-day period) be an account stated, which is final, conclusive and binding on the Borrowers.

SECTION 2.16 Payments; Sharing of Setoff.

(a) The Borrowers shall make each payment required to be made hereunder or under any other Loan Document (whether of principal, interest or fees of amounts payable under Sections 2.09 or 2.17, or otherwise) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 875 Third Avenue, New York, New York except that payments pursuant to Sections 2.09, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, except with respect to LIBOR Borrowings, the date for payment shall be extended to the next succeeding Business Day, and, if any payment due with respect to LIBOR Borrowings shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in

which event, the date of such payment shall be on the last Business Day of subject calendar month, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) All funds received by and available to the Administrative Agent to pay principal interest and fees then due hereunder, shall be applied in accordance with the provisions of Sections 2.12(f) or 7.03, as applicable, ratably among the parties entitled thereto in accordance with the amounts of principal, interest, and fees then due to such respective parties. Any net principal reductions to the Loans received by the Administrative Agent in accordance with the Loan Documents during such period shall not reduce such actual amount so contributed, for purposes of calculation of interest due to that Lender, until the Administrative Agent has distributed to that Lender its Commitment Percentage thereof.

(c) Unless the Administrative Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Administrative Agent, for the account of the Lenders hereunder, that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to this Agreement, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid in cash.

SECTION 2.17 Taxes.

(a) Any and all payments made by any Loan Party 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, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, except for (i) taxes imposed on the net income or similar measure (or taxes imposed in lieu thereof) of any Agent or any Lender (or any transferee or assignee thereof, including a participation holder (any such entity, a "**Transferee**")) or, in the case of a pass-through entity, any of its beneficial owners by the United States or the jurisdiction in which such Person is organized or has its principal lending office or in which its applicable lending office is located, or with which such person has any other present or former connection (other than a connection arising solely from entering into, receiving any payment under or enforcing its rights under this Agreement or any other Loan Document), or (ii) any branch profits imposed by the United States or any similar tax imposed by any other jurisdiction in which any Borrower is located (each such tax, together with all interest, penalties and additions to tax thereon, an "**Excluded Tax**"), (all such nonexcluded taxes, levies, imposts, deductions, charges withholdings and liabilities, collectively or individually, imposed on any payment by such Loan

Party or on account of any Obligation hereunder, “**Indemnified Taxes**”). If any Loan Party shall be required to deduct or withhold any Indemnified Taxes from or in respect of any sum payable hereunder to any Agent or any Lender (or any Transferee), (i) the sum payable shall be increased by the amount (an “**Additional Amount**”) necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.17) such Agent or such Lender (or such Transferee) shall receive an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document (“**Other Taxes**”). Each Loan Party shall deliver to each Agent and each Lender official receipts (or other evidence of payment reasonably satisfactory to such Agent) in respect of any Indemnified Taxes or Other Taxes payable hereunder promptly after payment of such Indemnified Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Agent and each Lender harmless from and against Indemnified Taxes and Other Taxes (including, without limitation, Indemnified Taxes and Other Taxes imposed on any amounts payable under this Section 2.17) paid by such Person, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefor specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes.

(d) (i) Each Lender (or Transferee) that is organized under the laws of a jurisdiction outside the United States (a “**Non-U.S. Lender**”) agrees that it shall, no later than the Interim Effective Date (or, in the case of a Lender which becomes a party hereto pursuant to Section 9.04 hereof after the Interim Effective Date, promptly after the date upon which such Lender becomes a party hereto) deliver to the Agents (who shall promptly provide a copy to the Lead Borrower and, in the case of a participant, to the Lender granting the participation only) one properly completed and duly executed copy of either U.S. Internal Revenue Service Form W-8BEN, W-8ECI or W-8IMY (including the appropriate attachments thereto) or any subsequent versions thereof or successors thereto, in each case claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax and payments of interest hereunder along with any other appropriate documents establishing such exemption or reduction. In addition, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code, such Non-U.S. Lender hereby represents to the Agents and the Borrowers that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Internal Revenue Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Parent and is not a controlled foreign corporation related to the Parent (within the meaning of Section 864(d)(4) of the Internal Revenue Code), and such Non-U.S. Lender agrees that it shall promptly notify the Agents in the event any such representation is no longer accurate. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of a

Transferee that is a participation holder, on or before the date such participation holder becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office (a “**New Lending Office**”). In addition, such Non-U.S. Lender shall deliver such forms within 20 days after receipt of a written request therefor from any Agent, the assigning Lender or the Lender granting a participation, as applicable. If the lapse of time or a change in circumstances renders a previous certification obsolete or inaccurate in any material respect, the Non-U.S. Lender shall deliver to Agent (who shall promptly provide a copy to the Lead Borrower and, in the case of a participant, to the Lender granting the participation only), new, properly completed and duly executed copies of the applicable Internal Revenue Service Form establishing such exemption or reduction and any related documentation as may be required to establish such Non-U.S. Lender’s entitlement to a continued exemption from or reduction in United States withholding tax if such Non-U.S. Lender or beneficial owner continues to be so entitled.

(ii) Each Lender (or Transferee) and Agent that is a “United States person” (within the meaning of Section 7701(a)(30) of the IRC) (each a “**U.S. Lender**”) agrees that it shall, no later than the Interim Effective Date (or, in the case of a Lender which becomes a party hereto pursuant to Section 9.04 after the Interim Effective Date, promptly after the date upon which such Lender becomes a party hereto) deliver to Agent (who shall promptly provide a copy to the Lead Borrower and, in the case of a participant, to the Lender granting the participation only) a complete and duly executed copy of Internal Revenue Service Form W-9 or successor form certifying that such Lender (or Transferee) is not subject to United States backup withholding tax on the date it becomes a party to this Agreement. In addition, such U.S. Lender shall deliver such forms within 20 days after receipt of a written request therefor from Agent, the assigning Lender or the Lender granting a participation, as applicable.

(iii) Notwithstanding any other provision of this Section 2.17, a Lender shall not be required to deliver any form pursuant to this Section 2.17 that such Lender is not legally able to deliver. Upon written request by Borrowers, Agent shall provide to the Borrower Representative any U.S. Internal Revenue Service Form received by Agent pursuant to clauses (d)(i) and (d)(ii) above.

(e) The Loan Parties shall not be required to indemnify any Agent or Lender, or pay any Additional Amounts to any Agent or Lender, in respect of withholding or backup withholding tax pursuant to this Section 2.17 to the extent that (i) the obligation to withhold amounts with respect to withholding or backup withholding tax existed on the date such Agent or Lender became a party to this Agreement (or, in the case of a Transferee that is a participation holder, on the date such participation holder became a Transferee hereunder) or, with respect to payments to a New Lending Office, the date such Lender designated such New Lending Office with respect to a Loan; provided, however, that this clause (i) shall not apply to the extent the indemnity payment or Additional Amounts any Transferee, or Lender (or Transferee) through a New Lending Office, would be entitled to receive (without regard to this clause (e)) do not exceed the indemnity payment or Additional Amounts that the Person making the assignment, participation or transfer to such Transferee, or Lender (or Transferee) making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation, or (ii) the obligation to pay such

Additional Amounts would not have arisen but for a failure by such Agent or Lender to comply with the provisions of clause (d) above.

(f) If Agent or any Lender determines in its good faith that it has received a refund of any Indemnified Taxes as to which it has been indemnified by any Loan Party or with respect to which the Loan Parties have paid Additional Amounts pursuant to this Section 2.17, it shall pay to the Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties under this Section 2.17 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant governmental authority with respect to such refund), provided that the Loan Parties, upon the request of the Agent or such Lender, agrees to repay the amount paid over to Agent or such Lender (plus any penalties, interest or other charges imposed by the relevant governmental authority) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such governmental authority. This paragraph shall not be construed to require Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to any Loan Party or any other Person.

(g) Any Agent or any Lender (or Transferee) claiming any indemnity payment or additional payment amounts payable pursuant to this Section 2.17 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Lead Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount that may thereafter accrue, would not require such Agent or such Lender (or Transferee) to disclose any information such Agent or such Lender (or Transferee) deems confidential and would not, in the sole determination of such Agent or such Lender (or Transferee), be otherwise disadvantageous to such Agent or such Lender (or Transferee).

(h) If any Agent or any Lender (or a Transferee) shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Taxes or Other Taxes with respect to which any Loan Party has paid additional amounts, pursuant to this Section 2.17, it shall promptly notify the Lead Borrower of the availability of such refund claim and shall, within 30 days after receipt of a request by the Lead Borrower, make a claim to such Governmental Authority for such refund at the Loan Parties' expense. If any Lender or any Agent (or a Transferee) receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Taxes or Other Taxes with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.17, it shall within 30 days from the date of such receipt pay over such refund to the Lead Borrower, net of all out-of-pocket expenses of such Agent or such Lender (or Transferee).

(i) The obligations of the parties under this Section 2.17 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 2.18 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.09, or 2.17, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall (at the request of the Lead Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.09 or Section 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; provided, however, that the Borrowers shall not be liable for such costs and expenses of a Lender requesting compensation if (i) such Lender becomes a party to this Agreement on a date after the Interim Effective Date and (ii) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto.

(b) If any Lender requests compensation under Section 2.09 or Section 2.17, or if the Borrower is required to pay any Additional Amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender is a Delinquent Lender then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, however, that (i) the Lead Borrower shall have received the prior written consent of the Administrative Agent which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its portion of the Loan, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.09 or Section 2.17 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 2.19 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain the Loans, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to the Administrative Agent and each Lender on account of the Loans so made as if made directly by the Lenders to such Borrower, notwithstanding the manner by which the Loans are recorded on the books and records of the Lead Borrower and of any other Borrower.

(b) Each Borrower represents to the Credit Parties that it is an integral part of a consolidated enterprise, and that each Loan Party will receive direct and indirect benefits from the availability of the joint credit facility provided for herein, and from the ability to access the collective credit resources of the consolidated enterprise which the Loan Parties comprise. Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers as if the Borrower which is so assuming and agreeing were each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a Borrower) on whose behalf the Lead Borrower has requested the Loans. None of the Agents nor any other Credit Party shall have any obligation to see to the application of such proceeds.

(d) The authority of the Lead Borrower to request the Loans on behalf of, and to bind, the Borrowers, shall continue unless and until the Administrative Agent actually receives written notice of: (i) the termination of such authority, and (ii) the subsequent appointment of a successor Lead Borrower, which notice is signed by the respective Financial Officers of each Borrower; and (iii) written notice from such successive Lead Borrower accepting such appointment and acknowledging that from and after the date of such appointment, the newly appointed Lead Borrower shall be bound by the terms hereof, and that as used herein, the term "Lead Borrower" shall mean and include the newly appointed Lead Borrower.

SECTION 2.20 Security Interests in Collateral.

(a) As security for the full and timely payment and performance of all of the Obligations, upon entry of the Interim DIP Order but retroactive to the Petition Date, each of the Loan Parties hereby assigns, pledges and grants (or causes the assignment, pledge and grant in respect of any indirectly owned assets) to the Collateral Agent, for its benefit and the benefit of the Lenders, pursuant to Section 364(c)(2), Section 364(c)(3) and Section 364(d) of the Bankruptcy Code, under this Agreement, the other Loan Documents and the DIP Orders, as applicable, a fully perfected first priority security interest and liens, superior to all other liens, claims or security interests that any creditor of the Loan Parties' and their estates may have (but subject only to the Carve-Out Expenses and the Permitted Priority Liens, as and to the extent expressly provided in Section 2.1.3 of the Interim DIP Order or the comparable provision in the Final DIP Order, as the case may be), in and upon all tangible and intangible assets and property of the Loan Parties, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the Collateral Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, securities (whether or not marketable), properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, bank accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds (provided, however, that to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the

leasehold interest, then in such event the Collateral Agent shall be granted a lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests), real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, permits, franchise rights, capital stock and other Equity Interests of Subsidiaries, tax and other refunds, insurance or other proceeds, commercial tort claims, causes of action, any Avoidance Proceeds (subject to entry of the Final DIP Order, other than Avoidance Proceeds arising from causes of action under Section 549 of the Bankruptcy Code), any rights under Section 506(c) of the Bankruptcy Code (subject to entry of the Final DIP Order), and all other property or “property of the estate” (as defined in Section 541 of the Bankruptcy Code) of any kind or nature, real or personal, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, wherever located (collectively, the “**Collateral**”).

