

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

In re:)	
)	
PIZZA PALZ, INC.)	Case No:
)	
Debtor.)	

**DEBTOR’S MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1),
364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (II) SCHEDULING FINAL HEARING
PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)**

COMES NOW, Pizza Palz, Inc. (the “Debtor”) as debtor and debtor in possession and, pursuant to pursuant to §§ 105, 361, 362, 363(c), 364(c)(1)-(3) and 364(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and move this Court (this “Motion”) to enter an interim order (the “Interim Order”) and a final order (the “Final Order”) approving and authorizing the Debtor to obtain post-petition financing, use cash collateral, and schedule final hearings as necessary.

Jurisdiction and Venue

1. On March 23, 2017, (the “Petition Date”) the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtor continues to operate their businesses and manage their properties as debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor’s chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The

statutory predicate for the relief requested herein is Bankruptcy Code §§ 105, 361, 362, 363(c), 364(c)(1)-(3) and 364(d), in addition to Bankruptcy Rules 2002, 4001 and 9014.

Factual Background

3. The Debtor operates eight (8) Domino's Pizza franchise locations located in the cities of: Albertville, Boaz, Guntersville, Gadsden, Rainbow City, Attala, Oneonta and Odenville, Alabama (collectively, the "Stores"), pursuant to certain Franchise Agreements by and between the Debtor and Domino's Pizza Franchising LLC ("DPF" and together with its affiliates and subsidiaries, including Domino's Pizza Distribution LLC, "Domino's Pizza" or the "Lender").¹

4. Due to unpaid federal taxes, the Debtor's operations have become unsustainable absent relief under the Bankruptcy Code. The Internal Revenue Service has filed numerous Notices of Federal Tax Liens with the Alabama Secretary of State.

5. Likewise, the Alabama Department of Labor has also filed numerous Certificates of Lien for Unemployment Compensation with the Alabama Secretary of State.

6. The Debtor has pre-Petition Date loans with The Business Backer, LLC / MCA Recovery, LLC ("TBB") and Merchant Capital Solutions ("Merchant Capital"). Upon information and belief, the loan from TBB purports to be secured and perfected in the Debtor's pre-Petition Date accounts receivable pursuant to those certain UCC Financing Statements identified as B15-0386652FS, B15-7118743FS and B16-7529728, all of which indicate the secured party as "Corporation Service Company, as Representative".

¹ While the Franchise Agreements were terminated, Domino's Pizza and the Debtor entered into a Franchise Stay of Enforcement of Termination Agreement, pursuant to which Domino's Pizza agreed, upon the satisfaction of certain conditions, to stay the enforcement of the termination to allow the Debtor an opportunity to sell its Stores.

7. Merchant Capital likewise purports to be secured and perfected in the Debtor's pre-Petition Date accounts receivable pursuant to those certain UCC Financing Statements identified as B17-7106099FS, which was filed on March 15, 2017.

Proposed DIP Financing

8. Domino's Pizza (the "Lender") has agreed in principle to the terms of a facility for the Debtor to obtain post-petition financing (the "DIP Financing") to include the following: (i) up to an aggregate principal amount not to exceed \$50,000.00 as a revolving line of credit, and (ii) the ability to purchase food and supplies from Domino's on credit terms.²

9. The Debtor has determined that the DIP Financing is necessary for the Debtor to operate its businesses in chapter 11 and for the Debtor's successful reorganization. Because the Debtor's existing cash on hand and projected operating revenues will not be sufficient to fund the completion of its restructuring process, the Debtor concluded that obtaining a firm commitment for post-petition financing at the outset of this case is necessary and in the best interest of their estates.

10. The Debtor has an immediate need to obtain the DIP Financing and use cash collateral to, among other things, pay the operating expenses associates with the Stores as well as restructuring related expenses. The access of the Debtor to sufficient working capital and liquidity through the use of cash collateral and the incurrence of new indebtedness for borrowed money is vital to the preservation and maintenance of the going concern values of the Debtor and to a successful reorganization of the Debtor.

11. Moreover, the ability to obtain food and supplies from Domino's Pizza on credit terms is essential to the operation of the Stores post-petition. Since prior to the Petition Date,

² The credit terms allow for the payment of food and supplies fifteen (15) days from the Sunday of the week in which the delivery of food and/or supplies was made.

Domino's Pizza will only sell food and supplies to the Debtor on a cash-on-delivery basis. However, the Debtor requires additional working cash flow in the opening weeks of this case to allow for the continued orderly payment of its operating expenses. Accordingly, Domino's Pizza has agreed to sell the Debtor food and sales on credit terms as part of the DIP Financing.

12. The Debtor is unable to obtain post-petition financing in the form of unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, unsecured credit allowable under §§ 364(a) and (b) of the Bankruptcy Code, or credit secured by liens on Debtor's assets junior to existing pre-Petition Date liens, as contemplated by § 364(c) of the Bankruptcy Code.

13. The Debtor therefore determined, in the exercise of its sound business judgment, that the general terms of the proposal for the DIP Financing provided by the Lender are the most favorable under the circumstances and addresses the Debtor's working capital needs. The Debtor does not believe they could obtain proposals for post-petition financing on general terms and conditions more favorable to the Debtor's estates than those offered by the Lender pursuant to the DIP Credit Agreement (as defined below).

14. Before determining to enter into the DIP Financing upon the general terms of the DIP Credit Agreement, the Debtor and the Lender conducted and continue to conduct lengthy, arm's-length, and good faith negotiations.

15. The Lender is willing to make the DIP Financing available to the Debtor upon the terms and conditions set forth in the DIP Credit Agreement, the Interim Order and the Final Order.

16. As set forth in more detail in the DIP Credit Agreement and the Interim and Final Orders, the DIP Financing is conditioned on the Debtor (i) filing a motion to sell substantially all

of its assets under 11 U.S.C. § 363 by April 7, 2017; and (ii) obtaining an order from this Court under § 363 authorizing such sale and closing of such asset sale to a buyer that is approved by Domino's Pizza to operate the Stores by May 19, 2017. The failure to satisfy these milestones will be a default under the DIP Credit Agreement giving rise to the immediate termination of the DIP Financing.

17. Moreover, as set forth in more detail in the DIP Credit Agreement and the Interim and Final Orders, the DIP Financing is subject to the Debtor complying with the terms of the budget annexed to the DIP Credit Agreement, and seeking Domino's approval for any expenditures that are more than a 10% variance from the budgeted amounts.

18. A copy of Debtor-in-Possession Credit and Security Agreement (the "DIP Credit Agreement"), substantially in the form to be executed by the Debtor, as borrower, and the Lender is attached hereto as Exhibit A and reference to said DIP Credit Agreement should be made for particular terms thereof. A copy of the Promissory Note (the "Note"), substantially in the form to be executed by the Debtor, as borrower, is attached hereto as Exhibit B.

Relief Requested

19. By this Motion, the Debtor seek authority to enter an order granting the relief as set forth in the proposed Interim Order.

Basis for Relief

A. Approval of Financing

20. As described above, it is essential to the success of the Debtor's chapter 11 cases that the Debtor immediately obtain access to sufficient post-petition financing. The preservation of estate assets, the Debtor's continuing viability and its ability to reorganize successfully, thus,

depend heavily upon the expeditious approval of the DIP Financing and the related actions requested herein.

21. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing, may authorize debtor to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien;
- or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

22. In the event a debtor is unable to obtain credit under the provisions of § 364(c) of the Bankruptcy Code, a debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming lien.” 11 U.S.C. § 364(d). Such relief may be granted so long as there is adequate protection of the interests of the holder of the lien on the property on which the senior lien is proposed to be granted or such lien holder consents.

23. The Debtor has pursued various potential avenues of post-petition financing, but has been unable to procure the required funds in the form of unsecured credit or unsecured debt with an administrative priority. In addition, the Debtor has been unable to procure the required funds solely under § 364(c) of the Bankruptcy Code. The Debtor negotiated the DIP Financing at arm’s-length and pursuant to the Debtor’s business judgment. The terms and provisions of the DIP Financing are fair and reasonable under the circumstances and reflect the most favorable terms upon which Debtor could obtain post-petition financing.

24. The general terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at an arm's length. Accordingly, the Lender should be accorded the benefits of § 364(e) of the Bankruptcy Code in respect of the DIP Financing.

25. The DIP Financing will enable the Debtor to, among other things, (a) maintain the continuity of its operations, (b) maximize the value of its business and properties for the benefit of the Debtor's estates and creditors, and (c) give the Debtor's vendors, suppliers, and customers the necessary confidence to continue ongoing relationships with the Debtor, which is essential to the successful reorganization of the Debtor's businesses.

26. Lender is unwilling to extend the DIP Financing unless it is granted a superpriority, priming lien on all of the Debtor's property to be repaid out of the first proceeds of any sale of the Debtor or otherwise. The Debtor's reorganization efforts cannot continue without the DIP Financing. Without the DIP Financing, the Debtor's eight Stores will immediately cease operation, thus causing over 100 employees to lose their jobs.

B. Interim Approval Should Be Granted

27. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing (the "Final Hearing") on a motion to use cash collateral pursuant to § 363 and to obtain credit pursuant to § 364 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a Debtor's estate.

28. Pursuant to Rule 4001(b) and 4001(c), the Debtor request that the Court conduct an expedited preliminary hearing on the Motion (the “Interim Hearing”) and grant the relief requested in the proposed Interim Order in order to (a) maintain the Debtor’s ongoing operations and (b) avoid the immediate and irreparable harm and prejudice to the Debtor’s estate and all parties in interest that would otherwise ensue.

29. The Debtor has an urgent and immediate for cash to continue to operate.

30. The Debtor will be immediately and irreparably harmed absent authorization from the Court to use cash collateral and obtain secured credit as requested on an interim basis pending a Final Hearing on the Motion. In the short-term, if the Debtor’s locations are unable to provide customers with a continuous supply of product, competitors will capitalize on their inability to promptly fulfill the demand of their customer base, which likely will have a long-term negative impact on the value of the Debtor’s businesses, to the detriment of all parties in interest. Moreover, if the Debtor’s locations are closed, even on a temporary basis, there will likely be an exodus of trained employees that will make continued operations impossible.

31. So long as such are advanced to creditors of Debtor in accordance with the Interim Order and the DIP Credit Agreement (including the budget annexed thereto), no recipient of any funds from Debtor, whether from the use of cash collateral or from the DIP Financing, shall be compelled to disgorge any such funds for any reason.

Request for Final Hearing

32. The Debtor also request that the Court schedule the final hearing during the week that is three (3) weeks after the date of this Motion, with objections, if any, to the Final Order being due writing on or before the date that is at least five (5) business days prior to the Final Hearing.

Disclaimer

33. Notwithstanding anything to the contrary contained herein, the parties continue to negotiate certain material terms of DIP Credit Agreement and the Interim Order. The proposed forms of such attached hereto are for reference only and may not contain the final agreement of the parties. As such, no party shall be bound by any of terms contained therein until and unless this Court enters an interim order authorizing the parties to, inter alia, enter into the DIP Credit Agreement, as the same may hereafter be revised.

WHEREFORE, the Debtor respectfully request that the Court enter an order: (i) authorizing the debtor to obtain post-petition financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (ii) scheduling final hearing pursuant to Bankruptcy Rules 4001(b) and (c) and further relief as this Court may deem just and proper.

/s/ Brian R. Walding
Brian R. Walding
WALDING, LLC
2227 First Avenue South
Suite 100
Birmingham, Alabama 35233

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served this the 23rd day of March, 2017 electronically through the CM/ECF system.

/s/ *Brian R. Walding*
Of Counsel

EXHIBIT A

{00069414.DOCX .}

DEBTOR-IN-POSSESSION SUPERPRIORITY CREDIT AND SECURITY AGREEMENT

THIS DEBTOR-IN-POSSESSION SUPERPRIORITY LOAN AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Agreement**”) is dated as of March ___, 2017 by and among **PIZZA PALZ, INC.** (“**Borrower**”) and **DOMINO’S PIZZA [ENTITY TBD]** (“**Lender**”).

RECITALS

WHEREAS, on March 23, 2017 (the “**Petition Date**”), the Borrower filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (as defined in Section 1.1 hereof) in the United States Bankruptcy Court for the Northern District of Alabama (the “**Bankruptcy Court**”) and the Borrower is continuing to operate its businesses and manage its properties as debtors and debtors-in-possession under sections 1107 and 1109 of the Bankruptcy Code (the “**Bankruptcy Case**”);

WHEREAS, the Borrower has requested that the Lender provide financing to the Borrower consisting of a line of credit in the aggregate principal amount of \$50,000.00, the proceeds of which will be used for the purposes permitted under this Agreement, as well as the ability to purchase food and supplies on the Credit Terms (as defined below) from Lender, subject to the terms set forth herein and pursuant to section Sections 363(c)(1) and (c)(2), and Section 364(d) of the Bankruptcy Code;

WHEREAS, the Lender has indicated a willingness to agree to lend such amounts pursuant to Sections 363(c)(1) and (c)(2), and Section 364(d) of the Bankruptcy Code on the terms and conditions of this Agreement so long as such postpetition credit obligations are secured by Liens (as defined in Section 1.1 hereto) on all of the assets, property and interests, real and personal, tangible and intangible, of the Borrower, whether now owned or leased or hereafter acquired or leased and given super-priority status as provided in the Interim Order (as defined in Section 1.1 hereto) and the Final Order (as defined in Section 1.1 hereto); and

WHEREAS, the Borrower has agreed to provide such collateral as security and provide such super-priority claims and liens subject to the approval of the Bankruptcy Court.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrower and Lender agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

“**Acceleration Event**” means the occurrence of an Event of Default (a) in respect of which Lender has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 8.2, Section 8.1(a), and/or (c) pursuant to Sections 8.1(m) through Section 8.1(z).

“Account Debtor” means “account debtor”, as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

“Accounts” means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any “account” (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any “health-care-insurance receivables” (as defined in the UCC), any “payment intangibles” (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, “general intangibles” (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, “supporting obligations” (as defined in the UCC), “letter-of-credit rights” (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

“Affiliate” means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person’s (other than, with respect to any Lender, any Lender’s) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote five percent (5.0%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Allowed Fees” means, in each case with respect to the Bankruptcy Cases, fees and reimbursement for distributions of professionals retained by the Borrower and/or a statutory committee of unsecured creditors allowed pursuant to an order of the Bankruptcy Court, including, without limitation, pursuant to monthly fee statements, that has not been vacated, stayed or appealed, under sections 327, 328 or 1103 of the Bankruptcy Code.