(b) Upon entry of the Interim DIP Order or Final DIP Order, as the case may be, the Liens and security interests in favor of the Collateral Agent referred to in Section 2.20 shall be valid and perfected Liens on, and security interests in, the Collateral, prior to all other Liens on, and security interests in, the Collateral, other than Permitted Priority Liens and subject to the Carve-Out Expenses. Such Liens and security interests and their priority shall remain in effect until the Total Commitment shall have been terminated and all Obligations shall have been repaid in cash in full.

(c) Notwithstanding anything herein to the contrary, all proceeds received by the Agents and the Lenders from the Collateral subject to the Liens granted in Section 2.20 or in any other Loan Document or by the DIP Orders shall be subject to the prior payment of Carve-Out Expenses; provided, that no Person entitled to such Carve-Out Expenses shall be entitled to sell or otherwise dispose, or seek or object to the sale or other Disposition, of any Collateral.

(d) Except for the Carve-Out Expenses, no costs or expenses of administration shall be imposed against the Agents, the Lenders or any of the Collateral or any of the Pre-Petition Agents or the Pre-Petition Lenders under the Pre-Petition Term Loan Agreement or the “Collateral” (as defined in the Pre-Petition Term Loan Documents) under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and the Loan Parties hereby waive for themselves and on behalf of each of their estates in bankruptcy, any and all rights under Sections 105, 506(c) (subject to entry of the Final DIP Order) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Agents, the Lenders or any of the Collateral or any of the Pre-Petition Agents or the Pre-Petition Lenders under the Pre-Petition Term Loan Documents.

SECTION 2.21 Administrative Priority.

Each of the Loan Parties agrees for itself that the Obligations of such Person shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c)

(subject to entry of the Final DIP Order), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, subject only to the prior payment of Carve-Out Expenses.

SECTION 2.22 Grants, Rights and Remedies.

The Liens and security interests granted pursuant to Section 2.20 and the administrative priority granted pursuant to Section 2.21 may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the DIP Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative.

SECTION 2.23 No Filings Required.

The Liens and security interests referred to herein shall be deemed valid and perfected solely by and upon entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date of any Loan. No Agent, Lender or other Person shall be required to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect any Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document; provided, that the Collateral Agent shall be permitted to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office and to take any other action with respect to the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document; provided, further that should the Collateral Agent so choose and attempt to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office and to take any other action with respect to such Lien or security interest, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the any Liens and security interests granted herein by virtue of the entry of the Interim DIP Order or the Final DIP Order.

SECTION 2.24 Survival.

The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agents and the Lenders pursuant to this Agreement, the DIP Orders and the other Loan Documents (specifically including the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any Loan Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or any successor bankruptcy case, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, successor bankruptcy case act or omission:

(a) except for the Carve-Out Expenses, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in

any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Agents and the Lenders against any Loan Party in respect of any Obligation;

(b) upon entry of the Interim DIP Order or Final DIP Order, as the case may be, but retroactive to the Petition Date in each case, the Liens in favor of the Agents and the Lenders set forth in Section 2.20 shall constitute valid and perfected first priority Liens and security interests to which all other Liens and security interests shall be subordinate and junior, subject only to Permitted Priority Liens, and which Liens and security interests shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever;

(c) the Liens in favor of the Agents and the Lenders set forth herein, in the DIP Orders and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Collateral Agent file financing statements, mortgages, certificates of title, notices of Lien or other similar instruments or otherwise perfect its Lien under applicable non-bankruptcy law; and

(d) (i) the Obligations and all other rights, remedies, interests, liens, priorities, privileges, protections, and benefits granted hereunder shall not be altered, modified, impaired, or discharged by, the entry of any order confirming any Chapter 11 plan (and each Loan Party pursuant to Article 1041(d)(4) of the Bankruptcy Code, waives any such discharge) and (ii) the super priority administrative claim granted to the Agents and the Lenders pursuant to the DIP Orders and described in this Agreement and the Liens granted to the Agents and the Lenders pursuant to the DIP Orders and described in this Agreement shall not be altered, modified, impaired, or discharged by, the entry of any order confirming any Chapter 11 plan.

SECTION 2.25 Further Assurances.

The Loan Parties shall take any other actions reasonably requested by the Agents from time to time to cause the attachment, perfection and first priority of, and the ability of the Agents and the Lenders to enforce, the security interest of the Agents and the Lenders in any and all of the Collateral, including, (a) executing and delivering any requested security agreement, pledge agreement or mortgage, (b) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that any Loan Party's signature thereon is required therefor, (c) causing the Collateral Agent's name to be noted as secured party on any certificate of title for a titled good if such notation would be a condition, if not for the Chapter 11 Cases, to attachment, perfection or priority of, or ability of the Collateral Agent to enforce, the security interest of the Collateral Agent in such Collateral, (d) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision would be a condition, if not for the Chapter 11 Cases, to attachment, perfection or priority of, or ability of the Collateral Agent to enforce, the security interest of the Collateral Agent in such Collateral, (e) using commercially reasonable efforts to obtain the consent and approval of any Governmental Authority or third party, including any consent of any licensor, lessor or other Person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law,

as applicable in any relevant jurisdiction, and (f) complying with any changing requirements to effectuate the provisions of Section 9.09.

ARTICLE III REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to make the Loans, the Loan Parties executing this Agreement, jointly and severally, make the following representations and warranties to each Credit Party with respect to each Loan Party:

SECTION 3.01 Organization; Powers.

Each Loan Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, subject to the entry and the terms of the DIP Orders, has all requisite power and authority to own its property and assets and to carry on its business as now conducted and to execute and deliver and perform all its obligations under all Loan Documents to which such Loan Party is a party. Each Loan Party is qualified to do business in, and is in good standing (where such concept exists) in, every jurisdiction in which the nature of its business or ownership or leasing of properties makes such qualification necessary, except where the failure to be so qualified and in good standing individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect. Schedule 3.01 annexed hereto sets forth, as of the Petition Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

SECTION 3.02 Authorization; Enforceability.

The transactions contemplated hereby and by the other Loan Documents which each Loan Party is or will be a party are within such Loan Party's corporate powers and have been duly authorized by all necessary corporate, membership, partnership or other necessary action. This Agreement has been duly executed and delivered by each Loan Party that is a party hereto or thereto and constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party and subject to entry of the DIP Orders, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms.

SECTION 3.03 Governmental Approvals; No Conflicts.

The execution and delivery of the Loan Documents and the performance by the Loan Parties of their obligations thereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i) entry of the DIP Orders, (ii) such as have been obtained or made and are in full force and effect and (iii) filings and recordings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law material to the business of any Loan Party, (c) will not violate the Charter Documents of any Loan Party, (d) will not violate or result in a default under

any indenture or any other agreement, instrument or other evidence of Material Indebtedness or give rise to a right thereunder to require any payment to be made by any Loan Party (other than violations and defaults, the enforcement of which will be stayed by virtue of the filing of the Chapter 11 Cases), and (e) will not result in the creation or imposition of any Lien on any asset of any Loan Party, except Liens created under the Loan Documents.

SECTION 3.04 Properties.

(a) Except as disclosed on Schedule 3.04(a), each Loan Party has good title to all its material real and personal property, except for defects which would not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party owns or is licensed to use, all material patents, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, and other intellectual property used in its business and to the knowledge of the Responsible Officers of the Loan Parties, the use thereof by the Loan Parties does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(c) Schedule 3.04(c)(i) sets forth the address (including county) of all Real Estate that is owned by the Loan Parties as of the Petition Date, together with a list of the holders of any mortgage or other Lien thereon. Schedule 3.05(c)(ii) sets forth the address (including county) of all Real Estate that is leased by the Loan Parties as of the Petition Date, together with a list of the lessor with respect to each such Lease. Each of such Leases is in full force and effect and, to the knowledge of the Responsible Officers of the Loan Parties, the Loan Parties are not in default of the terms thereof, except for any such defaults that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.05 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.05(a), there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Responsible Officers of the Loan Parties, threatened in writing against or affecting any Loan Party (i) which, if adversely determined, could reasonably be expected individually or in the aggregate to result in a Material Adverse Effect (other than Disclosed Matters) or (ii) that involve any of the Loan Documents.

(b) Except for Disclosed Matters, no Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, which, in each case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 3.06 Compliance with Laws and Agreements.

Each Loan Party is in compliance with all Applicable Law, all material provisions of any agreement relating to Material Indebtedness to which it is a party, and no default has occurred and is continuing thereunder, except in each case where the failure to comply or the existence of a default, individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.07 Investment Company Status.

No Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.08 Taxes.

Each Loan Party has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) such obligations constituting Pre-Petition Liabilities or (b) Taxes that are being contested in good faith by appropriate proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof.

SECTION 3.09 ERISA.

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan subject to ERISA (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans subject to ERISA (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans, in each case, to the extent that any resulting liabilities could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 Disclosure.

The Loan Parties have disclosed to the Credit Parties all agreements, instruments and corporate or other restrictions to which any Loan Party is subject, and all other matters known to any of them that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11 Subsidiaries.

Schedule 3.11 sets forth the name of, and the ownership interest of each Loan Party in, each Subsidiary as of the Petition Date; there are no other Equity Interests outstanding as of the Petition Date. All such Equity Interests are validly issued, fully paid, and non-

assessable. Except as set forth on Schedule 3.11, no Loan Party is party to any joint venture, general or limited partnership, or limited liability company agreements as of the Petition Date.

SECTION 3.12 Insurance.

Schedule 3.12 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Petition Date. Each insurance policy listed on Schedule 3.12 is in full force and effect as of the Petition Date and all premiums in respect thereof that are due and payable as of the Petition Date have been paid.

SECTION 3.13 Labor Matters.

Except for Disclosed Matters and to the extent that such liability would not reasonably be expected to have a Material Adverse Effect, all payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued in accordance with GAAP as a liability on the books of such Loan Party. As of the Petition Date, there are no representation proceedings pending or, to any Responsible Officer of any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party has made a pending demand for recognition.

SECTION 3.14 Federal Reserve Regulations.

(a) No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of the Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to buy or carry Margin Stock or to extend credit to others for the purpose of buying or carrying Margin Stock or to refund indebtedness originally incurred for such purpose in violation of Regulation U or X or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board of Governors, including Regulation U or Regulation X.

SECTION 3.15 Licenses; Permits; Intellectual Property.

(a) To the knowledge of each Responsible Officer of each Loan Party, each Loan Party is in compliance with all terms and conditions of all such permits, licenses, orders and authorizations, and is also in compliance with all Applicable Laws, except where the failure to comply with such permits, licenses or other authorizations, or Applicable Laws, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Set forth on Schedule 3.15(b) is a complete and accurate list as of the Petition Date of all material (i) licenses (other than licenses granting rights to sue commercially-available software) to which each Loan Party is a party and (ii) patents, patent applications, trademark and service mark registrations, trademark and service mark applications, copyright registrations and copyright applications owned by each Loan Party. No slogan or

other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party, to its knowledge, infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or proposed, which, individually or in the aggregate, could have a Material Adverse Effect.

SECTION 3.16 Bankruptcy Matters.

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

(b) Upon entry of the Interim DIP Order but retroactive to the Petition Date or the Final DIP Order Entry Date, as the case may be, the Obligations of the Loan Parties will constitute allowed administrative expenses in the Chapter 11 Cases, having priority in payment over all other administrative expenses and unsecured claims against the Loan Parties now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of the Final DIP Order), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, subject only to the prior payment of Carve-Out Expenses.

(c) Upon entry of the Interim DIP Order or the Final DIP Order, as the case may be, the Liens and security interests of the Administrative Agent on the Collateral referred to in Section 2.20 shall be valid and perfected first priority Liens, subject only to Permitted Priority Liens and the Carve-Out Expenses.

(d) On and after the Interim DIP Order Entry Date and prior to the Final DIP Order Entry Date, the Interim DIP Order is in full force and effect, and has not been reversed, modified, amended, stayed, vacated or subject to appeal, absent the written consent of the Agents, the Required Lenders and the Borrowers, and on and after the Final DIP Order Entry Date, the Final DIP Order is in full force and effect, and has not been reversed, modified, amended, stayed, vacated or subject to appeal absent the written consent of the Agents, the Required Lenders and the Borrowers.

(e) No order has been entered, and no Loan Party has filed a motion, in any Chapter 11 Case (A) for the appointment of a Chapter 11 trustee, (B) for the appointment of a responsible officer or an examiner with enlarged powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code or (C) to convert any of the Chapter 11 Cases to a Chapter 7 case or to dismiss any of the Chapter 11 Cases.

**ARTICLE IV
CONDITIONS**

SECTION 4.01 Conditions Precedent to Interim Period Effectiveness.

This Agreement shall become effective as of the Business Day (the “**Interim Effective Date**”) when each of the following conditions precedent shall have been satisfied or waived in a manner satisfactory to the Agents:

(a) Interim DIP Order. The Interim DIP Order shall have been entered by the Bankruptcy Court on or before January 20, 2017, and the Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed, or vacated, absent prior written consent of the Agents, the Required Lenders and the Borrowers. The Interim DIP Order shall (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agents and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, as of the Petition Date, the Liens and security interests in favor of the Collateral Agent referred to in Section 2.20 shall be valid and perfected Liens and security interests in the Collateral, prior to all other Liens and security interests in the Collateral and subject only to Permitted Priority Liens and payment of the Carve-Out Expenses.

(b) Payment of Fees, Etc. The Borrowers shall have paid on or before the Interim Effective Date the Closing Fee and all Credit Party Expenses then due and payable, including the reasonable documented fees, costs and expenses of the Agents’ and the Lenders’ outside professionals (including legal counsel) in connection with the negotiation and preparation of this Agreement and the other Loan Documents; provided that such payments will be made out of the initial Borrowings hereunder.

(c) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the Interim Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Interim Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Interim Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(d) Legality. The making of the initial Loans shall not contravene any law, rule or regulation applicable to any Agent or any Lender.

(e) Delivery of Documents. The Collateral Agent shall have received on or before the Interim Effective Date the following, each in form and substance satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Interim Effective Date:

(i) this Agreement, duly executed in counterpart by the Loan Parties, the Agents and the Lenders;

(ii) copies of the Charter Documents of each Loan Party, together with all amendments thereto, certified as of the Interim Effective Date by a Responsible Officer of such Loan Party;

(iii) a copy of the resolutions of each Loan Party, certified as of the Interim Effective Date by a Responsible Officer thereof, authorizing (A) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (B) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith;

(iv) a certificate of a Responsible Officer of each Loan Party, certifying the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;

(v) a certificate of the appropriate official(s) of the jurisdiction of organization of each Loan Party certifying as of a recent date not more than 30 days prior to the Interim Effective Date as to the subsistence in good standing of such Loan Party in such jurisdictions; and

(vi) a certificate of a Responsible Officer of each Loan Party, certifying as to the matters set forth in Section 4.01(c).

(f) Budget. The Agents and the Lenders shall have received the initial Budget, attached hereto as Exhibit D, together with a certificate of a Responsible Officer of the Parent stating that such Budget has been prepared on a reasonable basis and in good faith and is based on assumptions believed by the Loan Parties to be reasonable at the time made and from the best information then available to the Loan Parties.

(g) Insurance. Evidence of the insurance coverage required by Section 5.07 and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent may request together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request.

(h) Material Adverse Effect. The Agents shall have determined in their sole judgment that no event or development shall have occurred, other than the Chapter 11 Cases, which could reasonably be expected to have a Material Adverse Effect.

(i) Priority. The Collateral Agent shall be satisfied that it has been granted, and holds for the benefit of the Agents and the Lenders, a perfected, first priority Lien on, and security interest in, all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses.

(j) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans or the conduct of the Loan Parties' business shall have been obtained and shall be in full force and effect.

(k) First Day Motions and Orders. The Agents shall have received on or before the Petition Date, copies of the "first day" motions, including the orders attached thereto, to be filed by the Loan Parties with the Bankruptcy Court in the Chapter 11 Cases, each of which shall be in form and substance satisfactory to the Agents, and the orders of the Bankruptcy Court approving such motions, in form and substance satisfactory to the Agents, shall have been entered by the Bankruptcy Court on or before the third (3rd) Business Day after the Petition Date.

(l) Litigation. There shall exist no claim, action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority which relates to the Loans.

(m) Commencement of Chapter 11 Cases. The Loan Parties shall have commenced the Chapter 11 Cases and no trustee, examiner or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and no motion shall be pending seeking any relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral with an aggregate value in excess of \$200,000.

(n) Compliance with Laws. The Loan Parties shall be in compliance with all applicable requirements of law, including Regulations T, U and X of the Board of the Federal Reserve System.

(o) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Agents and their counsel, and the Agents and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Agents or such counsel may reasonably request.

SECTION 4.02 Conditions Precedent to Final Period Effectiveness.

The obligation of any Agent or any Lender to make any Loan during the Final Period shall commence as of the Business Day (the "**Final Effective Date**") when each of the

following conditions precedent shall have been satisfied or waived in a manner satisfactory to the Agents:

(a) Final DIP Order, Etc. The Final DIP Order shall have been signed and entered by the Bankruptcy Court on a date that is within thirty (30) days following the Petition Date, and the Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated, absent the prior written consent of the Agents, the Required Lenders and the Borrowers. The Final DIP Order shall (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agents and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, as of the Petition Date, the Liens and security interests in favor of the Collateral Agent referred to in Section 2.20 shall be valid and perfected Liens and security interests in the Collateral, prior to all other Liens and security interests in the Collateral and subject only to Permitted Priority Liens.

(b) Payment of Fees, Etc. The Borrowers shall have paid on or before such date all reasonable documented fees, costs, expenses and taxes then due and payable, including any Credit Party Expenses; provided that such payments may be made out of the Borrowings on such Final Effective Date.

(c) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to the Agents or the Lenders pursuant hereto or thereto on or prior to the Final Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Final Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Final Effective Date or would result from the making of Loans on such date.

(d) Liens; Priority. The Collateral Agent shall be satisfied that it has been granted, and still continues to hold, as the case may be, for the benefit of the Agents and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses.

(e) Material Adverse Effect. The Agents shall have determined that no event or development shall have occurred since the Interim Effective Date, which could reasonably be expected to have a Material Adverse Effect.

(f) Litigation. There shall exist no claim, action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority, which relates to the Loans.

(g) Proceedings; Receipt of Documents. All proceedings in connection with the making of the Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Agents and their counsel, and the Agents and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Agents or such counsel may reasonably request.

SECTION 4.03 Conditions Precedent to the Making of All Loans The obligation of any Agent or any Lender to make any Loan after the Interim Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrowers shall have paid all fees, costs, expenses and taxes then due and payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including the Credit Party Expenses; provided that such payments may be made out of the Borrowings hereunder.

(b) Representations and Warranties; No Event of Default. Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the date of such Loan as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made on such date and (iii) the conditions set forth in this Section 4.03 have been satisfied as of the date of such request.

(c) Cash Balance. Prior to giving effect to the making of such Loan, the Loan Parties will not hold unrestricted cash, in the aggregate, in excess of \$800,000.00.

(d) Total Commitment. After giving effect to the making of such Loan, the outstanding principal amount of the Loans shall not exceed the Total Commitment then in effect.

(e) Legality. The making of such Loan shall not contravene any law, rule or regulation applicable to any Agent or any Lender.

(f) Notices. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 hereof.

(g) Material Adverse Effect. The Agents shall have determined that no event or development shall have occurred since the Interim Effective Date which could reasonably be expected to result in a Material Adverse Effect.

(h) Receipt of Documents. The Agents and their counsel shall have received all information or certified or other copies of any other documents as the Agents or such counsel may reasonably request.

ARTICLE V AFFIRMATIVE COVENANTS

So long as any principal of or interest on the Loan or any other Obligation (whether or not due but excluding contingent indemnity obligations as to which no claims have been asserted) shall remain unpaid or any Lender shall have any Commitment hereunder, each Loan Party covenants and agrees with the Credit Parties that:

SECTION 5.01 Budget and Other Information.

The Lead Borrower will furnish to the Administrative Agent:

(a) At least one week before the end of any period covered by the Budget then in effect and upon request by the Required Lenders at any time, an updated Budget, in form and substance, and covering such periods, satisfactory to the Required Lenders. In the event any Budget then in effect is so updated, such updated Budget shall be the “Budget”;

(b) Beginning on Wednesday, January 25, 2017 (for the Measurement Period ending Sunday, January 22, 2017) and on Wednesday of each week thereafter, no later than 5:00 p.m. (Eastern time) on such day (i) a variance and compliance report (the “**Variance Report**”), in a form and with supporting information in detail reasonably acceptable to the Agents showing the comparison of, and the variances between, actual performance to projections for each line item of the Budget and reconciling the sources, uses and disbursements of cash, for the Measurement Period most recently ended and (ii) a certificate from a Responsible Officer of the Parent (1) certifying the calculation and compliance of the variances and other requirements under Section 6.15 (certification of compliance with Section 6.15(a) commencing with the Measurement Period ending on Sunday, February 5, 2017 and (2) including explanations for all variances in excess of fifteen percent (15%); provided that in the event the Budget applicable to such Measurement Period has been updated and approved such that it is the “Budget”, the Variance Report shall be determined with reference to such updated Budget;

(c) A detailed summary of the Net Proceeds received from any Prepayment Event immediately after receipt of such proceeds;

(d) As soon as possible and in any event within two (2) Business Days after execution, receipt of delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Indebtedness;

(e) As soon as possible and in any event within two (2) Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the Sale or any other Disposition of the Equity Interests of or assets any Loan Party;

(f) Promptly and in any event within two (2) Business Days after the sending thereof, copies of all information packages, reports and other materials sent to the Board of Directors, other than any such information, reports or other materials subject to privilege or confidentiality restriction; provided that such information, reports and other materials may have any confidential information redacted if a summary of the redacted information is provided to the Agents;

(g) Promptly and in any event within two (2) Business Days after the filing thereof and to the extent the same is not publicly available on the Bankruptcy Court's electronic docket, copies of all pleadings, motions, applications, financial information and other papers and documents filed by any Loan Party in the Chapter 11 Cases, which papers and documents shall also be given or served on each Agent's counsel;

(h) Promptly and in any event within two (2) Business Days after the sending thereof, copies of all written reports given by any Loan Party to any official or unofficial Committee;

(i) Promptly and in any event within two (2) Business Days after receipt thereof, status updates and summaries of all letters of intent, commitment letters, written offers and purchase agreements received by any Loan Party or any of their advisors with respect to, in connection with, or in response to, the proposed Sale, the Asset Purchase Agreement or pleadings seeking approval of the same; and

(j) Promptly following any reasonable request therefor, such other information regarding the operations, business affairs and financial condition of any Loan Party, or compliance with the terms of any Loan Document, as the Agents or any Lender may reasonably request (other than information which is subject to an attorney-client privilege or would result in a breach of a confidentiality obligation of the Loan Parties to any other Person).

SECTION 5.02 Notices of Material Events.

The Lead Borrower will furnish to the Administrative Agent prompt (and in any event within two (2) Business Days) written notice of the occurrence of any of the following after any Responsible Officer of any Loan Party obtains knowledge thereof:

(a) A Default or Event of Default, specifying the nature and extent thereof and the action (if any) which is proposed to be taken with respect thereto;

(b) The filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority (including, without limitation, any of the foregoing relating to any Environmental Liability or potential Environmental Liability) against or affecting any Loan Party or any Subsidiary thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) An ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) Any development (including, without limitation, any Environmental Liability or potential Environmental Liability) that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(e) Any change in any Loan Party's chief restructuring officer or chief financial officer;

(f) The filing of any Lien for unpaid Taxes against any Loan;

(g) Any casualty or other insured damage to any portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in the Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Information Regarding Collateral.

The Lead Borrower will furnish to the Agents fifteen (15) days prior (or such shorter time as consented to by the Collateral Agent) written notice of any change in: (a) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (b) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (c) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (d) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

SECTION 5.04 Existence; Conduct of Business.

Each Loan Party will, and will cause each of their Subsidiaries to, do all things necessary to (a) comply with its Charter Documents in all material respects, and (b) preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits,

privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except, in the case of this clause (b), to the extent the failure to so preserve, renew and keep in full force and effect could not be reasonably expected to have a Material Adverse Effect, provided, however, that none of the foregoing shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05 Payment of Obligations.

Subject to the provisions of the Bankruptcy Code, each Loan Party will, and will cause its Subsidiaries to, pay its tax liabilities, all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers and carriers) which, if unpaid, would by law become a Lien upon its property except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) such contest effectively suspends collection of the contested obligation and no Lien having priority to the Lien of the Collateral Agent is securing such obligation. For the avoidance of doubt, nothing herein requires payment of any Pre-Petition Liabilities subject to the automatic stay of the Bankruptcy Code.

SECTION 5.06 Maintenance of Properties.

Each Loan Party will, and will cause its Subsidiaries to, maintain, preserve and protect all Collateral and other assets except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Insurance.