“Anti-Terrorism Laws” means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“Bankruptcy Case” has the meaning set forth in the preamble.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, entitled “Bankruptcy”, as the same may be amended, modified or supplemented from time to time, and any successor statutes thereto.

“Bankruptcy Court” has the meaning specified therefor in the recitals to this Agreement.

“Blocked Person” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list or is named as a “listed person” or “listed entity” on other lists made under any Anti-Terrorism Law.

“**Borrower**” has the meaning set forth in the Preamble.

“**Business Day**” means any day except a Saturday, Sunday or other day on which commercial banks in Alabama or Michigan are authorized by law to close.

“**Change in Control**” means any of the following: (a) any change in the legal or beneficial ownership of the capital stock, partnership interests or membership interests, or in the capital structure, organizational documents or governing documents of the applicable Person; (b) any pledge, assignment or hypothecation of or Lien or encumbrance on any of the legal or beneficial equity interests in the applicable Person; (c) any change in the legal or beneficial ownership or control of the outstanding voting equity interests of the applicable Person necessary at all times to elect a majority of the board of directors (or similar governing body) of each such Person and to direct the management policies and decisions of such Person; (d) the applicable Person shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding equity interests of each Subsidiary of such Person; (e) any sale, transfer, lease (other than a lease approved by Lender), conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation (other than Permitted Liens) or other disposition of (i) all or any portion of Stores or any material portion of any other Collateral, or (ii) all or any portion of the Borrower’s right, title and interest (legal or equitable) in and to the Stores or any portion of any other Collateral.

“**Closing Date**” means the date of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Lender pursuant to this Agreement and the Security Documents, including the property listed in Schedule 7.1.

“**Contingent Obligation**” means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a “**Third Party Obligation**”) if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (d) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

“**Controlled Group**” means all members of any group of companies and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“**Borrower**” shall have the meaning given to such term in the Preamble.

“Debt” of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (i) all Debt of others Guaranteed by such Person; (j) off-balance sheet liabilities and/or pension plan liabilities; (k) obligations arising under non-compete agreements; and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Deposit Account” means a “deposit account” (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

“Distribution” means as to any Person, (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries, compensation or other fees or payments to an Affiliate of a Borrower, (d) any lease or rental payments to an Affiliate of a Borrower, except lease and rental payments on account of the Operating Leases, or (e) repayments of Debt held by any Person holding an equity interest in a Borrower or an Affiliate of a Borrower, unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

“Dollars” or **“\$”** means the lawful currency of the United States of America.

“Environmental Laws” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower or the Stores and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard

Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

“Environmental Liens” means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of any Borrower or any other Person.

“Event of Default” has the meaning set forth in Section 8.1.

“FF&E” means personal property delivered upon, attached to, used or required to be used in connection with the operation of the Stores.

“Final Order” means an order of the Bankruptcy Court in the Bankruptcy Cases which approves the transactions contemplated by this Agreement and the other Financing Documents on a final basis and is in form and substance acceptable to Lender, including providing superpriority liens under Section 364(d) of the Bankruptcy Code, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

“Financing Documents” means this Agreement, the Note, the Security Documents, and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“Financing Orders” means the Interim Order or, when applicable, the Final Order.

“General Intangible” means any “general intangible” as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Stores is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any

material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls (“PCB’s”), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“Hazardous Materials Contamination” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“Indemnitees” has the meaning set forth in Section 9.12.

“Instrument” means “instrument”, as defined in Article 9 of the UCC.

“Intellectual Property” means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefore, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

“Interim Order” means the order of the Bankruptcy Court entered in the Bankruptcy Cases, in form and substance satisfactory to Lender, approving this Agreement and other Financing Documents and the Liens granted thereunder and the other transactions contemplated thereby on an interim basis, including providing superpriority liens under Section 364(d) of the Bankruptcy Code, which shall be in full force and effect until the entry of the Final Order approving this Agreement and other Financing Documents and the Liens granted hereunder and thereunder and the other transactions contemplated hereby and thereby, and which shall not have been stayed, reversed, vacated or otherwise modified.

“Inventory” means “inventory” as defined in Article 9 of the UCC.

“Laws” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Borrower in any particular circumstance.

“Lender” has the meaning set forth in the Preamble.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other

Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Litigation” means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

“Loan” has the meaning given to such term in Section 2.1(a).

“Material Adverse Effect” means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business, properties or prospects of the Borrower, (ii) the rights and remedies of Lender under any Financing Document, or the ability of any Borrower to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral.

“Maximum Lawful Rate” has the meaning set forth in Section 2.5.

“Multiemployer Plan” means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

“Note” has the meaning set forth in Section 2.3.

“Obligations” means all obligations, liabilities and indebtedness (monetary (including post-petition interest, whether or not allowed) or otherwise) of the Borrower under this Agreement, including the Loan, or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control.

“OFAC Lists” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“Ordinary Course of Business” means, in respect of any transaction involving any Borrower, the ordinary course of business of such Borrower, as conducted by such Borrower in accordance with past practices and consistent with the Budget.

“Organizational Documents” means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal

governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

“**Pension Plan**” means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

“**Permits**” means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals required under all applicable Laws and required in order to carry on its business as now conducted.

“**Permitted Debt**” means (a) Borrower’s Debt to Lender under this Agreement and the other Financing Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms); and (d) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business and consistent with the Budget.

“**Permitted Liens**” means (a) to the extent Borrower has employees, deposits or pledges of cash to secure obligations under workmen’s compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA) pertaining to a Borrower’s employees, if any; (b) deposits or pledges of cash to statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) mechanic’s, workmen’s, materialmen’s or other like Liens arising in the Ordinary Course of Business with respect to obligations which are not due; (d) Liens on Collateral for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty; (e) Liens and encumbrances in favor of Lender under the Financing Documents; and (f) Liens on Collateral, existing on the date hereof and set forth on Borrower’s bankruptcy schedules;

“**Person**” means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“**Postpetition**” or “**postpetition**” means the time period commencing on the Petition Date and ending on the Sale Date.

“**Prepetition**” or “**prepetition**” means the time period prior to the Petition Date.

“**Release**” has the meaning set forth in 42 U.S.C. §9601 (22).

“**Responsible Officer**” means any of the Chief Executive Officer, Chief Financial Officer or a member of the applicable Borrower or Borrower Representative.

“**Sale Date**” means the date set forth in the Sale Order for the closing date for the sale of the substantially all of the assets of the Borrower.

“**Sale Order**” means an order of the Bankruptcy Court, in form and substance satisfactory to the Lender, ordering the sale of the substantially all of the assets of the Borrower.

“**Securities Account**” means a “securities account” (as defined in Article 8 and Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

“**Security Document**” means this Agreement and any other agreement, mortgage, document or instrument executed concurrently herewith or at any time hereafter pursuant to which Borrower or any other Person either (a) guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Lender, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Solvent**” means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due. For purposes of this definition, the amount of Contingent Obligations (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

“**Stores**” means the Borrower’s Domino’s Pizza® franchise locations in located in the cities of: Albertville, Boaz, Guntersville, Gadsden, Rainbow City, Attala, Oneonta and Odenville, Alabama.