Each Loan Party shall (i) maintain insurance with financially sound and reputable insurers reasonably acceptable to the Agents (or, to the extent consistent with prudent business practice, a program of self-insurance approved by the Agents, such approval not to be unreasonably withheld) on such of its property and in at least such amounts and against at least such risks as is customary with companies in the same or similar businesses, including public liability insurance against claims for personal injury in connection with the use of any properties owned, occupied or controlled by it; (ii) maintain such other insurance as may be required by law; and (iii) furnish to the Agents, upon written request, full information as to the insurance carried.

SECTION 5.08 Books and Records; Inspection Rights.

Each Loan Party will, and will cause each of its Subsidiaries to, keep proper books of record and account in accordance with GAAP and in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by any Agent, upon reasonable prior notice and during normal business hours, to visit and inspect its properties, to discuss its affairs, finances and condition with its officers and, as long as such Loan Party is afforded an opportunity to participate, independent accountants and to examine and make extracts from its books and records, all at such reasonable times and as often as reasonably requested. Any Lender may accompany the Agent or its representatives on any such visit or inspection.

SECTION 5.09 Compliance with Laws.

Each Loan Party will comply with all Applicable Laws and the orders of any Governmental Authority, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party shall: (a) conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws other than such noncompliance as could not reasonably be expected to have a Material Adverse Effect; (b) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, except to the extent that non-compliance with any of the foregoing could not reasonably be expected to have a Material Adverse Effect; (c) notify the Administrative Agent promptly after such Loan Party becomes aware of any violation of Environmental Laws or any Release on, at, in, under, above, to, from or about any Real Estate that is reasonably likely to result in Environmental Liabilities and have a material impact on the fair market value of the Collateral, and (d) promptly forward to Administrative Agent a copy of any order, notice, request for information or any communication or report received by such Person in connection with any such violation or Release or any other matter relating to any Environmental Laws that could reasonably be expected to result in Environmental Liabilities and have a material impact on the fair market value of the Collateral, in each case whether or not any Governmental Authority has taken or threatened any action in connection with any such violation, Release or other matter.

SECTION 5.10 Use of Proceeds.

The proceeds of the Loans shall be used in accordance with the Budget (within the variances from budgeted amounts and as otherwise permitted under this Agreement and the other Loan Documents) to (i) pay fees and expenses related to this Agreement and the Chapter 11 Cases, (ii) repay the Loans or any other Obligations and (iii) fund working capital of the Loan Parties, consistent with the Budget. None of the proceeds of the Loans may be used for any purpose prohibited by the Interim DIP Order or the Final DIP Order, as applicable, including to challenge, as opposed to investigate, the validity, perfection, priority, extent or enforceability of this Agreement and any other Loan Documents, the Pre-Petition Term Loan Documents, or the liens or security interests securing the obligations under this Agreement and any other Loan Documents, the Pre-Petition Term Loan Documents or to pursue any causes of action of any kind against any Agent, any Lender, or any Pre-Petition Agent or any Pre-Petition Lender solely in their respective capacities as agent or lenders under this Agreement and any other Loan Documents and the Pre-Petition Term Loan Documents, or to object to or to oppose any action authorized hereunder or under the DIP Orders, and the Loan Parties waive their right to challenge and investigate each of the foregoing. No more than \$25,000 of any proceeds hereunder, any Collateral (including cash collateral) or the Carve-Out Expenses may be used by any Committee to investigate (but not to prosecute) the validity, perfection, priority, extent or enforceability of the Pre-Petition Term Loan Documents or the liens or security interests securing the obligations under the Pre-Petition Term Loan Documents within the period permitted by the DIP Orders, as applicable. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Board of Governors, including Regulations U and X.

SECTION 5.11 Sale Milestones.

The Loan Parties shall comply with and achieve the Sale Milestones.

SECTION 5.12 Status Calls; Financial Advisors.

Arrange for the chief restructuring officer, chief financial officer, such other officers and executives of the Loan Parties (as requested by the Administrative Agent) and the financial advisors of the Loan Parties to participate in, weekly conference calls with the Agents, the Lenders and/or their financial advisors to review and discuss the Sale Milestones, variances from the Budget and related matters. In addition, the financial advisors of the Agents shall have reasonable access to the Loan Parties' officers, executives and financial advisors. The Agents shall also have full access to the chief restructuring officer, chief financial officer, such other officers and executives of the Loan Parties and the financial advisors of the Loan Parties, as any Agent may require from time to time. To the extent inside or outside counsel to the Agent or the Loan Parties are involved in any calls or discussions described herein, counsel to the Loan Parties may also participate in any such calls or discussions.

SECTION 5.13 Further Assurances.

(a) Each Loan Party will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Applicable Law, or which any Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created under this Agreement or the validity or priority of any such Lien, all at the expense of the Loan Parties.

(b) If any registered intellectual property or Equity Interests is acquired by any Loan Party after the Petition Date, the Lead Borrower will notify the Administrative Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such reasonable actions as shall be necessary or shall be reasonably requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 5.13, all at the reasonable expense of the Loan Parties.

**ARTICLE VI
NEGATIVE COVENANTS**

So long as any principal of or interest on the Loan or any other Obligation (whether or not due but excluding contingent indemnification obligations as to which no claims have been asserted) shall remain unpaid or any Lender shall have any Commitment hereunder, each Loan Party covenants and agrees with the Credit Parties that:

SECTION 6.01 Indebtedness and Other Obligations.

No Loan Party will, or will permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except Permitted Indebtedness.

SECTION 6.02 Liens.

No Loan Party will, or will permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except Permitted Encumbrances.

SECTION 6.03 Fundamental Changes.

(a) No Loan Party will, or will permit any Subsidiary to, liquidate, dissolve, merge into or consolidate with any other Person, or permit any other Person to liquidate, dissolve, merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing or would arise therefrom, (i) any Subsidiary may liquidate, dissolve, merge into or consolidate with a Loan Party in a transaction in which a Loan Party is the surviving corporation, (ii) any Subsidiary that is not a Loan Party may liquidate, dissolve, merge into or consolidate with any Subsidiary that is not a Loan Party, and (iii) any Loan Party may liquidate, dissolve, merge into or consolidate with any other Loan Party.

(b) No Loan Party will, or will permit any Subsidiary to, engage, to any material extent, in any business other than the sale of retail and wholesale apparel and related products and businesses complementary or ancillary thereto.

(c) The Parent shall not (i) engage in, or commit to engage in, any business or other activities, or enter into, execute or perform any business transaction, (ii) own any material assets other than the Equity Interests of the Lead Borrower, (iii) incur any Indebtedness (other than Indebtedness arising from the Loan Documents and the Pre-Petition Term Loan Documents, in each case, to which it is a party and Permitted Indebtedness), or (iv) grant any Liens in any of its assets (other than Liens granted to Collateral Agent and the Pre-Petition Collateral Agent pursuant to the Pre-Petition Term Loan Documents).

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

No Loan Party will, or will permit any Subsidiary to, make or permit to exist any Investment, except Permitted Investments.

SECTION 6.05 Asset Sales.

No Loan Party will, or will permit any Subsidiary to Dispose of any asset, including any Equity Interests, except the use of cash in the ordinary course of business, transactions permitted pursuant to Section 6.03 and Permitted Dispositions.

SECTION 6.06 Equity Issuances.

No Loan Party will, or will permit any Subsidiary to, issue any Equity Interests.

SECTION 6.07 **Restricted Payments; Certain Payments of Indebtedness.**

(a) No Loan Party will, or will permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment other than (i) the declaration and payment of a dividend by any Subsidiary of a Loan Party to a Loan Party, (ii) provided no Event of Default then exists or would arise therefrom, any Loan Party (other than the Parent) may make Restricted Payments to the Parent solely for the purpose of paying professional and other shared expenses (including, without limitation, the costs of preparing financial statements and related materials) incurred in the ordinary course of business due and payable by such Loan Party and to pay customary fees to directors of the Parent and (iii) provided no Event of Default then exists or would arise therefrom, any Loan Party (other than the Parent) may make Restricted Payments to the Parent solely for the purpose of paying taxes of the Parent and its Subsidiaries.

(b) No Loan Party will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash securities or other property) of or in respect of principal of or interest on any Indebtedness, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness or) or make any payment in violation of any subordination terms of any subordinated Indebtedness, except (i) the Obligations, (ii) the Pre-Petition Term Loan Obligations in accordance with the terms and conditions in the DIP Orders and herein, (iii) with respect to the Pre-Petition Term Loan Obligations, any adequate protection payments expressly provided for in the DIP Orders and (iv) as set forth in the Budget.

SECTION 6.08 **Transactions with Affiliates.**

No Loan Party will, or will permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Loan Parties to the extent specifically permitted hereunder, (c) payment of reasonable compensation to officers and employees for services actually rendered to any such Loan Party or any of its Subsidiaries consistent with the Budget, (d) payment of director's fees, expenses and indemnities incurred for the direct benefit of the Loan Parties and their Subsidiaries consistent with the Budget, (e) employment contracts with officers and management of the Loan Parties and their Subsidiaries consistent with the Budget, (f) advances to officers and employees of the Loan Parties and their Subsidiaries to the extent specifically permitted under this Agreement and consistent with the Budget, and (g) other transactions specifically permitted under this Agreement (including, without limitation, Permitted Dispositions, Restricted Payments, Permitted Investments and Permitted Indebtedness).

SECTION 6.09 Restrictive Agreements.

No Loan Party will, or will permit any Subsidiary to, directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary thereof to pay dividends or other distributions with respect to any of its Equity Interests to such Loan Party or to make or repay loans or advances to a Loan Party or any other Subsidiary of a Loan Party or to guarantee Indebtedness of the Loan Parties or any other Subsidiary of the Loan Parties, provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document or any Pre-Petition Term Loan Document, (ii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment or subleasing thereof, (iv) clause (a) of the foregoing shall not apply to licenses or contracts which by the terms of such licenses and contracts prohibit the granting of Liens on the rights contained therein, and (v) the foregoing shall not apply to any restrictions in existence prior to the time any such Person became a Subsidiary and not created in contemplation of any such acquisition.

SECTION 6.10 Amendment of Material Documents.

No Loan Party will, or will permit any Subsidiary to, amend, modify or waive any of its rights under (a) its Charter Documents to the extent that such amendment, modification or waiver would be adverse to the Lenders and the Agent, or (b) any Material Indebtedness (other than the Pre-Petition Term Loan Obligations) or the Management Services Agreement, in each case to the extent that such amendment, modification or waiver would be adverse to the Lenders and the Agent.

SECTION 6.11 ERISA.

No Loan Party shall, or shall cause or permit any of its Subsidiaries or its ERISA Affiliates to:

(a) cause or permit to occur an event that could reasonably be expected to result in the imposition of a Lien under Section 412 of the IRC or Section 302 or 4068 of ERISA; or

(b) cause or permit to occur an ERISA Event to the extent such ERISA Event could reasonably be expected to result in taxes, penalties and other liability and could reasonably be expected to result in a Material Adverse Effect; or

(c) engage in any transaction in connection with which a Loan Party or any ERISA Affiliate could be reasonably expected to be subject to either a civil penalty assessed pursuant to the provisions of Section 502(i) of ERISA or a tax imposed under the provisions of Section 4975 of the IRC, in each case, which could reasonably be expected to result in a Material Adverse Effect; or

(d) adopt an amendment to any Pension Plan requiring the provision of security under Section 307 of ERISA or Section 401(a)(29) of the IRC which could reasonably be expected to result in a Material Adverse Effect; or

(e) terminate any Pension Plan under Section 4041(c) of ERISA without the prior consent of Administrative Agent which could reasonably be expected to result in a Material Adverse Effect; or

(f) fail in any material respect to make payment when due (including permissible extensions) of all amounts which, under the provisions of any Plan, it is required to pay as contributions thereto or as premiums to the PBGC, or, with respect to any Pension Plan, permit to exist any material “accumulated funding deficiency” (within the meaning of Section 302 of ERISA and Section 412 of the IRC) which could reasonably be expected to result in a Material Adverse Effect; or

(g) enter into a new agreement or agreements that would (i) obligate a Loan Party or any ERISA Affiliate to make contributions to a Multiemployer Plan subject to subtitle (e) of Title IV of ERISA which could reasonably be expected to result in a Material Adverse Effect, or (ii) create, extend or increase an obligation to provide health or medical benefits for retirees of a Loan Party or an ERISA Affiliate that would increase the accumulated post-retirement benefit obligation and could reasonably be expected to result in a Material Adverse Effect.

SECTION 6.12 Environmental Laws.

The Loan Parties shall not, and shall not permit any Subsidiary to, (a) fail to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, or (b) become subject to any Environmental Liability, in each case which could reasonably result in a Material Adverse Effect.

SECTION 6.13 Additional Subsidiaries.

The Loan Parties will not, and will not permit any Subsidiary to, create any additional Subsidiary

SECTION 6.14 Bankruptcy Provisions

The Loan Parties will not, and will not permit any Subsidiary to:

(a) At any time, seek, consent to or suffer to exist any reversal, modification, amendment, stay or vacatur of any of the DIP Orders, any of the Loan Documents, any of the Pre-Petition Term Loan Documents or any obligations outstanding under any of the foregoing, or assert that any Lien granted by any Loan Party in any of the Collateral hereunder or under any other Loan Document, or under any Pre-Petition Term Loan Document, does not have the validity, perfection or priority set forth herein, in the DIP Orders or the other Loan Documents, (subject to any rights of the Committee set forth in Section 5.10 or the DIP Orders),

in each case, except for modifications and amendments agreed to by the Agents and the Required Lenders.

(b) Subject to the terms of the DIP Orders, object to, contest, delay, prevent or interfere with in any way the exercise of rights and remedies by the Agents or the Lenders with respect to the Collateral following the occurrence of an Event of Default; provided that the Loan Parties (A) may contest or dispute whether an Event of Default has occurred and (B) shall be entitled to any notice provisions provided in the DIP Orders.

(c) At any time, suffer to exist a priority for any administrative expense or unsecured claim against the Loan Parties (now existing or hereafter arising of any kind or nature whatsoever), including any administrative expense of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code equal or superior to the priority of the Agents and the Lenders in respect of the Obligations, except as provided in Section 2.21 and for the Carve-Out Expenses and Permitted Priority Liens.

(d) At any time, suffer to exist any Lien on the Collateral having a priority equal or superior to the Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders in respect of the Collateral, except for Permitted Priority Liens.

(e) Prior to the date on which all the Obligations have been paid in full in cash, pay any administrative expense claims except (A) Carve-Out Expenses, (B) Obligations due and payable hereunder, and (C) other administrative expense and professional claims approved by order of the Bankruptcy Court and consistent with the Budget.

(f) (i) Make any payment or prepayment on or redemption or acquisition for value (including by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due) of any Pre-Petition Liabilities of any Loan without the consent of the Agents and the Required Lenders, or (ii) make any payment or create or permit any Lien pursuant to Section 361 of the Bankruptcy Code (or pursuant to any other provision of the Bankruptcy Code authorizing adequate protection), or apply to the Bankruptcy Court for the authority to do any of the foregoing; provided, however, that the Loan Parties may make payments permitted by the “first day” orders and the assumption of executory contracts and unexpired leases, in each case, as specifically approved by the Agents and the Required Lenders and the DIP Orders, and consistent with the Budget. For the avoidance of doubt, the payment of any fees, expenses and other amounts due by the Loan Parties to the Agents and the Lenders under this Agreement, including under Section 9.03 that may be constituted as Pre-Petition Liabilities, will not be prohibited hereunder. In addition, no Loan Party shall permit any of its Subsidiaries to make any payment, redemption or acquisition, which such Loan Party is prohibited from making under the provisions of this Section 6.14(f).

SECTION 6.15 Budget Compliance.

The Loan Parties shall not:

(a) Disbursements. (i) Commencing with the Measurement Period ending on Sunday, February 5, 2017, permit the variance between actual disbursements for any

line item during any Measurement Period, to be greater than 15% of the projected disbursements for such line item (excluding fees and expenses of Professionals, for which no upward variance shall be permitted) for such period in the Budget plus the amount set forth in (iii), below; (ii) amounts set forth in any line item may be expended for a purpose in another line item, excluding line items for any amounts for the fees and expenses of Professionals; and (iii) any unused amounts contained in a line item for a given week (without giving effect to the 15% variance set forth in subclause (i), above) may be carried forward for the same line item in the three successive weekly periods; provided that line items for the fees and expenses of Professionals shall not be subject to such carry-forward limitation; provided further that no unused amounts for the fees and expenses of Professionals shall be carried forward to be applied to such fees and expenses incurred after the occurrence of the Carve-Out Trigger Date.

(b) Compliance with Budget. Make any payment or incur any obligation that is not provided for in the Budget (within the variances from budgeted amounts permitted by this Agreement).

(c) Critical Vendors and Other Payments. Make (i) any pre-petition “critical vendor” payments or other payments on account of any creditor’s pre-petition unsecured claims, (ii) payments (including deposits) on account of claims or expenses arising under Section 503(b)(9) of the Bankruptcy Code, and (iii) payments to any vendors who may be entitled to assert various lien claims against the Loan Parties, their property or other assets, on account of any such vendor’s Pre-Petition claims, if the Loan Parties fail to pay for Pre-Petition goods and services, except, in each case, (A) as otherwise permitted by “first day orders” and in amounts and on terms and conditions that are approved by order of the Bankruptcy Court and (B) as permitted by the Budget.

ARTICLE VII EVENTS OF DEFAULT

SECTION 7.01 Events of Default.

If any of the following events (each an “**Event of Default**”) shall occur and be continuing:

(a) Any Loan Party shall fail to pay any principal of or any interest on the Loan or any fee or any other amount payable under this Agreement or any other Loan Document when and as the same shall become due and payable;

(b) any representation, warranty, or certification made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any report, certificate, or other document delivered to any Agent or any Lender pursuant to any Loan Document, which representation or warranty is subject to a materiality or a Material Adverse Effect qualification, shall have been incorrect in any respect when made or deemed made; or any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any report, certificate or other document delivered to any Agent or any Lender pursuant to any Loan

Document, which representation or warranty is not subject to a materiality or a Material Adverse Effect qualification, shall have been incorrect in any material respect when made or deemed made;

(c) Any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in ARTICLE VI (other than Section 6.12, which shall be subject to the provisions of Section 7.01(d)) or in any of Section 2.12,, Section 2.20, Section 2.21, Sections 5.01, Section 5.02, Section 5.04, Section 5.07, Section 5.08, Section 5.11 or Section 5.12;

(d) Any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in any Loan Document (other than those specified in Section 7.01(a), Section 7.01(b) or Section 7.01(c)), and such failure shall continue unremedied for a period of fifteen (15) days after the earlier of (i) the date on which a Responsible Officer of any Loan becomes aware of such failure and (ii) the date notice thereof shall have been given by any Agent to the Lead Borrower;

(e) Any Loan Party or any of its Subsidiaries (i) fails to pay when due or within any applicable grace period any principal or interest on any Indebtedness incurred after the Petition Date having an aggregate principal amount in excess of \$100,000 (other than the Loans) or (ii) breaches or defaults with respect to any Indebtedness incurred after the Petition Date (other than the Loans) (A) having an aggregate principal amount in excess of \$100,000 and (B) if the effect of such breach or default is to cause, or to permit the holder or holders then to cause, such Indebtedness to become or be declared due prior to their stated maturity;

(f) a Change in Control shall occur;

(g) One or more judgments, awards or orders for the payment of money exceeding \$100,000 in the aggregate shall be rendered against any Loan Party or any of its Subsidiaries and remain unsatisfied and either: (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment or order, or (ii) there shall be a period of ten (10) consecutive days after entry thereof during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment or order shall not give rise to an Event of Default under this subsection (g) if and for so long as (A) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering full payment thereof subject to standard and customary deductibles and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order;

(h) An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect and the same shall remain undischarged for a period of thirty (30) consecutive days during which period any action shall not be legally taken to attach or levy upon any material assets of any Loan Party to enforce any such liability;

(i) Any challenge by or on behalf of any Loan Party to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto;

(j) Any challenge by or on behalf of any other Person to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered adverse to the Agents and the Lenders;

(k) Any Lien purported to be created under any Loan Document in Collateral shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any such Collateral, with the priority required by the applicable Loan Document except as a result of the sale, release or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or the failure of the Agents, through their acts or omissions and through no fault of the Loan Parties, to maintain the perfection of their Liens in accordance with Applicable Law;

(l) (i) any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that could reasonably be expected to lead to forfeiture of any material portion of Collateral, or (ii) any director or senior officer of any Loan Party is (A) convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that could reasonably be expected to lead to forfeiture of any material portion of Collateral;

(m) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(n) [intentionally omitted];

(o) the imposition of any stay or other order, the effect of which restrains in the conduct by the Loan Parties, taken as a whole, of their business in the ordinary course in a manner which results in, or could reasonably be expected to have a Material Adverse Effect;

(p) the failure of any Loan Party or any of its Subsidiaries to comply with the terms of any subordination, lien priority or intercreditor agreement or any subordination or lien priority provisions of any note or other document running to the benefit of any Agent or the Lenders or the Pre-Petition Agents or Pre-Petition Lenders under the Pre-Petition Term Loan Documents, or if any such document becomes null and void or any Loan Party denies in writing further liability under any such document or provides notice to that effect;

(q) any Loan Party asserts or prosecutes any claim or cause of action against any of the Agents, the Lenders, the Pre-Petition Agents or the Pre-Petition Lenders; or

(r) The occurrence of any of the following in the Chapter 11 Cases:

(i) the Interim DIP Order shall not have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date;

(ii) the Final DIP Order shall not have been entered by the Bankruptcy Court within thirty (30) days after the Petition Date;

(iii) the Interim DIP Order or the Final DIP Order, as the case may be, shall have been revoked, reversed, vacated, stayed, modified, extended, supplemented or amended without the express prior written consent of the Agents and the Required Lenders;

(iv) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court appointing, (i) a trustee under Section 1104 of the Bankruptcy Code, or (ii) a responsible officer or an examiner with enlarged powers relating to the operating of the Loan Parties' business (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code;

(v) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Agents and the Required Lenders, (A) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties pari passu or superior to the priority of (1) the Agents and the Lenders in respect of the Obligations, or (2) the Pre-Petition Agents and the Pre-Petition Lenders in respect of the Pre-Petition Replacement Liens or Pre-Petition Adequate Protection Claim, or (B) to grant or permit the grant of a Lien on the Collateral other than a Permitted Encumbrance;

(vi) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court converting such Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;

(vii) an order shall be entered by the Bankruptcy Court confirming a plan of reorganization in any of the Chapter 11 Cases which does not (i) contain a provision for termination of the Total Commitment and payment in full in cash of (A) all Obligations of the Loan Parties hereunder and under the other Loan Documents and (B) all outstanding Pre-Petition Term Loan Obligations on or before the effective date of such plan or plans upon entry thereof and (ii) provide for the continuation of the Liens and security interests granted to the Collateral Agent for the benefit of the Agents and the Lenders, and the priority thereof until such plan effective date;

(viii) an order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the Total Commitment and payment in full in cash of (A) all Obligations of the Loan Parties hereunder and under the other Loan Documents and (B) all Pre-Petition Term Loan Obligations, in each case on dismissal;

(ix) an order shall be entered by the Bankruptcy Court terminating, or the termination, of the exclusivity period of the Loan Parties under Section 1121 of the Bankruptcy Code to file a plan in the Chapter 11 Cases;

(x) any Loan Party shall take any action, including the filing of an application, motion or other pleading, in support of any of the events or actions set forth under clauses (i) through (ix) above, or any other Person (other than any of the Loan Parties) shall do so and such application, motion or pleading is not contested in good faith by the Loan Parties;

(xi) an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor of any Loan Party with respect to any claim (other than a claim for personal injury that is covered by liability insurance) against one or more of the Loan Parties in an amount equal to or exceeding \$200,000 in the aggregate;

(xii) if any material property of any Loan Party is sold without the express written consent of the Agents and the Required Lenders (other than pursuant to the Asset Purchase Agreement);

(xiii) without the prior written consent of the Agents and the Required Lenders, any Loan Party shall take any action, including the filing of an application, motion or other pleading, requesting or seeking authority for any Loan Party (A) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (C) except as provided in the DIP Orders (as applicable), to use, or grant any lien on (other than Permitted Encumbrances), cash collateral of the Agents and the Lenders under Section 363(c) of the Bankruptcy Code; (D) to take any other action or actions materially adverse to any Agent and/or any Lender or their rights and remedies hereunder; or (E) the entry of any order by the Bankruptcy Court in any Chapter 11 Case granting relief as described in subclauses (A) through (D) of this clause (xiii);