“**Tax Distributions**” means, for any taxable year for which Borrower is treated under the Code as a Subchapter S corporation, partnership for income tax purposes or otherwise disregarded under the Code for income tax purposes, dividends and/or distributions paid by any Borrower to its shareholders or members in an amount not to exceed the *product of* (a) taxable income related to such shareholders’ or members’ ownership interest in such Borrower *multiplied by* (b) the sum of the highest marginal federal and state income tax rates in any State in which any shareholder or member is organized which were applicable in such taxable year.

“**Taxes**” has the meaning set forth in Section 2.6.

“**Term**” means the period commencing on the Closing Date and ending on May 19, 2017.

“**Termination Date**” means the earlier to occur of (a) the last day of the Term, (b) any date on which Lender accelerates the maturity of the Loan pursuant to Section 8.2, (c) the Sale Date, or (d) the termination date stated in any notice of termination of this Agreement provided by Lender in accordance with Section 2.8.

“**UCC**” means the Uniform Commercial Code of the State of Maryland or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“**United States**” means the United States of America.

Section 1.2 Other Definitional and Interpretive Provisions. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits” or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term “material” or the phrase “in all material respects” is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

ARTICLE 2 - LOANS

Section 2.1 The Loan.

(a) The Loan. Subject to the terms and conditions of this Agreement, Lender agrees to fund a line of credit to the Borrower on the Closing Date (the “**Credit Line**”) in the maximum aggregate amount of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) (the “**Credit Line Cap**”). Subject to the terms and conditions of this Agreement, Lender agrees to sell to Borrower food and supplies on the following credit terms: the invoice for each delivery of food and supplies shall be due on the fifteenth day following the immediate Sunday after such delivery was made (“**Food Credit**” and together with the Credit Line, the “**Loan**”).

(b) Funding of the Loan. On the Closing Date and on terms and subject to the conditions of this Agreement, the Credit Line shall be made available to Borrower by a deposit to an account of Borrower in an amount set forth in a written draw request to Lender (“**Draw Request**”), but at no point shall Lender fund a draw request that would cause the principal amount of the outstanding Credit Line to exceed the Credit Line Cap.

(c) Repayment of Loan. Notwithstanding any provision of this Agreement to the contrary, if not sooner paid, the Borrower shall repay in full the outstanding principal amount of the Loan, together with accrued interest, fees, costs and expenses, on the Termination Date. Such amounts that are prepaid may not be reborrowed.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From the date of the funding of a Draw Request, the outstanding amount of the Credit Line shall bear interest at the per annum rate of SEVEN percent (7.0%). Interest on the Food Credit shall accrue if not paid with the credit terms described in Section 2.1. Interest on the Loan shall be paid on the maturity of the Loan, whether by acceleration or otherwise.

(b) Wire Fees. Borrower shall pay to Lender, on written demand, fees for incoming and outgoing wires made for the account of Borrower.

(c) Late Charges. If payments of principal or interest are not timely made and remain overdue for a period of five (5) days, Borrower, without notice or demand by Lender, promptly shall pay to Lender an amount equal to five percent (5.0%) of such outstanding amounts.

(d) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of the Loan shall be included in the calculation of interest. The date of payment of the Loan shall be excluded from the calculation of interest. If the Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

Section 2.3 Notes. The Credit Line shall be evidenced by a promissory note executed by Borrower (the "Note") in an original principal amount equal to the Credit Line Cap.

Section 2.4 General Provisions Regarding Payment; All payments to be made by Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto).

Section 2.5 Maximum Interest. In no event shall the interest charged with respect to the Loan under any Financing Document exceed the maximum amount permitted under the laws of the State of Alabama or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**").

Section 2.6 Modification; Unconditional Obligations.

(a) Lender is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by either Borrower and delivered to Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof Lender, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all surety defenses being hereby waived by Borrower. Except as specifically provided in this Agreement or any of the other Financing Documents, Lender shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source. All such payments and credits may be applied,

reversed and reapplied, in whole or in part, to any of the Obligations that Lender shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(b) Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Lender with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Lender; (iii) failure by Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) Lender's election of the application of section 1111(b)(2) of the Bankruptcy Code; (v) the disallowance, under section 502 of the Bankruptcy Code, of all or any portion of Lender's claim(s) for repayment of any of the Obligations; or (vi) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

Section 2.7 Termination; Restriction on Termination.

(a) Termination by Lender. In addition to the rights set forth in Section 8.2 and in the Financing Orders, Lender may terminate this Agreement including its obligation to advance any credit under the Loans without (i) notice upon or after the occurrence and during the continuance of an Event of Default and (ii) further application to or order of the Bankruptcy Court. –

(b) Effectiveness of Termination. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without further application to or order of the Bankruptcy Court, all of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrower contained in the Financing Documents shall survive any such termination and Lender shall retain its Liens in the Collateral and Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Lender shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Lender may incur as a result of dishonored checks or other items of payment received by Lender from Borrower and applied to the Obligations, Lender shall, at its option, (i) have received a written agreement satisfactory to Lender, executed by Borrower and by any Person whose loans or other advances to Borrower are used in whole or in part to satisfy the Obligations, indemnifying Lender from any such loss or damage, or (ii) have retained cash Collateral or other Collateral for such period of time as Lender, in its discretion, may deem necessary to protect Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement and to make the Loan and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Lender that:

Section 3.1 Existence and Power. Each Borrower is a corporation, is duly organized, validly existing and in active status under the laws of the State of Alabama, is “active” and has paid all fees required to maintain its existence under such laws, has the same legal name as it appears in such Borrower's Organizational Documents, and has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted. No Borrower (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, (b)

was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization, (c) is qualified to do business as a foreign entity in any jurisdiction.

Section 3.2 Organization and Governmental Authorization; No Contravention. Other than the entry of the Financing Orders, the execution, delivery and performance by each Borrower of the Operative Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law applicable to any Borrower or any of the Organizational Documents of any Borrower, or (b) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (b), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Borrower is a party constitutes a valid and binding agreement or instrument of such Borrower, enforceable against such Borrower in accordance with its respective terms.

Section 3.4 Ownership of Property. Each Borrower is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets, including the Collateral, (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.5 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing.

Section 3.6 Regulated Entities. No Borrower is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.7 Margin Regulations. None of the proceeds from the Loan have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause the Loan to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.8 Compliance with Laws; Anti-Terrorism Laws.

(a) Each Borrower is in compliance with the requirements of all applicable Laws, including Environmental Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) Borrower and, to the knowledge of Borrower, none of its Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Borrower nor, to the knowledge of any Borrower, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any

business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.9 Consummation of Operative Documents; Brokers. Borrower has not engaged any broker, finder or other intermediary to bring about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and Borrower has or will not have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.10 Subsidiaries. Borrower does not own any stock, partnership interests, limited liability company interests or other equity securities.

Section 3.11 Appointment of a Trustee or Examiner; Liquidation. No order has been entered in any Bankruptcy Case for the appointment of a chapter 11 trustee, (b) for the appointment of an examiner with expanded powers (beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code, (c) to convert any Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (d) to dismiss any Bankruptcy Case.

Section 3.12 Bankruptcy Matters.

(a) The Bankruptcy Case was commenced on the Petition Date in accordance with applicable Law and proper notice thereof.

(b) Proper notice for (i) the motion seeking approval of this Agreement, the other Financing Documents, the Interim Order and Final Order, (ii) the hearing for the approval of the Interim Order (the "**Interim Hearing**") and (iii) the hearing for approval of the Final Order has been given. The Borrower has given, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(c) From and after the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order, the Liens securing the Obligations are valid and enforceable perfected Liens on all of the Collateral of the Lender with superpriority under Section 364(d) of the Bankruptcy Code required by the Financing Orders with respect to all Collateral.

(d) After entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and Final Order, the Obligations will constitute allowed administrative expense claims in the Bankruptcy Case having priority over all administrative expense claims and unsecured claims against the Borrower now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726 (to the extent permitted by Law), 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code.

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

(f) Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order and Section 8.2 hereof, as the case

may be, on the Termination Date the Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, without further application to or order by the Bankruptcy Court.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Obligation exists:

Section 4.1 Financial Statements and Other Reports.

(a) Borrower will promptly furnish to Lender all financial information, reports or statements regarding the Borrower or the Stores as Lender may from time to time reasonably request.

Section 4.2 Payment and Performance of Obligations. Subject to the entry of appropriate orders of the Bankruptcy Court or to the extent otherwise excused by the Bankruptcy Code, each Borrower (a) will pay and discharge, at or prior to maturity, all of their respective obligations and liabilities, including payroll and withholding taxes and other tax liabilities, except for such obligations and/or liabilities the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) will not breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation (other than leases) to which it is a party, or by which its properties or assets are bound, and (c) will not breach or permit to exist any default under any material lease to which it is a party as a lessee.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect their respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Payment of Taxes; Insurance.

(a) Each Borrower will keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner. Borrower will not, and will not permit any other Person to, commit or allow waste or permit impairment or deterioration of the Collateral or abandon all or any part of the Collateral. Borrower will perform such acts to preserve the value of Collateral. Borrower will (i) preserve its or their interest in and title to the Collateral and will forever warrant and defend the same to Lender against any and all claims made by, through or under Borrower, and (ii) except in respect of Permitted Liens, forever warrant and defend the validity and priority of the lien and security interest created in the Security Documents against the claims of all Persons whomsoever claiming by, through or under Borrower. The foregoing warranty of title shall survive the foreclosure of the Security Documents and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to any Collateral pursuant to any foreclosure.

(b) Subject to entry of appropriate orders of the Bankruptcy Court, Borrower will pay or cause to be paid all Taxes on or prior to the date due, and in any event, prior to the date upon which any fine, penalty, interest or cost for nonpayment could be imposed, and furnish to Lender, upon request, receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Lender evidencing the payment thereof. If Borrower shall fail to pay any Taxes in accordance with this Section 4.4(b) or if there are insufficient funds in the applicable reserves or escrows under Article 2 to pay any such Taxes, Lender, subject to the Financing Orders, shall have the right, but shall not be

obligated, to pay such Taxes, and Borrower shall repay to Lender, on written demand, any amount paid by Lender, with interest thereon from the date of the advance thereof to the date of repayment, at the rate applicable during periods of Default hereunder, and such amount shall constitute a portion of the Obligations. Borrower shall not pay any Taxes or other obligations in installments unless permitted by applicable Laws, and shall, upon the request of Lender, deliver copies of all notices and bills relating to any Taxes or other charge covered by this Section 4.4(b) to Lender.

(c) Subject to entry of appropriate order of the Bankruptcy Court, each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage for business interruption and rent loss and professional liability and public liability insurance (including products/completed operations liability coverage), and (ii) general and professional liability insurance, and (iii) such other insurance coverage in such amounts and with respect to such risks as Lender may request from time to time; *provided, however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Lender. Borrower will not bring or keep any article on the Stores, or cause or allow any condition to exist, if the presence of such article or the occurrence of such condition could reasonably cause the invalidation of any insurance required by this Section 4.4(d), or would otherwise be prohibited by the terms thereof.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Lender to be named as an additional insured, assignee and loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4(d) pursuant to endorsements in form and content acceptable to Lender. Borrower will deliver to Lender (i) on the Closing Date, a certificate from Borrower's insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days (ten (10) days if such cancellation is due to nonpayment) after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) upon the request of any Lender from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) not less than thirty (30) days prior to the expiration of any policies of insurance, furnish to Lender, premiums prepaid, additional and renewal insurance policies with companies, coverage and in amounts required hereunder.

(e) In the event any Borrower fails to provide Lender with evidence of the insurance coverage required by this Agreement, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Collateral. This insurance may, but need not, protect any Borrower's interests. The coverage purchased by Lender may not pay any claim made by any Borrower or any claim that is made against any Borrower in connection with the Collateral. The applicable Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that such Borrower has obtained insurance as required by this Agreement. If Lender purchases insurance for the Collateral, to the fullest extent provided by law Borrower will be responsible for the costs of that insurance, including interest and other charges imposed by Lender in connection with the placement of

the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance each Borrower is able to obtain on its own.

(f) If any insurance proceeds are paid by check, draft or other instrument payable to any Borrower and Lender jointly, such Borrower authorizes Lender to endorse such Borrower's name thereon and do such other things as Lender may deem advisable to reduce the same to cash. Borrower shall not carry separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 4.4(f). Borrower shall promptly notify Lender of any loss, damage, or destruction to any Collateral, whether or not covered by insurance. Lender is hereby authorized to collect all insurance proceeds in respect of Collateral directly and to apply the same to the Obligations whether or not then due and payable. Lender is authorized and empowered, and each Borrower hereby irrevocably appoints Lender as its (or their) attorney-in-fact (such appointment is coupled with an interest), at Lender's option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Borrower, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply with the requirements of all applicable Laws, including Environmental Laws and Anti-Terrorism Laws, and material contracts.

Section 4.6 Inspection of Property, Books and Records.

(a) The Borrower will provide Lender with access to its Stores, and allow it to examine and make abstracts or copies from any of its books and records, to conduct a Collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrower, and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of an Event of Default, Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Event of Default.

Section 4.7 Use of Proceeds. Borrower shall use the proceeds of the Loan solely for financing its operations, which shall be solely limited to those items set for on the budget attached hereto as **Exhibit A** (the "**Budget**"), and shall seek Lender's written consent for any expenditure which varies more than 10% from the budgeted amounts.

Section 4.8 Notices of Litigation and Defaults. Borrower will give prompt written notice to Lender (a) upon becoming aware of the existence of any Default or Event of Default, or (b) if Borrower is in breach or default under or with respect to any Material Contract, or if any Borrower is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, and (c) of all returns, recoveries, disputes and claims that involve more than \$100,000.

Section 4.9 Further Assurances. Borrower will, at its own cost and expense, cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as may from time to time be necessary or as Lender may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to establish, create, preserve, protect and perfect a first

priority Lien (subject only to Permitted Liens) in favor of Lender on the Collateral (including Collateral acquired after the date hereof).

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations. No Borrower will, directly or indirectly, make any loans or advance any Debt to any Person.