(xiv) (A) any Loan Party shall attempt to, or any representative of the Loan Parties' estates files an action to, (1) invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent and/or any Lender's claims or rights against any Loan Party or (2) subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (B) any Collateral becoming subject to surcharge, to marshaling or to assessment pursuant to Section 506(c) of the Bankruptcy Code, (C) any Lien or security interest created by this Agreement, the DIP Orders or any other Loan Document shall, for any reason, cease to be a valid first priority Lien, subject only to Permitted Priority Liens or (C) any action is commenced by any Loan Party which contests the validity, perfection, enforceability or priority of any of the Liens and security interests of the Agents and/or the Lenders created by this Agreement, any of the DIP Orders or any other Loan Document;

(xv) if any Loan Party commences, or seeks leave to commence, any action against any of the Pre-Petition Agents, Pre-Petition Lenders or their respective agents, advisors or employees, challenging the validity, perfection, priority, extent or enforceability of any Pre-Petition Term Loan Document or claims that arose in connection with the Pre-Petition

Term Loan Documents, or seeking to avoid, modify, dispute, challenge or subordinate any Lien or claim thereunder;

(xvi) the determination of any Loan Party, whether by vote of such Loan Party's Board of Directors or otherwise, to employ an agent or other third party (other than Guggenheim) to conduct any sales of all or substantially all of such Loan Party's assets, or the filing of a motion or other application in the Chapter 11 Cases, seeking authority to do the foregoing, in each case without the prior written consent of the Agents and the Required Lenders;

(xvii) any Loan Party shall fail to comply with or achieve any Sale Milestone;

(xviii) immediately upon consummation of the Sale, the Obligations are not paid in full;

(xix) any Loan Party makes any disbursement not in accordance with or set forth in the Budget subject to all permitted variances herein;

(xx) an order shall be entered by the Bankruptcy Court amending, supplementing or otherwise modifying, or the filing by any Loan Party of an application, motion, pleading or notice seeking the amendment, supplement or other modification of or appeal against, in each case, the DIP Orders or any of the "first day" orders in respect of cash management or critical vendors or suppliers, in each instance, without the consent of the Administrative Agent and the Required Lenders; provided, however, that any amendment, supplement or other modification materially and adversely affecting any Lender in a manner disproportionate from any other member shall require the written consent of such materially and adversely affected Lender;

(xxi) except with respect to payments as permitted by any order of the Bankruptcy Court approving a "first day" motion (and included in the Budget), an order shall be entered by the Bankruptcy Court permitting the payment of, or granting adequate protection with respect to, the Pre-Petition Obligations (other than the Pre-Petition Adequate Protection Claim) or the filing of any motion seeking the same by any of the Loan Parties, in each case, without the consent of the Agents and the Required Lenders;

(xxii) this Agreement, the DIP Orders or any other Loan Document, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and Lenders on any Collateral purported to be covered thereby; or

(xxiii) any other "Event of Default" under and as defined in the Interim DIP Order or the Final DIP Order, as the case may be, shall have occurred;

then, in any such event, subject to the DIP Orders, the Collateral Agent may, and at the request of the Required Lenders shall, (A) suspend or immediately terminate the Commitments (in whole or in part) and the Agents and the Lenders shall have no obligation to lend or advance any additional funds to or on behalf the Borrowers, or provide any other financial accommodations,

(B) with notice to the Borrowers, declare all of the Obligations due and payable, and (C) five (5) days after delivery of an Enforcement Notice, take any and all other actions and remedies available to the Collateral Agent under this Agreement, the DIP Orders, the other Loan Documents or Applicable Law, which the Collateral Agent may deem appropriate and to proceed against and realize upon the Collateral or any other property of the Loan Parties or their estates, unless an order of the Bankruptcy Court is entered to the contrary.

SECTION 7.02 Remedies on Default.

Subject to the DIP Orders, in case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, the Agents may (and at the direction of the Required Lenders, shall) proceed to protect and enforce their rights and remedies under this Agreement or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties. No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law. Notwithstanding the foregoing, the exercise of remedies upon an Event of Default as provided herein shall not restrict the payment of the Carve-Out Expenses or payroll expenses due and owing as of the date of such Event of Default.

SECTION 7.03 Application of Proceeds.

After the occurrence of an Event of Default and acceleration of the Obligations, all proceeds realized from any Loan Party or on account of any Collateral or, without limiting the foregoing, on account of any Prepayment Event, shall be applied in the following order:

- (a) FIRST, ratably to pay the Obligations in respect of any Credit Party Expenses, indemnities and other amounts then due to the Agents until paid in full in cash;
- (b) SECOND, ratably to pay any Credit Party Expenses, indemnities and fees then due to the Lenders until paid in full in cash;
- (c) THIRD, ratably to pay interest accrued in respect of the Obligations until paid in full in cash;
- (d) FOURTH, ratably to pay principal due in respect of the Loans until paid in full in cash; and
- (e) FIFTH, to such other Person entitled thereto under Applicable Law.

**ARTICLE VIII
THE AGENTS**

SECTION 8.01 Appointment and Administration by Administrative Agent.

Each Lender hereby irrevocably designate Cerberus as Administrative Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Administrative Agent. The Lenders each hereby irrevocably authorizes the Administrative Agent (a) to enter into the Loan Documents to which it is a party, and (b) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Credit Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

SECTION 8.02 Appointment of Collateral Agent.

Each Lender hereby irrevocably designates Cerberus as Collateral Agent under this Agreement and the other Loan Documents. The Lenders each hereby irrevocably authorizes the Collateral Agent (a) to enter into the Loan Documents to which it is a party, and (b) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto for its own benefit and for the ratable benefit of the other Credit Parties. Any proceeds received by the Collateral Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of any Loan Document shall be paid over to the Administrative Agent for application as provided in this Agreement and the other Loan Documents. The Collateral Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Credit Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Collateral Agent.

SECTION 8.03 Sharing of Excess Payments.

If at any time or times any Credit Party shall receive (i) by payment, foreclosure, setoff, banker's lien, counterclaim, or otherwise, or any payments with respect to the Obligations owing to such Credit Party arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Credit Party from the Administrative Agent pursuant to the terms of this Agreement, or (ii) payments from the Administrative Agent in excess of such Credit Party's ratable portion of all such distributions by the Administrative Agent, such Credit Party shall promptly (1) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in same day funds, as applicable, for the account of all of

the Credit Parties and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Credit Parties so that such excess payment received shall be applied ratably as among the Credit Parties in accordance with their Commitment Percentages; provided, however, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

SECTION 8.04 Agreement of Applicable Lenders.

Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Applicable Lenders, action shall be taken by the Administrative Agent, for and on behalf or for the benefit of all Credit Parties upon the direction of the Applicable Lenders, and any such action shall be binding on all Credit Parties. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of Section 9.02.

SECTION 8.05 Liability of Agents.

(a) The Agents, when acting on behalf of the Credit Parties, may execute any of their respective duties under this Agreement by or through any of its officers, agents and employees, and no Agent nor its respective directors, officers, agents or employees shall be liable to any other Credit Party for any action taken or omitted to be taken in good faith, or be responsible to any other Credit Party for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of such Agent's own gross negligence, bad faith or willful misconduct. No Agent or its respective directors, officers, agents and employees shall in any event be liable to any other Credit Party for any action taken or omitted to be taken by it pursuant to instructions received by it from the Applicable Lenders, or in reliance upon the advice of counsel selected by it. Without limiting the foregoing, no Agent or any of its respective directors, officers, employees, or agents shall be: (i) responsible to any other Credit Party for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any other Loan Document or any related agreement, document or order; (ii) required to ascertain or to make any inquiry concerning the performance or observance by any Loan Party of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents; (iii) responsible to any other Credit Party for the state or condition of any properties of the Loan Parties or any other obligor hereunder constituting Collateral for the Obligations or any information contained in the books or records of the Loan Parties; (iv) responsible to any other Credit Party for the validity, enforceability, collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (v) responsible to any other Credit Party for the validity, priority or perfection of any Lien securing or purporting to secure the Obligations or for the value or sufficiency of any of the Collateral.

(b) The Agents may execute any of their duties under this Agreement or any other Loan Document by or through its agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the other Loan Documents. The Agents shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) None of the Agents nor any of their respective directors, officers, employees, or agents shall have any responsibility to any Loan Party on account of the failure or delay in performance or breach by any other Credit Party (other than by each such Agent in its capacity as a Lender) of any of its respective obligations under this Agreement or any of the other Loan Documents or in connection herewith or therewith.

(d) The Agents shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by them to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Loan Parties), independent accountants and other experts selected by any Loan Party or any Credit Party. The Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless they shall first receive such advice or concurrence of the Applicable Lenders as it deems appropriate or they shall first be indemnified to its satisfaction by the other Credit Parties against any and all liability and expense which may be incurred by them by reason of the taking or failing to take any such action.

SECTION 8.06 Notice of Default.

The Agents shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has actual knowledge of the same or has received notice from a Credit Party or Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that an Agent obtains such actual knowledge or receives such a notice, such Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of an Event of Default, the Administrative Agent shall (subject to the provisions of Section 9.02) take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Administrative Agent shall have received such direction, the Administrative 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 Credit Parties. In no event shall the Administrative Agent be required to comply with any such directions to the extent that the Administrative Agent believes that its compliance with such directions would be unlawful.

SECTION 8.07 Credit Decisions.

Each Credit Party (other than the Agents) acknowledges that it has, independently and without reliance upon the Agents or any other Credit Party, and based on the financial statements prepared by the Loan Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Loan Parties and has made its own

decision to enter into this Agreement and the other Loan Documents. Each Credit Party (other than the Agents) also acknowledges that it will, independently and without reliance upon the Agents or any other Credit Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing the Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

SECTION 8.08 Reimbursement and Indemnification.

Each Credit Party (other than the Agents) agrees to (i) reimburse the Agents for such Credit Party's Commitment Percentage of (x) any expenses and fees incurred by any Agent for the benefit of Credit Parties under this Agreement and any of the other Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Credit Parties, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by the Loan Parties and (y) any expenses of any Agent incurred for the benefit of the Credit Parties that the Loan Parties have agreed to reimburse pursuant to this Agreement or any other Loan Document and have failed to so reimburse and (ii) indemnify and hold harmless each Agent and any of its directors, officers, employees, or agents, on demand, in the amount of such Credit Party's Commitment Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any Credit Party in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by it or any of them under this Agreement or any of the other Loan Documents to the extent not reimbursed by the Loan Parties, including, without limitation, costs of any suit initiated by each Agent against any Credit Party (except such as shall have been determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent); provided, however, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Credit Party in its capacity as such. The provisions of this Section 8.08 shall survive the repayment of the Obligations and the termination of the Commitments.

SECTION 8.09 Rights of Agents.

It is understood and agreed that the Agents shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as their rights and powers under other agreements and instruments to which they are or may be party, and engage in other transactions with the Loan Parties, as though they were not the Agents. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of commercial or investment banking, trust, advisory or other business with the Loan Parties and their Affiliates as if it were not an Agent hereunder.

SECTION 8.10 Notice of Transfer.

The Administrative 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 Acceptance shall have become effective as set forth in Section 9.04.

SECTION 8.11 Successor Agents.

Any Agent may resign at any time by giving thirty (30) Business Days' written notice thereof to the other Credit Parties and the Lead Borrower. Upon any such resignation of an Agent, the Required Lenders shall have the right to appoint a successor Agent, which, so long as there is no Event of Default, shall be reasonably satisfactory to the Lead Borrower (whose consent in any event shall not be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Required Lenders and/or none shall have accepted such appointment within thirty (30) days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the other Credit Parties, appoint a successor Agent which shall be a Person capable of complying with all of the duties of such Agent hereunder (in the opinion of the retiring Agent and as certified to the other Credit Parties in writing by such successor Agent) which, so long as there is no Event of Default, shall be reasonably satisfactory to the Lead Borrower (whose consent shall not in any event be unreasonably withheld or delayed). Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as such Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent under this Agreement.

SECTION 8.12 Relation Among the 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 any Agent) authorized to act for, any other Lender.

SECTION 8.13 Reports and Financial Statements.

By signing this Agreement, each Lender:

- (a) agrees to furnish the Administrative Agent on the first day of each month with a summary of all Other Liabilities due or to become due to such Lender;
- (b) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of Variance Reports and all commercial finance examinations and appraisals of the Collateral received by the Administrative Agent (collectively, the "**Reports**");

(c) expressly agrees and acknowledges that the Administrative Agent (i) makes no representation or warranty as to the accuracy of the Reports, and (ii) shall not be liable for any information contained in any Report;

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

(e) agrees to keep all Reports confidential in accordance with Section 9.15; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative 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 in connection with any portion of the Loan that the indemnifying Lender has made to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a portion of the Loan of the Borrowers; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative 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 Administrative 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.