Section 5.2 Liens. Borrower will not directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. Borrower will not, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution.

Section 5.4 Restrictive Agreements. Borrower will not directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired.

Section 5.5 Consolidations and Mergers; Sales of Assets; Change in Control.

(a) Borrower will not, directly or indirectly consolidate or merge or amalgamate with or into any other Person.

(b) Other than the Store Sale (as defined below), Borrower shall not suffer or permit to occur any sale, transfer, lease (other than a lease approved by Lender), conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition of all or any portion of the Collateral.

(c) Borrower shall not suffer or permit to occur (i) any Change in Control or (ii) any other sale, transfer, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition of any interest in Borrower or any interest in any entity which holds an interest in, or directly or indirectly controls, Borrower.

(d) In addition to the prohibitions set forth in subsections (a) above, no Borrower shall engage in or permit to occur any transfer as set forth in subsections (b) and (c) above that would constitute or result in the occurrence of one or more non-exempt prohibited transactions under ERISA or the Internal Revenue Code. Borrower agrees to unwind any such transaction upon notice from Lender or, at Lender's option, to assist Lender in obtaining such prohibited transaction exemption(s) from the United States Pension and Welfare Benefits Administration with respect to such transaction as are necessary to remedy such prohibited transactions.

Section 5.6 Purchase of Assets, Investments. Borrower will not, directly or indirectly, (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any investment in any Person.

Section 5.7 Transactions with Affiliates. Borrower will not, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.8 Modification of Organizational Documents. Borrower will not, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person.

Section 5.9 Conduct of Business. Borrower will not directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date.

Section 5.10 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. Borrower will not establish any new Deposit Account or Securities Account without prior written notice to Lender.

Section 5.11 Interim Order; Final Order, Administrative Expense Priority; Payments.

(a) Borrower will not seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Interim Order or the Final Order, as the case may be, except for modifications and amendments joined in or agreed to in writing by Lender.

(b) Borrower will not suffer to exist at any time a priority for any administrative expense or unsecured claim against Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Section 503(b) and 507(b) of the Bankruptcy Code) equal or superior to the priority of Lender in respect of the Obligations.

(c) Prior to the date on which the Obligations have been indefeasibly paid in full, all in accordance with the terms of this Agreement, and this Agreement has been terminated, no Borrower will (i) pay any administrative expenses pursuant to 503(b) of the Bankruptcy Code, except (A) administrative expenses incurred in the Ordinary Course of Business of the Borrower or approved by an order of the Bankruptcy Court and (B) Allowed Fees payable under section 330 and 331 of the Bankruptcy Code, or (ii) permit or seek to permit the granting of adequate protection in favor any Person.

(d) Except as provided in the Financing Orders, no Borrower will make, consent to, or support any claims under section 506(c) of the Bankruptcy Code or take any other action adverse to Lender or their rights and remedies under the Financing Documents.

Notwithstanding the foregoing, the Borrower shall be permitted to pay as the same may become due and payable and to the extent permitted under the Financing Orders, Allowed Fees payable under section 330 and 331 of the Bankruptcy Code.

Section 5.12 Bankruptcy Actions.

(a) No Borrower shall enter into any agreement to return any of its inventory or other Collateral outside the Ordinary Course of Business to any of its creditors for application against any prepetition Debt, prepetition trade payables or other prepetition claims under section 546(h) of the Bankruptcy Code.

(b) No Borrower shall make (i) any payments on account of any creditor's claims against any Borrower, (ii) payments on account of claims or expenses arising under section 503(b)(9) of

the Bankruptcy Code, (iii) payments in respect of a reclamation program or (iv) payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except in each case, in amounts and on terms and conditions that (A) are approved by order of the Bankruptcy Court and (B) are expressly permitted by the Budget, or otherwise approved by the Lender in writing.

(c) No Borrower shall obtain, or seek to obtain, any stay on the exercise of the remedies of the Lender hereunder, under any Financing Document or the Financing Order.

ARTICLE 6 - CONDITIONS

Section 6.1 Conditions to Closing. The obligation of the Lender to make the Loan on the Closing Date shall be subject to the satisfaction of the following conditions precedent, each to the satisfaction of Lender and their respective counsel in their sole discretion:

(a) the Interim Order shall be in effect and shall not have been reversed, modified, amended or stayed (other than with the written consent of the Lender in its sole discretion);

(b) the Lender shall have received the Financing Documents, each duly executed by an authorized officer of the Borrower and other parties thereto;

ARTICLE 7 - SECURITY AGREEMENT

Section 7.1 Grant of Security Interest. As security for the payment and performance of the Obligations, Borrower hereby assigns and grants to Lender, a continuing first priority Lien on and security interest in the Collateral.

Section 7.2 Representations and Warranties and Covenants Relating to Collateral.

(a) Except for the entry of the Financing Orders, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by Borrower to Lender of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Lender of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law.

(b) No Person has “control” (as defined in Article 9 of the UCC) over any Deposit Account, investment property, letter of credit rights or chattel paper in which any Borrower has any interest.

(c) Borrower shall not take any of the following actions or make any of the following changes unless Borrower has given at least thirty (30) days prior written notice to Lender of Borrower’s intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Lender may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Lender with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Borrower or allow any Borrower or Borrower to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Borrower, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records

concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(d) Borrower shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account) without the prior written consent of Lender. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Lender after the occurrence and during the continuance of an Event of Default, Lender, subject to the Financing Orders, shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrower with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrower and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(e) Borrower shall promptly advise Lender upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims.

(f) No Accounts or Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrower's agents or processors without prior written consent of Lender. Borrower has notified Lender that Inventory is currently located at the locations set forth on Schedule 7.2.

(g) Borrower shall cause all equipment and other tangible Collateral other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end.

(h) As of the Closing Date, no Borrower holds, and after the Closing Date Borrower shall promptly notify Lender in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Lender, Borrower shall take such steps as may be necessary or desirable, or that Lender may request, to comply with any such applicable Law.

ARTICLE 8 - EVENTS OF DEFAULT

Section 8.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "Event of Default":

(a) Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, or there shall

occur any default in the performance of or compliance with any of the following sections of this Agreement: Sections 4.1, 4.4(d), 4.6 and 4.7, and Article 5;

(b) any Borrower defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 8.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Borrower or waived by Lender within 10 days after the earlier of (i) receipt by Borrower of notice from Lender of such default, or (ii) actual knowledge of any Borrower or any other Borrower of such default;

(c) any representation, warranty, certification or statement made by any Borrower or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) failure of any Borrower to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loan), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loan), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt to cause, Debt or other liabilities having an individual principal amount in excess of \$15,000 or having an aggregate principal amount in excess of \$15,000 to become or be declared due prior to its stated maturity;

(e) (i) one or more judgments or orders for the payment of money aggregating in excess of \$15,000 shall be rendered against any or all Borrower and either (A) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (B) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect, or (ii) Borrower shall have entered into any settlement agreement or similar arrangement in satisfaction or compromise of a claim against any Borrower in an amount in excess of \$15,000;

(f) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be secured thereby, subject to no prior or equal Lien except Permitted Liens, or any Borrower shall so assert;

(g) the institution by any Governmental Authority of criminal proceedings against any Borrower;