SECTION 8.14 Agency for Perfection.

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

SECTION 8.15 Delinquent Lender.

(a) If for any reason any Lender shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Administrative Agent its Commitment Percentage of the Loan, expenses or setoff (a "**Delinquent Lender**") and such failure is not cured within ten (10) days of receipt from the Administrative Agent of written notice thereof, then, in addition to the rights and remedies that may be available to the other Credit Parties, the Loan Parties or any other party at law or in equity, and not at limitation thereof, (i) such Delinquent Lender's right to participate in the administration of, or decision-making rights related to, the Obligations, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, and (ii)

a Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Loan Parties to the remaining non-delinquent Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, as a result of application of such assigned payments the Lenders' respective Commitment Percentages of all outstanding Obligations shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency. The Delinquent Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Delinquent Lender of its Commitment Percentage of any Obligations, any participation obligation, or expenses as to which it is delinquent, together with interest thereon at the rate set forth in Section 2.08 hereof from the date when originally due until the date upon which any such amounts are actually paid.

(b) Each Delinquent Lender shall indemnify the Administrative Agent and each non-delinquent Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by the Administrative Agent or by any non-delinquent Lender, on account of a Delinquent Lender's failure to timely fund its Commitment Percentage of the Loan or to otherwise perform its obligations under the Loan Documents.

ARTICLE IX MISCELLANEOUS

SECTION 9.01 Notices.

Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail, as follows:

(a) if to any Loan Party, to it c/o Limited Stores, LLC, 7775 Walton Parkway, New Albany, OH 43054, Attention: Timothy D. Boates (email tboates@rasmanagement.com) with a copy to Klehr | Harrison | Harvey | Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801, Attention: Domenic Pacitti, Esq. (email: dpacitti@klehr.com);

(b) if to the Administrative Agent or the Collateral Agent, to Cerberus Business Finance, LLC, 875 Third Avenue, New York, New York 10022, Attention: Joseph Naccarato (Facsimile (212) 891-1541 (E-Mail jnaccarato@cerberuscapital.com), with a copy to Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, Thirty-Ninth Floor, Los Angeles, CA 90067, Michael Tuchin and Maria Sountas-Argiropoulos (Facsimile: (310) 407-9090) (E-Mail mtuchin@ktbslaw.com and msargiropoulos@ktbslaw.com); and

(c) if to any other Credit Party, to it at its address (or facsimile number or electronic mail address) set forth on the signature pages hereto or on any Assignment and Acceptance.

Notwithstanding the foregoing, any notice hereunder sent by e-mail shall be solely for the distribution of (i) routine communications and (ii) documents and signature pages for execution

by the parties hereto, and for no other purpose. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given three (3) days after mailing or otherwise upon delivery. Nothing in this Agreement or in any other Loan Document shall be construed to limit or affect the obligation of the Loan Parties or any other Person to serve upon the Agents and the Lenders in the manner prescribed by the Bankruptcy Code any pleading or notice required to be given to the Agents and the Lenders pursuant to the Bankruptcy Code.

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by any Credit Party in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any other rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 9.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of the Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as otherwise specifically provided herein, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders, or in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided, however, that no such waiver, amendment, modification or other agreement shall:

(i) Increase the Commitment of any Lender without the prior written consent of such Lender;

(ii) Reduce the principal amount of any Obligation or reduce the rate of interest thereon (other than the waiver of the Default Rate), or reduce any fees payable under the Loan Documents without the prior written consent of the Lenders affected thereby;

(iii) Without prior written Unanimous Consent,

(A) postpone the scheduled date of payment of the principal amount of any Obligation, or any interest thereon, or any fees payable under the Loan

Documents, or reduce the amount of, waive or excuse any such payment, or postpone the expiration of the Commitments or postpone the Maturity Date;

(B) except for Permitted Dispositions, release any material portion of the Collateral from the Liens granted under the Loan Documents;

(C) increase the Total Commitment;

(D) except in connection with any Permitted Disposition, release any Loan Party from its obligations under any Loan Document, or limit its liability in respect of such Loan Document;

(E) change Section 2.12(f) or Section 7.03;

(F) subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be; or

(G) change any of the provisions of this Section 9.02 or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder.

(iv) Without prior written consent of the Agents, affect the rights or duties of the Agents.

(c) No notice to or demand on any Loan Party shall entitle any Loan Party to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not a Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by a Lender, or any holder of a Note, shall bind any Person subsequently acquiring a Note, whether or not a Note is so marked. No amendment to this Agreement or any other Loan Document shall be effective against the Borrower unless signed by the Borrower or other applicable Loan Party.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Loan Parties shall jointly and severally pay all Credit Party Expenses on demand and without further notice (other than as provided in, and in accordance with, the DIP Orders, as applicable). Without limitation of the foregoing or any other provision of any Loan Document, if any Borrower fails to perform any covenant or agreement contained herein or in any other Loan Document, the Administrative Agent may itself perform or cause performance of such covenant or agreement, and the reasonable documented expenses of the Administrative Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers. Notwithstanding anything to the contrary, this Section 9.03(a) shall not apply to any tax-related matter, which shall be subject to Section 2.17 instead.

(b) The Loan Parties shall, jointly and severally, indemnify the Credit Parties and each of their Subsidiaries and Affiliates, and each of their respective stockholders, directors, officers, employees, agents, attorneys, and advisors of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all damages, actual out-of-pocket losses, claims, actions, causes of action, settlement payments, obligations, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred, suffered, sustained or required to be paid by, or asserted against, any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the transactions contemplated by the Loan Documents or any other transactions contemplated hereby, (ii) the Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by any Loan Party or any Subsidiary, or any Environmental Liability related in any way to any Loan Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to or arising from any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto or (v) any documentary taxes, assessments or similar charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or any other Loan Document; provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any Affiliate of such Indemnitee (or any officer, director, employee, advisor or agent of such Indemnitee or any such Indemnitee’s Affiliates), or (y) which constitute indirect, consequential, special or punitive damages. In connection with any indemnified claim hereunder, the Indemnitee shall be entitled to select its own counsel and the Loan Parties shall promptly pay the reasonable fees and expenses of such counsel.

(c) No party to this Agreement shall assert and, to the extent permitted by Applicable Law, such party hereby waives, any claim against any other party to this Agreement or any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated by the Loan Documents, the Loan or the use of the proceeds thereof.

(d) The provisions of this Section 9.03 shall remain operative and in full force and effect regardless of the termination of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of any Loan Document, or any investigation made by or on behalf of any Credit Party. All amounts due under this Section 9.03 shall be payable within fifteen (15) Business Days of written demand therefor, which written demand shall set forth such amounts in reasonable detail.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including, except for the right to request and receive Loans, any trustee succeeding to the rights of the Loan Parties pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code); except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any such attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Indemnitees, any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may, with the consent of the Administrative Agent, assign to one or more Persons (other than Loan Party, the Sponsor or a Sponsor Affiliated Lender) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loan at the time owing to it); provided, however, that no such consent shall be required in connection with any assignment to another Lender or to an Affiliate of a Lender or a Related Fund of such Lender or if such assignment is in connection with any merger, consolidation, sale, transfer or other disposition of all or any substantial portion of the business or loan portfolio of such Lender, and provided further that each assignment shall be subject to the following conditions: (i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or the assigning Lender's portion of the Loan, the amount of the Commitment or the assigning Lender's portion of the Loan subject to an assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$500,000 or a multiple of \$100,000 with respect to the Commitments, or, if less, the entire remaining amount of the assigning Lender's Commitment or the assigning Lender's portion of the Loan (except such minimum amount shall not apply to an assignment by a Lender to (x) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (y) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$500,000 or a multiple of \$100,000 in excess thereof); and (ii) except as provided in the last sentence of this Section 9.04(b), the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$5,000.00 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender). Subject to acceptance and recording thereof pursuant to Section 9.04(d), from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not

comply with this Section 9.04(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(e). The Loan Parties hereby acknowledge and agree that any assignment shall give rise to a direct obligation of the Loan Parties to the assignee and that the assignee shall be considered to be a “Credit Party” for all purposes under this Agreement and the other Loan Documents.

(c) The Administrative Agent, acting for this purpose as an agent of the Loan Parties, shall maintain at one of its offices in New York, New York, a copy of each Assignment and Acceptance delivered to it and a register (the “**Register**”) for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loan owing to, each Lender pursuant to the terms hereof from time to time (“**Registered Loans**”). The entries in the Register shall be conclusive and the Loan Parties and Credit Parties may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the processing and recordation fee referred to in Section 9.04(b) and any written consent to such assignment required by Section 9.04(a), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.04(d).

(e) Any Lender may, without the consent of the Loan Parties or any other Person, sell participations to one or more banks or other entities (a “**Participant**”), excluding any Loan Party, any Sponsor or any Sponsor Affiliated Lender, in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loan owing to it), subject to the following:

(i) such Lender’s obligations under this Agreement and the other Loan Documents shall remain unchanged;

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(iii) the Loan Parties and other Credit Parties shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement;

(iv) any agreement or instrument pursuant to which a Lender sells a participation in the Commitments or the such Lender’s portion of the Loan which provides that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided, however, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 9.02(b)(ii)(A) or (B) that affects such Participant;

(v) subject to clauses (viii) and (ix) of this Section 9.04(e), the Loan Parties agree that each Participant shall be entitled to the benefits of Section 2.09 and Section 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b);

(vi) to the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender so long as such Participant agrees to be subject to Section 2.16 as though it were a Lender;

(vii) only with respect to Registered Loans, each Lender, acting for this purpose as an agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register (each a “**Participation Register**”) meeting the requirements of 26 CFR §5f.103 1(c) for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts and other Obligations from time to time. The entries in each Participation Register shall be conclusive and the Loan Parties and the Credit Parties may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under Section 2.09, Section 2.17, and Section 9.08). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participation Register shall be available for inspection by the Lead Borrower and any Credit Party at any reasonable time and from time to time upon reasonable prior notice;

(viii) a Participant shall not be entitled to receive any greater payment under Section 2.09 or Section 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower’s prior written consent; and

(ix) a Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 2.17(e) as though it were a Lender and such Participant is eligible for exemption from the withholding Tax referred to therein, following compliance with Section 2.17(e).

(f) Any Credit Party may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Credit Party, including any pledge or assignment to secure obligations to any of the twelve Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, however, that no such pledge or assignment of a security interest shall release a Credit Party from any of its obligations hereunder or substitute any such pledgee or assignee for such Credit Party as a party hereto.

(g) The Loan Parties authorize each Credit Party to disclose to any Participant or assignee and any prospective Participant or assignee, subject to the provisions of Section 9.15, any and all financial information in such Credit Party's possession concerning the Loan Parties which has been delivered to such Credit Party by or on behalf of the Loan Parties pursuant to this Agreement or which has been delivered to such Credit Party by or on behalf of the Loan Parties in connection with such Credit Party's credit evaluation of the Loan Parties prior to becoming a party to this Agreement.

SECTION 9.05 Survival.

All covenants, agreements, indemnities, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of the Loan, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on the Loan or any fee or any other Obligation (other than contingent indemnification obligations for which no claims have been asserted) is outstanding and unpaid. The provisions of Section 2.09, Section 2.17, Section 9.03 and Article VIII shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent, on behalf of itself and the other Credit Parties, may require such assurances and indemnities as it shall reasonably deem necessary or appropriate to protect the Credit Parties against loss on account of such release and termination, including, without limitation, with respect to credits previously applied to the Obligations that may subsequently be reversed or revoked, any Other Liabilities, and any contingent indemnification claims for which no claim has been asserted.

SECTION 9.06 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all contemporaneous or previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the applicable Credit Parties and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including, except for the right to request Loans, any trustee succeeding to the rights of the Borrowers pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code), except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of

each Agent and each Lender, and any assignment by any Lender shall be governed by Section 9.04 hereof. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Credit Party, each Participant, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, but excluding payroll accounts, and employee benefit or withholding accounts) at any time held and other obligations at any time owing by such Credit Party, Participant, or Affiliate to or for the credit or the account of the Loan Parties against any of and all the Obligations of the Loan Parties now or hereafter existing under this Agreement or other Loan Document held by a Credit Party, irrespective of whether or not such Credit Party shall have made any demand under this Agreement or other Loan Document and although such obligations may be matured or unmatured or otherwise fully secured. The Administrative Agent or the applicable Lender shall provide the Lead Borrower with written notice promptly after any exercise of the right of setoff. The rights of each Credit Party under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) that such Credit Party may have, provided that the proceeds of any setoff shall be shared in accordance with Section 8.03. Notwithstanding the foregoing, no Credit Party will, or will permit its Participant to, exercise its rights under this Section 9.08 without the consent of the Administrative Agent or the Required Lenders. ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES ANY OF THE OBLIGATIONS PRIOR TO THE EXERCISE BY ANY CREDIT PARTY OF ITS RIGHT OF SETOFF UNDER THIS SECTION ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process; Venue.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, AND, AS MAY BE APPLICABLE, THE BANKRUPTCY CODE.