(h) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(i) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect;

(j) any Borrower shall breach any provision or requirement of any Operative Document;

(k) any failure of any Borrower to strictly comply with any of provisions of any Financing Document pertaining to Hazardous Materials, Environmental Laws or Environmental Liabilities;

(l) there shall occur a material adverse change in the financial condition or business prospects of any Borrower, or if Lender in good faith deems the Lender insecure as a result of acts or events bearing upon the financial condition of any Borrower or the repayment of the Note, which default shall have continued unremedied for a period of ten (10) days after written notice from Lender;

(m) if (i) any of the Bankruptcy Cases is converted to a case under chapter 7 of the Bankruptcy Code, or (ii) any of the Bankruptcy Cases is dismissed;

(n) if a chapter 11 trustee or an examiner with enlarged powers relating to the operations of the Borrower's business (beyond those set forth under section 1106(a)(3) and (4) of the Bankruptcy Code) is appointed pursuant to section 1104 of the Bankruptcy Code in any of the Bankruptcy Cases;

(o) if any super-priority administrative expense claim or any Lien that is *pari passu* with or senior to those of the Lender is granted to any Person other than Lender, or the authorization to use cash collateral without the consent of the Lender is granted to any Person other than the Lender;

(p) if any Person other than Lender is granted relief from the automatic stay provided for in the Bankruptcy Cases, or such automatic stay is otherwise modified, to permit enforcement of rights by such Person with respect any asset of any Borrower;

(q) if Borrower files a motion under Section 363 to sell its assets, other than the Store Sale as consented to by Lender;

(r) if any Borrower shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the Interim Order and/or the Final Order; provided, that, any such failure arising solely from the failure to deliver to Lender any report or document set forth in the Financing Orders, which is not also the subject of a covenant set forth in this Agreement or any other Financing Document shall not give rise to an Event of Default unless such report or document is not delivered to Lender within five (5) Business Days of the specified date of delivery;

(s) the failure of the Closing Date to occur within three (3) Business Days after entry of the Interim Order without the prior written consent of the Lender;

(t) if the Final Order has not been entered within thirty days after the Petition Date without the prior written consent of the Lender;

(u) any assumption or rejection of any executory contract without the prior written consent of the Lender;

(v) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the Interim Order, the Final Order, or any other order of the Bankruptcy Court affecting this Agreement, any other Financing Document or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Lender;

(w) if the Sale Order shall fail to provide for the payment in full, in cash of all Obligations on or before the Sale Date;

(x) the circulation or distribution by or on behalf of the Borrower of any document and/or disclosure statement, or draft thereof (or term sheet or similar indicative statements of terms thereof) that does not provide for repayment in full in cash of all Obligations before or at the last day of the Term;

(y) if any documentation is executed, filed, delivered, or any confirmation order is entered which does not provide for repayment in full in cash of all Obligations before or at the Sale Date;

(z) if the Borrower exceeds any line item on the Budget by an amount exceeding ten percent (10%) without the prior written consent of the Lender.

(aa) Borrower fails to file a motion under 11 U.S.C. § 363 to sell substantially all of its assets to a buyer approved by Lender by April 7, 2017; or

(bb) Borrower fails to obtain a Sale Order and close the sale its Stores by May 19, 2017 (the “Store Sale”).

Section 8.2 Acceleration and Suspension or Termination. Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, upon the occurrence and during the continuance of an Event of Default, Lender may declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrower will pay the same; *provided, however*, that in the case of any of the Events of Default specified in Section 8.1(m) through 8.1(x) above, without any notice to any Borrower or any other act by Lender, and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrower will pay the same.

Section 8.3 Additional Remedies.

(a) Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Lender, in addition to all other rights, options, and remedies granted to Lender under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents, under the Financing Orders and Bankruptcy Code, and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrower’s premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrower’s original books and records, to obtain access to Borrower’s data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Lender deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action (if Borrower’s books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrower hereby irrevocably

authorizes such service, contractor or other agent, upon notice by Lender to such Person that an Event of Default has occurred and is continuing, to deliver to Lender or its designees such books and records, and to follow Lender's instructions with respect to further services to be rendered);

(iii) the right to require Borrower at Borrower's expense to assemble all or any part of the Collateral and make it available to Lender at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrower's mail to an address designated by Lender and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrower's rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Lender's own name and to charge the collection costs and expenses, including attorneys' fees, to Borrower, and (ii) the right, in the name of Lender or any designee of Lender or Borrower, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrower's compliance with applicable Laws. Borrower shall cooperate fully with Lender in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Lender and applicable federal, state and local regulatory authorities having jurisdiction over the Borrower's affairs, all of which contacts Borrower hereby irrevocably authorize.

(b) Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Borrower. At any sale or disposition of Collateral, Lender may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrower, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral. Lender shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Lender may resell the Collateral and Borrower shall be credited with the proceeds of the sale. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution in the Collateral, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend

all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Lender's exercise of its rights under this Article, Borrower's rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Lender's benefit.

Section 8.4 Terminated Use of Cash Collateral. Without limitation of any of the remedies set forth in this Agreement and the other Financing Documents, upon the occurrence and during the continuance of any Event of Default, or upon the occurrence of the Termination Date, Borrower shall not have any right to use or seek to use any cash collateral (as defined in section 363(a) of the Bankruptcy Code) in which Lender has an interest.

Section 8.5 Default Rate of Interest; Fees. Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, at the election of Lender, after the occurrence of an Event of Default and for so long as it continues, the Loan and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement. Borrower shall pay all reasonable attorney's fees and costs in enforcing remedies of the Lender under the Financing Documents.

Section 8.6 Setoff Rights. Notwithstanding the provisions of section 362 of the Bankruptcy Code and subject to the terms of the Financing Orders, during the continuance of any Event of Default, Lender is hereby authorized to set off and to appropriate and to apply any and all (a) balances held by Lender for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that Lender may exercise its right to set off with respect to the Obligations as provided in this Section 8.6.

Section 8.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Lender from or on behalf of such Borrower of all or any part of the Obligations, and, as between Borrower on the one hand and Lender on the other, Lender shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Lender may deem advisable notwithstanding any previous application by Lender, and (b) but absent the occurrence and continuance of an Acceleration Event, Lender shall apply any and all payments received by Lender in respect of the Obligations, and any and all proceeds of Collateral received by Lender, in such order as Lender may from time to time elect.

(b) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Lender shall apply any and all payments received by Lender in respect of the Obligations, and any and all proceeds of Collateral received by Lender, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Lender with respect to this Agreement, the other Financing

Documents or the Collateral; second to accrued and unpaid interest on the Obligations; and third, to any other indebtedness or obligations of Borrower owing to Lender under the Financing Documents. Any balance remaining shall be delivered to Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category.

Section 8.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lender on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard; (ii) all rights to notice and a hearing prior to Lender's or any Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower or Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) Any forbearance by Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loan, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Note or as a reinstatement of the Loan or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Lender as the result of an Event of Default shall not be a waiver of Lender's right to accelerate the maturity of the Loan, nor shall Lender's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Borrower's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Lender

shall not be subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all remedies against the Collateral and any other properties owned by Borrower and the Financing Documents and other security instruments or agreements securing the Loan have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrower’s obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Lender to resort to any part of the Collateral for the satisfaction of any of Borrower’s obligations under the Financing Documents in preference or priority to any other Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrower’s obligations under the Financing Documents. In addition, Lender, subject to the Financing Orders, shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Lender may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Borrower which would require the separate sale of any of the Collateral or require Lender to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of each part of the Collateral.