(b) EACH OF THE PARTIES HERETO AGREES THAT ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURTS OF THE STATE OF DELAWARE, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE COLLATERAL AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE THE COLLATERAL AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 9.09 , THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; PROVIDED, THAT NOTHING IN THIS SECTION 9.09 SHALL AFFECT THE RIGHT OF THE AGENTS OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY OR ANY COLLATERAL IN ANY OTHER JURISDICTION.

(c) EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES, AND DOCUMENTS IN ANY SUIT, ACTION, OR PROCEEDING BROUGHT IN THE UNITED STATES OF AMERICA ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS BY THE MAILING (BY REGISTERED MAIL OR CERTIFIED MAIL, POSTAGE PREPAID) OR DELIVERING OF A COPY OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 9.01. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH 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. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(d) EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING; AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Press Releases and Related Matters.

Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of Administrative Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Administrative Agent and without the prior written consent of Administrative Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with Administrative Agent before issuing such press release or other public disclosure. Each Borrower consents to the publication by Administrative Agent or any Lender of advertising material in tombstone format relating to the financing transactions contemplated by this Agreement using any Borrower's name, logo or trademark. The Administrative Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

SECTION 9.12 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.13 Interest Rate Limitation.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to the Loan, together with all fees, charges and other amounts that are treated as

interest on the Loan under Applicable Law (collectively, the “**Charges**”), shall be found by a court of competent jurisdiction in a final order to exceed the maximum lawful rate (the “**Maximum Rate**”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of the Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of the Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of the Loan or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party hereunder shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release of any Loan Party from, any of the terms or provisions of, this Agreement, any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Administrative Agent, the Collateral Agent, or any other Credit Party.

(b) The obligations of each Loan Party to pay the Obligations in full hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Obligations after the termination of all Commitments to any Loan Party under any Loan Document), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations, or the Other Liabilities, as applicable, or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the payment in full in cash of all the Obligations after termination of all Commitments to any Loan Party under any Loan Document).

(c) To the fullest extent permitted by Applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash of all the Obligations after the termination of all Commitments to any Loan Party under any Loan

Document. The Administrative Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been paid in full in cash and performed in full after the termination of Commitments to any Loan Party under any Loan Document. Pursuant to Applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each of the Borrowers hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 9.14), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 9.14 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever. Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

(e) Each Loan Party hereby agrees to keep each other Loan Party fully apprised at all times as to the status of its business, affairs, finances, and financial condition, and its ability to perform its Obligations under the Loan Documents and the Other Liabilities, and in particular as to any adverse developments with respect thereto. Each Loan Party hereby agrees

to undertake to keep itself apprised at all times as to the status of the business, affairs, finances, and financial condition of each other Loan Party, and of the ability of each other Loan Party to perform its Obligations under the Loan Documents and the Other Liabilities, and in particular as to any adverse developments with respect to any thereof. Each Loan Party hereby agrees, in light of the foregoing mutual covenants to inform each other, and to keep themselves and each other informed as to such matters, that the Credit Parties shall have no duty to inform any Loan Party of any information pertaining to the business, affairs, finances, or financial condition of any other Loan Party, or pertaining to the ability of any other Loan Party to perform its Obligations under the Loan Documents and the Other Liabilities, even if such information is adverse, and even if such information might influence the decision of one or more of the Loan Parties to continue to be jointly and severally liable for, or to provide Collateral for, Obligations of one or more of the other Loan Parties. To the fullest extent permitted by applicable law, each Loan Party hereby expressly waives any duty of the Credit Parties to inform any Loan Party of any such information.

(f) The provisions of this Section 9.14 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Loan Parties as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the Loan Parties or to exhaust any remedies available to it or them against any of the other Loan Parties or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 9.14 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

SECTION 9.15 Confidentiality.

Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to their and their Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and agrees to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Applicable Law or by any subpoena or similar legal process (the Credit Parties agree to endeavor to furnish the Lead Borrower with notice of such process and an opportunity to contest such disclosure as long as furnishing such notice and opportunity would not result in the Credit Parties' violation of Applicable Law, but the good faith failure to furnish such notice and opportunity shall not create any liability on any Credit Party to the Loan Parties), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement and any actual or prospective counterparty or advisors to any swap or derivative transactions relating to the Loan Parties, the Other Liabilities and the Obligations, (g) with the consent of the Loan Parties or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to any Credit Party on a nonconfidential basis from a source other than

the Loan Parties. For the purposes of this Section, the term “**Information**” means all information received from the Loan Parties relating to their business, other than any such information that is available to the Credit Parties on a nonconfidential basis prior to disclosure by the Loan Parties. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.16 Patriot Act.

Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

SECTION 9.17 Foreign Asset Control Regulations.

Neither of the Loan nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “**Trading With the Enemy Act**”) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the “**Foreign Assets Control Regulations**”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “**Executive Order**”) and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Borrowers or their Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or in any manner violative of any such order.

SECTION 9.18 Reinstatement; Certain Payments.

If any claim is ever made upon any Agent or any Lender for repayment or recovery of any amount or amounts received by such Agent or such Lender in payment or on account of any of the Obligations, such Agent or such Lender shall give prompt notice of such claim to each other Agent and Lender and the Lead Borrower, and if such Agent or such Lender repays all or part of such amount by reason of (i) any judgment, decree or order of any court or

administrative body having jurisdiction over such Agent or such Lender or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Agent or such Lender with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Agent or such Lender hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Agent or such Lender. The provisions of this Section shall survive the repayment of the Obligations and release of the Liens granted under the Loan Documents.

SECTION 9.19 Parties Including Trustees; Bankruptcy Court Proceedings.

Subject to the DIP Orders, this Agreement, the other Loan Documents, and all Liens created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Loan Party, the estate of each Loan Party, and any trustee or other successor in interest of any Loan Party in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code or any other bankruptcy or insolvency laws, and shall not be subject to Section 365 of the Bankruptcy Code. Subject to the DIP Orders, this Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agents and Lenders and their respective assigns, transferees and endorsees. Subject to the DIP Orders, this Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the Bankruptcy Code, or in the event of dismissal of any Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Collateral Agent or the Lenders file financing statements or otherwise perfect their security interests or Liens under applicable law.

**ARTICLE X
GUARANTY**

SECTION 10.01 Guaranty.

Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including all interest that accrues after the commencement of the Chapter 11 Cases, whether or not a claim for post-filing interest is allowable or allowed in the Chapter 11 Cases), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrowers, being the “Guaranteed Obligations”), and agrees to pay any and all costs, fees and expenses (including reasonable counsel fees and expenses) incurred by the Agents and the Lenders in enforcing any rights under the guaranty set forth in this Article X. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Agents and the Lenders

under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of the Chapter 11 Cases.

SECTION 10.02 Guaranty Absolute.

Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agents or the Lenders with respect thereto. Each Guarantor agrees that this Article constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article X are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives (to the fullest extent permitted by law) any defenses it may now or hereafter have in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;
- (c) any taking, exchange, release, subordination or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
- (d) the applicability of Section 509(c) of the Bankruptcy Code to the claims of any Guarantor against any Loan Party in the Chapter 11 Cases;
- (e) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including any Agent, or any Lender;
- (f) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or
- (g) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Agents or the Lenders that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article X shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Agents, the Lenders, or any other Person for any reason (and whether as a

result of any demand, settlement, litigation or otherwise), all as though such payment had not been made.

SECTION 10.03 Waiver.

(a) Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article and any requirement that the Agents or the Lenders exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Agent or any Lender to seek payment or recovery of any amounts owed under this Article X from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Agent or any Lender protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Agents and the Lenders shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 10.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article X, and acknowledges that this Article is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(b) Without limiting the generality, scope or meaning of any of the foregoing or any other provision hereof, each Guarantor:

(i) waives all rights of subrogation, reimbursement, indemnification, and contribution and all other rights and defenses that are or may become available by reason of Applicable Law;

(ii) waives all rights and defenses arising out of an election of remedies by any Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the Borrower by the operation of Applicable Law or otherwise;

(iii) waives all rights and defenses that a Guarantor may have because Borrowers' debt is or may be secured by real property. This means, among other things:

(A) the Agents and Lenders may collect from Guarantor without first foreclosing on any real or personal property collateral pledged any Borrower;

(B) if Collateral Agent forecloses on any real property collateral pledged by any Borrower: (1) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (2) any Agent or any Lender may collect from Guarantor even if the Collateral Agent, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrowers;

(iv) waives all rights regarding and defenses to the application of Section 509(c) of the Bankruptcy Code to claims of Guarantor; and

(v) acknowledges this is an unconditional and irrevocable waiver of any rights and defenses each Guarantor may have because the Borrowers' debt is secured by real property, including any rights or defenses based upon Applicable Law.

SECTION 10.04 Continuing Guaranty, Assignments.

This Article is a continuing guaranty and shall (a) remain in full force and effect until the later of (i) the cash payment in full of the Guaranteed Obligations (other than indemnification obligations as to which no claim has been made) and all other amounts payable under this Article and (ii) the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agents and the Lenders and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including all or any portion of its Commitments or its Loans) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 9.04.

SECTION 10.05 Subrogation.

No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article X, including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agents and the Lenders against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Article X shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of the Agents and the Lenders and shall forthwith be paid to the Agents and the Lenders to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article X, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article X thereafter arising. If (i) any Guarantor shall make payment to the Agents and the Lenders of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article X shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Agents and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as a sealed instrument as of the day and year first above written.

LIMITED STORES, LLC
as Lead Borrower

By: _____
Name:
Title:

THE LIMITED STORES GC, LLC
as Borrower

By: _____
Name:
Title:

LIMITED STORES COMPANY, LLC, as
Guarantor

By: _____
Name:
Title:

CERBERUS BUSINESS FINANCE, LLC
As Administrative Agent and Collateral Agent

By: _____
Name:
Title:

CERBERUS ASRS HOLDING LLC, as Lender

By: _____

Name:

Title:

**CERBERUS ICQ LEVERED LOAN
OPPORTUNITIES FUND, L.P., as Lender**

By: Cerberus ICQ Levered Opportunities GP, LLC

Its: General Partner

By: _____

Name:

Title:

**CERBERUS KRS LEVERED LOAN
OPPORTUNITIES FUND, L.P., as Lender**

By: Cerberus KRS Levered Opportunities GP, LLC

Its: General Partner

By: _____

Name:

Title:

**CERBERUS NJ CREDIT OPPORTUNITIES
FUND, L.P., as Lender**

By: Cerberus NJ Credit Opportunities GP, LLC
Its: General Partner

By: _____
Name:
Title:

**CERBERUS ONSHORE LEVERED LOAN
OPPORTUNITIES FUND II, L.P., as Lender**

By: Cerberus Levered Opportunities II GP, LLC
Its: General Partner

By: _____
Name:
Title:

SCHEDULE 1.1

BORROWERS

Limited Stores, LLC
The Limited Stores GC, LLC

SCHEDULE 1.2**LENDERS AND COMMITMENTS**

<u>Lender</u>	<u>Commitment (as of the Interim Effective Date)</u>	<u>Commitment (as of the Final Effective Date)</u>	<u>Commitment Percentage</u>
Cerberus ASRS Holding LLC	\$1,797,052.89	\$2,343,982.02	39.06636707%
Cerberus ICQ Levered Loan Opportunities Fund, L.P.	\$664,428.43	\$866,645.78	14.44409631%
Cerberus KRS Levered Loan Opportunities Fund, L.P.	\$298,406.21	\$389,225.49	6.48709157%
Cerberus NJ Credit Opportunities Fund, L.P.	\$261,918.45	\$341,632.77	5.69387947%
Cerberus Onshore Levered Loan Opportunities Fund II, L.P.	\$1,578,194.02	\$2,058,513.94	34.30856558%
Total Commitment	\$4,600,000.00	\$6,000,000.00	100.00000000%

Sched. 1.2