Section 8.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Borrower’s obligations under any Financing Documents, Lender may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Borrower waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Borrower, each Borrower specifically joins in this Section 8.9 as if this Section were a part of each Financing Document executed by such Borrower.

Section 8.10 Marshalling; Payments Set Aside. Lender shall not be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Lender enforces its Liens or Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefore,

shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

Section 8.11 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrower and Lender

ARTICLE 9 - MISCELLANEOUS

Section 9.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Article 9 shall survive the payment of the Obligations and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 9.2 No Waivers. No failure or delay by Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Borrower has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 9.3 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any party to the other may be effected by personal delivery in writing, by registered or certified mail, postage prepaid, return receipt requested, or on the date sent by facsimile or email delivery of a PDF document (with confirmation of transmission) and shall be deemed communicated as of the date of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section 9.3.

To Borrower:

Pizza Palz, Inc.
1428 Gunter Avenue
Guntersville, Alabama
pizzapalz@gmail.com

With a copy to:

Brian Walding
Walding LLC
2227 First Avenue South, Suite 100
Birmingham, AL 35233
bwalding@waldinglaw.com

To Lender:

Domino's Pizza
30 Frank Lloyd Wright Drive
Ann Arbor, MI 48106
Attn: Joe Devereaux

With a copy to:

Eric Goldstein
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
egoldstein@goodwin.com

Section 9.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 9.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 9.6 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against 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 Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 9.7 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (IF THE BANKRUPTCY COURT DOES NOT HAVE JURISDICTION, ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF ALABAMA) TO HEAR AND

DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO, ON THE ONE HAND, AND ANY AGENT OR ANY LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS; *PROVIDED THAT* EACH PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ANY AGENT OR ANY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

Section 9.8 Waiver of Jury Trial; Commercial Waiver; Preservation of Remedies.

(a) WAIVER OF JURY TRIAL. LENDER AND EACH BORROWER EACH HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION, CLAIM OR OTHER PROCEEDING ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR THE OTHER FINANCING DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 9.9 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 9.10 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 9.11 Time. Time is of the essence in each Borrower's performance under this Agreement and all other Financing Documents

Section 9.12 Expenses; Indemnity.

(a) Borrower hereby agrees to promptly pay (i) all costs and expenses of Lender (including, without limitation, the reasonable fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Lender) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Lender of its rights and remedies

under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Lender (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Lender in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Lender in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; and (iv) all costs and expenses incurred by Lender in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Lender are a party thereto.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Lender and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Lender (collectively called the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnatee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnatee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Lender) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnatee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loan, except that Borrower shall have no obligation hereunder to an Indemnatee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrower under this Section 9.12 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWER OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE,

EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 9.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns.

Section 9.14 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 9.15 Financing Orders. In the event of any inconsistency between the terms and conditions of any of the Financing Documents and the Financing Orders, the provisions of the Financing Orders shall govern and control.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWER:

PIZZA PALZ, INC.

By: _____
Name:
Its:

LENDER:

DOMINO'S PIZZA [ENTITY TBD]

By: _____
Name:
Its:

Schedule 7.1 – Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising, and all proceeds and products of the following:

All goods, Accounts (including health-care insurance receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All of Borrower's books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

EXHIBIT A

BUDGET

EXHIBIT B

{00069414.DOCX .}

PIZZA PALZ, INC.
SECURED PROMISSORY NOTE

\$50,000.00

March __, 2017

1. Principal and Interest.

Pizza Palz, Inc. ("**Company**"), for value received, hereby promises to pay to Domino's Pizza [entity name TBD] ("**Payee**"), in lawful money of the United States at the address of Payee, the principal amount of \$50,000.00, or as such lesser principal amount shall be then due and owing, together with interest from the date of this Note on the outstanding amount hereof at the rate of twelve percent (___%) *per annum*, compounded annually, computed on the actual number of days elapsed until all of the amounts under this Note have been paid in full.

Subject to the terms hereof, the outstanding principal of, and all accrued but unpaid interest on, this Note are due and payable ON DEMAND at the request of the Payee at any time on or after the earlier of May 19, 2017 or the Sale Date as defined in that certain Debtor-In-Possession Superpriority Credit and Security Agreement of even date herewith (the "Credit Agreement"). Principal and interest under this Note may be prepaid, in part or in full, without premium or penalty.

Upon payment in full of all amounts payable hereunder, this Note shall be surrendered to the Company for cancellation.

2. Enforcement Costs. The Company shall pay, in addition to the principal and interest payable hereunder, all of the reasonable fees, costs and expenses incurred by the Payee in connection with the exercise, enforcement or protection of any of the rights of the Payee hereunder or the failure of the Company to perform or observe any of the provisions hereof.

3. Event of Default. The outstanding principal of, and all accrued but unpaid interest on, this Note shall become immediately due and payable at the election of the Payee upon an Event of Default under the Credit Agreement. Upon the occurrence of such Event of Default, the outstanding principal of, and all accrued but unpaid interest on, this Note shall become immediately due and payable without any further action on the part of Payee and the Company shall immediately pay to Payee all amounts due and payable with respect to this Note. In addition to all other rights and remedies available to Payee under this Note, applicable law or otherwise, after an Event of Default the rate of interest under this Note shall increase to a rate this is five percent (5.0%) per annum in excess of the rate prior to the Event of Default, until this Note is paid in full or such Event of Default is cured.

4. Waivers. The Company hereby waives presentment, demand for performance, notice of non-performance, protest, notice of protest and notice of dishonor. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing.

5. Governing Law. This Note shall be governed by, and construed and interpreted in

accordance with, the laws of the State of Alabama.

6. Amendment. Except as otherwise set forth in the Agreement, any term of this Note may be amended (either retroactively or prospectively) with the written consent of the Company and Payee.

7. Remedies Cumulative. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

8. Severability. If any term or provision of this Note is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Note, and such provision shall not affect the legality, enforceability or validity of the remainder of this Note. If any provision or part thereof of this Note is stricken in accordance with the provisions of this Section 8, then such stricken provision shall be replaced, to extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to this Note, together with all fees, charges and other amounts which are treated as interest with respect to this Note under applicable law, shall exceed the maximum lawful rate which may be contracted for, charged, taken, received or reserved by the holder thereof in accordance with applicable law, the rate of interest payable in respect of this Note, together with all fees, charges and other amounts payable in respect thereof, shall be limited to the maximum lawful rate.

9. Secured Note. This Note is secured in accordance with, and is entitled to the benefits of the Credit Agreement.

10. Payments on Non-Business Days. If any payment hereunder 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, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

11. Jury Trial Waiver. To the fullest extent permitted by law, and as separately bargained-for-consideration, the Company hereby waives any right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or relating to this Note.

[Signature on following page]

IN WITNESS WHEREOF, Pizza Palz, Inc. has caused this Promissory Note to be duly executed and delivered by its proper and duly authorized officer as of the date first written above.

PIZZA PALZ, INC.

By: _____
Name:
Title: