UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Gander Mountain Company,

Case No.: 17-30673
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675
Chapter 11 Case

Debtor.

DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) GRANTING EXPEDITED RELIEF, (II) APPROVING POSTPETITION FINANCING, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) AUTHORIZING USE OF CASH COLLATERAL, (V) GRANTING ADEQUATE PROTECTION, (VI) MODIFYING AUTOMATIC STAY, AND (VII) GRANTING RELATED RELIEF

TO: The parties-in-interest as specified in Local Rule 9013-3(a)(2):

1. The above-captioned debtors and debtors in possession (together, the "**Debtors**") hereby move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on the Motion for expedited hearing and on the portion of this Motion seeking an **interim order** at 1:30 p.m. on March 14, 2017, before the Honorable Robert J. Kressel, in Courtroom No. 8 West of the United States Courthouse at 300 South Fourth Street, MN. A hearing on the portion of this Motion seeking a **final order** will be held at 9:00 a.m. on April 6, 2017, before the Honorable Michael E. Ridgway in Courtroom No. 7 West of the United States Courthouse at 300 South Fourth Street, MN.

3. Local Rule 9006-1(b) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought with respect to the portion of the Motion seeking an **interim order**, the Debtors do not object to written responses being served and filed **two hours prior to the hearing**. Any response to the Motion for a **final order** must be filed and served by mail not later than March 31, 2017, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules. **UNLESS RESPONSES OPPOSING THE MOTION ARE TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The petitions commencing the Debtors' chapter 11 cases were filed on March 10, 2017 (the "**Petition Date**"). The cases are now pending before this Court.

5. This Motion arises under 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, and Fed. R. Bankr. P. 4001(b). This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013 and 4001-2.

6. The Debtors have filed, contemporaneously with this Motion, a motion requesting joint administration of their chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are authorized to operate their businesses and manage the property of the estates as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee has been appointed.

7. Information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Timothy G. Becker in Support of Chapter 11

Petitions and Initial Motions (the "**Becker Declaration**"), which is incorporated herein by reference. Additional facts and circumstances supporting this Motion are set forth in the Declaration of Stephen Spencer in Support of the Debtors' Motion For Interim and Final Orders (I) Granting Expedited Relief, (II) Approving Postpetition Financing, (III) Granting Liens and Providing Superpriority Administrative Expense Status; (IV) Authorizing Use of Cash Collateral; (V) Granting Adequate Protection; (VI) Modifying Automatic Stay; and (VII) Granting Related Relief (the "**Spencer Declaration**"). The additional facts relevant to this motion set forth below are verified by Timothy G. Becker, as evidenced by the attached verification.

RELIEF REQUESTED

8. By this Motion, the Debtors seek immediate access to postpetition financing in order to ensure their continued operations during these Cases as they implement a sale process. To accomplish this task, the Debtors require the use of a postpetition credit facility consisting of a revolving loan as more fully described below up to an aggregate principal amount of $452,000,000 (the "**DIP Financing**") pursuant to the DIP Credit Agreement. The DIP Financing will provide the Debtors with the necessary liquidity to fund their operations, bankruptcy costs including professional fees, working capital needs and general corporate purposes during the course of these Cases.

9. Absent access to the DIP Financing, the Debtors will likely not have adequate liquidity to maintain uninterrupted operations. Any cessation in operations would, in turn, likely result in immediate liquidation, the loss of hundreds of jobs and severe losses for vendors, customers and creditors. Therefore, the Debtors' customers, their employees and all of the Debtors' other constituents depend on the Debtors' ability to access the DIP Financing so that

the Debtors can continue operating while a sale process takes place that will maximize recoveries for their estates and creditors.

10. The Debtors request that the Court enter an interim order (the "**Interim Order**") and a final order (the "**Final Order**," and collectively the "**DIP Orders**"). The Interim Order is attached hereto and the Final Order shall be served and filed at least 10 days prior to the Final Hearing. In summary, the Debtors request orders:

a. granting expedited relief; and

b. authorizing, under Sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain secured, superpriority post-petition loans, advances and other financial accommodations (the "**DIP Facility**"), on an interim basis for a period through and including the week following the date of the Final Hearing, pursuant to the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**") by and among (a) the Lead Borrower, (b) the other Borrowers[1] party thereto from time to time, (c) the Guarantors party thereto from time to time, (d) Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities herein, the "**DIP Agent**") for its own benefit and the benefit of the other Credit Parties, and (e) the Lenders from time to time party thereto (the "**DIP Lenders**" and each a "**DIP Lender**"; the DIP Agent, the DIP Lenders and the other Credit Parties under the DIP Loan Documents (as defined below) are collectively referred to herein as the "**DIP Credit Parties**"), substantially in the form of Exhibit A attached hereto; and

[1] Capitalized terms used but not defined herein have the meanings given to them in the DIP Loan Documents.

c. authorizing the Debtors to execute and deliver the DIP Credit Agreement and all other related documents and agreements, including security agreements, deposit account control agreements, pledge agreements, guaranties and promissory notes (collectively, the "**DIP Loan Documents**") and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents; and

d. until the Termination Date, and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Interim Order, authorizing the Debtors, prior to the entry of the Final Order, to request extensions of credit under the DIP Facility up to an aggregate principal amount of $110,000,000 at any one time outstanding (the "**Interim Financing**"); and

e. granting allowed superpriority administrative expense claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in each of the Cases and any Successor Cases (as defined herein) to all obligations owing under the DIP Credit Agreement and the other DIP Loan Documents (collectively, and including all "Obligations" as described in the DIP Credit Agreement, including, without limitation, all obligations with respect to cash management services, bank products and letters of credit issued or deemed issued under the DIP Credit Agreement, respectively, and, together, the "**DIP Obligations**"), subject to the priorities set forth herein; and

f. authorizing the Debtors to use "Cash Collateral," as defined in Section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to Bankruptcy Code Section 361 and 363 and Bankruptcy Rules 4001(b) and 6004; and

g. granting to the DIP Agent, for the benefit of the DIP Credit Parties, automatically perfected security interests in and liens on all of the DIP Collateral (as

defined herein), including, without limitation, all property constituting "Cash Collateral" as defined in Section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth in the Interim Order; and

h. authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Loan Documents as they become due, including, without limitation, continuing commitment fees, closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, the reasonable fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, and all related expenses of the DIP Credit Parties, all to the extent provided by and in accordance with the terms of the respective DIP Loan Documents; and

i. authorizing and directing the Debtors to pay in full the Prepetition ABL Obligations (as defined herein) upon the entry of the Final Order (as defined herein) and as set forth in the Interim Order, subject to the rights of parties in interest described in paragraphs 35 and 36 of the Interim Order; and

j. providing adequate protection to the Prepetition Secured Creditors (as defined in the Interim Order) to the extent set forth in the Interim Order; and

k. vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order; and

l. granting related relief.

RULE 4001 STATEMENT

11. Pursuant to Local Rule 4001-2(a), attached hereto as Exhibit A is the Debtors' cash flow projections (the "**Approved Budget**") and attached hereto as Exhibit B is the Debtors' calculation of its collateral base.

12. Pursuant to Fed. R. Bankr. P. 4001(b), the following summarizes the significant terms of the DIP Credit Agreement and the Interim Order. The Debtors believe that the following provisions of the DIP Credit Agreement and the Interim Order are justified and necessary in the context and circumstances of these cases.

Provision	**Description and Location**
Interest rate	Tranche A: Base Rate + 3% Tranche A-1: Base Rate + 4.75% DIP Credit Agreement, § 2.08
Fees	Commitment Fee of 0.375% (applies to any unused amount of Tranche A line and Tranche A-1 line) Arrangement Fee of $1,130,000 Tranche A Closing Fee of $4,250,000 Tranche A-1 Closing Fee of $270,000 Term Loan B Agent Consent Fee of $350,000 DIP Credit Agreement, § 2.09 and Exhibit F to DIP Credit Agreement
Maturity	The earliest of: (a) March __, 2018, (b) if the Final Financing Order is not entered within thirty five (35) calendar days after the Petition Date, immediately thereafter, and (c) the closing of a sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code. DIP Credit Agreement, §§ 1.01, 2.07
Events of default	In addition to customary events of default, (i) the failure to achieve certain milestones in the Cases; and (ii) certain actions or events contrary to the DIP Lenders' interests in the Cases, such as (a) seeking to sell property, obtain financing, or file a plan unless the result is payment in full in cash of the Prepetition Obligations and the DIP Obligations; and (b) the entry of an order allowing a Section 506(c) claim, dismissing or converting the Cases or confirming a plan that does not satisfy the Prepetition Obligations and the DIP Obligations in cash on the effective date, among others.

	DIP Credit Agreement, § 8.01
Liens	Substantially all assets of the Debtors. Interim Order, ¶ 6(a)
Borrowing limits	Tranche A: $425,000,000 Tranche A-1: $27,000,000 LOC sublimit: $10,000,000 DIP Credit Agreement, §§ 1.01, 2.01
Borrowing conditions	The obligations to make the interim financing available are subject to certain conditions precedent, including the entry of the Interim Order, the Cash Management Order and the Wage Order; the filing of the Bidding Procedures Motion, the Initial Store Closing Motion and the Sale Order Motion; entry by the Debtor into the Agency Agreement; and Uncapped Tranche A Availability shall be not less than $31,000,000. DIP Credit Agreement, Article IV
Grant of priority or a lien under §364(c) or (d)	DIP Agent is granted a priming, first priority lien to secure all DIP Obligations and a superpriority claim for all DIP Obligations, subordinate only to the Carve-Out and Prepetition Permitted Liens. Interim Order, ¶¶ 6-8
Adequate protection or priority for prepetition claims	**Adequate protection liens:** Each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Creditors) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Creditors) is to be granted, pursuant to Sections 361, 363 and 364(d) of the Bankruptcy Code, valid and perfected replacement and additional security interests in, and liens on all of the Debtors' right, title and interest in, to and under all DIP Collateral. To the extent provided in the Intercreditor Agreement, the Adequate Protection Liens granted to the Prepetition ABL Agent shall secure the Prepetition ABL Obligations and shall be senior to the Adequate Protection Liens granted to the Prepetition Term Loan Agent to secure the Prepetition Term Loan Obligations. The Adequate Protection Liens (x) are and shall be valid, binding enforceable and fully perfected as of the date hereof, (y) subordinate and subject only to (i) the DIP Liens, (ii) the Permitted Prior Liens and (iii) the DIP Carve-Out, and (z) in all instances, subject to the Intercreditor Agreement. **Adequate protection payments:** In the case of the Prepetition ABL Creditors, (A) the current payment of the reasonable and documented out-of-pocket fees and expenses of the financial advisors and attorneys of the Prepetition ABL Creditors, (B) until repayment in full of the Prepetition ABL Obligations, on the first day of each calendar month payment of all accrued and unpaid interest

	at the "Default Rate" as provided in the Prepetition ABL Credit Agreement, (C) payment of the Prepetition ABL Obligations from the proceeds of DIP Collateral, (D) upon the entry of the Final Order, the payment in full of any remaining Prepetition ABL Obligations, and (E) upon the earliest to occur of (x) closing of a sale of all or substantially all of the Debtors' assets, (y) May 15, 2017, and (z) commencement of a Challenge (as defined in the DIP Orders), payment of $500,000 to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Creditors, for the Prepetition ABL Indemnity Reserve to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition ABL Credit Documents. The Prepetition ABL Indemnity Reserve will be released upon the indefeasible payment in full in cash of the Prepetition ABL Obligations and the receipt by the Prepetition ABL Agent and the Prepetition ABL Lenders of applicable releases from the Debtors and their estates. In the case of the Prepetition Term Loan Creditors, (A) the current payment of the reasonable and documented out-of-pocket fees and expenses of the financial advisors and attorneys of the Prepetition Term Loan Creditors, (B) until repayment in full of the Prepetition Term Obligations, on the first day of each calendar month, payment of all accrued and unpaid interest at the "Default Rate" as provided in the Prepetition Term Loan Agreement, (C) upon the payment in full in cash of all DIP Obligations and Prepetition ABL Obligations in accordance with the DIP Orders, payment of $500,000 to the Prepetition Term Loan Agent, for the benefit of the Prepetition Term Loan Lenders, for the Prepetition Term Loan Indemnity Reserve to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition Term Loan Documents, and (D) a "Consent Fee" in the amount of $350,000 to the Prepetition Term Loan Agent as set forth in the Fee Letter. The Prepetition Term Loan Indemnity Reserve will be released upon the indefeasible payment in full in cash of the Prepetition Term Loan Obligations and the receipt by the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders of applicable releases from the Debtors and their estates. **With respect to sales and credit bidding:** The Debtors shall keep the DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent fully informed of the Debtors' efforts to consummate Permitted Sales, the Initial Store Closing Sale and any other sales of equity interests and/or assets of the Debtors after the Petition Date. In connection with any sale process authorized by the Court, the Prepetition ABL Agent, Prepetition Term Loan Agent and Prepetition Secured Creditors shall be considered a "Qualified Bidder" and may, subject to the terms of the Intercreditor Agreement, seek to credit bid some or all of their claims for their respective collateral (each

	a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code to reduce the cash consideration with respect to those assets in which the party submitting such Credit Bid holds a security interest. **Access to records:** The Debtor shall permit the Prepetition Secured Creditors (i) to have access to and inspect the Debtors' properties, (ii) to examine the Debtors' books and records, (iii) to discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors, and (iv) otherwise have full cooperation of the Debtors. **Superpriority Claims:** The Prepetition Secured Creditors will receive superpriority claims to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral Interim Order, ¶¶ 12-13
Rollup	The proceeds of DIP Collateral are to be applied in the interim period to the Prepetition ABL Obligations. Upon the entry of the Final Order, any remaining Prepetition ABL Obligations are to be paid in full. DIP Credit Agreement, §§ 2.05(f), 2.05(i), 6.11
Determinations regarding prepetition claim or lien	Debtors acknowledge validity, enforceability, priority and amount of prepetition claims and liens, but findings are subject to challenge period of 60 days for Committee and 75 days for other persons. Interim Order, ¶ 35
Waiver or modification regarding automatic stay	Automatic stay is modified such that DIP Credit Parties are entitled to exercise all remedies three business days after Termination Declaration Date (the "**Remedies Notice Period**"). During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred. Interim Order, ¶ 24
Waiver or modification of any entity's authority or right to file a plan, exclusivity, request the use of cash collateral, or request authority to obtain credit	It is an event of default for the Debtors to take certain actions without the DIP Agent's consent, other than in connection with the payment in full or refinancing of the Pre-Petition Obligations and the DIP Obligations. Debtors also waive the right to take, without the consent of the DIP Agent, certain actions, including to seek an order allowing the use of cash collateral or any lien on the DIP Collateral with priority equal or superior to the DIP Liens. DIP Credit Agreement, § 8.01(s) Interim Order, ¶ 47

Establishment of deadlines for filing a plan, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order	None.
Waiver or modification of the applicability of nonbankruptcy law relating to the perfection or enforcement of a lien	Automatic perfection of liens. Interim Order, ¶ 17(a).
Release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee	General release of the Prepetition Secured Creditors; release is not binding on parties other than the Debtors during challenge period of 60 days for Committee and 75 days for other persons. Interim Order, § 35
Indemnification	Indemnification of DIP Agent and DIP Credit Parties, not including losses resulted directly from gross negligence or willful misconduct, which obligations are secured by $500,000 DIP Indemnity Account. Interim Order, ¶ 29
Release, waiver, or limitation of any right under §506(c)	Effective upon entry of Final Order. Interim Order, ¶ 38
Granting of a lien on any claim or cause of action arising under §§544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)	Upon the entry of the Final Order, all proceeds of claims or causes of action that the Debtors may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors or the estates of the Debtors under Chapter 5 of the Bankruptcy Code and any and all recoveries and settlements thereof (the "**Bankruptcy Recoveries**"), but only (A) the full amount of any such recovery or settlement to the extent arising under Section 549 of the Bankruptcy Code and (B) all amounts necessary to reimburse the DIP Credit Parties for the amount of the DIP Carve-Out actually funded (the foregoing, the "**Specified Bankruptcy Recoveries**"); *provided, however*, for the avoidance of doubt, the DIP Superpriority Claim (as defined in the Interim Order) and the Adequate Protection Superpriority Claims (as defined in the Interim Order) of the Prepetition Secured Creditors shall be payable out of all Bankruptcy Recoveries. Interim Order, § 6(xvi)
DIP Carve-Out	The DIP Carve-Out means the sum of: (a) all allowed administrative

	expenses pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of the Court, and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; and (b) all fees and expenses allowed at any time by the Court (the "**Allowed Professional Fees**") and incurred by Case Professionals, which amount under this clause (b) shall not exceed the sum of: (x) the weekly amounts set forth in the Approved Budget for "Professional Fees Accrued" for "Debtor Counsel", "Debtor CRO", "Debtor FA", "Other Debtor Professionals", "UCC Counsel" and "UCC FA" incurred prior to the delivery of a Carve-Out Trigger Notice, solely to the extent that such amounts described in this clause (x) are actually funded into the Professional Fee Account; plus (y) $1,000,000 for Allowed Professional Fees incurred from and after the delivery of a Carve-Out Trigger Notice, which amount shall be funded by the DIP Agent within three business days thereafter. Interim Order, ¶ 32
Continuing Effect of Prepetition Intercreditor Agreement	The Intercreditor Agreement remains binding on the parties thereto. All loans and advances made by the DIP Agent and/or DIP Lenders pursuant to and under the DIP Facility and all other DIP Obligations outstanding thereunder shall be deemed to be "ABL Obligations" under the Intercreditor Agreement.

PREPETITION FINANCING FACILITIES

13. As of the Petition Date, the Debtors owe a total of approximately $424.5 million in principal plus accrued interest on the Prepetition Secured Obligations (defined below).

(a) Prepetition ABL Obligations

14. As of the Petition Date, the Debtors had outstanding secured debt to various lenders pursuant to that certain Credit Agreement dated as of April 11, 2011 (as amended, modified and supplemented from time to time, the "**Prepetition ABL Credit Agreement**" and together with all related documents, guaranties and agreements, the "**Prepetition ABL Credit Documents**"), by and among (a) the Lead Borrower, (b) the other Borrowers party thereto from time to time, (c) the Guarantors party thereto from time to time, (d) Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities herein, the

"**Prepetition ABL Agent**") for its own benefit and the benefit of the other "Credit Parties" (as defined therein), and (e) the Lenders from time to time party thereto (the "**Prepetition ABL Lenders**" and each a "**Prepetition ABL Lender**"; the Prepetition ABL Agent, the Prepetition ABL Lenders and the other "Credit Parties" under the Prepetition ABL Credit Documents are collectively referred to herein as the "**Prepetition ABL Creditors**").

15. As of March 9, 2017, the aggregate outstanding principal amount owed by the Debtors under the Prepetition ABL Credit Documents was not less than $389,570,717.99, consisting of Tranche A revolving credit loans in the outstanding principal amount of $359,557,399.02, Tranche A-1 revolving credit loans in the outstanding principal amount of $26,897,592.97 and issued and outstanding letters of credit in the amount of $3,115,726.00 (collectively, together with any interest, fees (including, without limitation, any termination and prepayment fees), costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition ABL Credit Documents, and further including all "Obligations" as described in the Prepetition ABL Credit Agreement, and all interest, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition ABL Obligations**").

(b) Prepetition Term Loan Obligations

16. As of the Petition Date, the Debtors also had outstanding secured debt to various lenders pursuant to that certain Term Loan Credit Agreement dated as of June 17, 2015 (as amended, modified and supplemented from time to time, the "**Prepetition Term Loan Agreement**" and together with all related documents, guaranties and agreements, the "**Prepetition Term Loan Documents**"), by and among (a) the Lead Borrower, (b) the other Borrowers party thereto from time to time, (c) the Guarantors party thereto from time to time, (d)

Pathlight Capital LLC, as administrative agent and collateral agent (in such capacity herein, the "**Prepetition Term Loan Agent**") for its own benefit and the benefit of the other "Credit Parties" (as defined therein), and (e) the Lenders from time to time party thereto (the "**Prepetition Term Loan Lenders**" and each a "**Prepetition Term Loan Lender**"; the Prepetition Term Loan Agent, the Prepetition Term Loan Lenders and the other "Credit Parties" under the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Term Loan Creditors**"). The Prepetition ABL Creditors and the Prepetition Term Loan Creditors are collectively referred to herein as the "**Prepetition Secured Creditors**" and the Prepetition ABL Credit Documents and the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Credit Documents**".

17. As of the Petition Date, the aggregate outstanding principal amount owed by the Debtors under the Prepetition Term Loan Documents was not less than $35,000,000 (together with any interest, fees (including, without limitation, prepayment fees), costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Term Loan Documents, and further including all "Obligations" as described in the Prepetition Term Loan Agreement, and all interest, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition Term Loan Obligations**"; the Prepetition ABL Obligations and the Prepetition Term Loan Obligations are collectively referred to herein as the "**Prepetition Secured Obligations**").

(c) Prepetition Senior Liens and Intercreditor Agreement

18. As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Debtors granted security interests in and liens on substantially all personal property of the Debtors, including, without limitation, accounts, inventory, equipment, and general

intangibles (collectively, the "**Prepetition Collateral**"), to the Prepetition ABL Agent and the Prepetition Term Loan Agent (collectively, the "**Prepetition Senior Liens**") to secure repayment of the Prepetition Secured Obligations. Pursuant to that certain Intercreditor Agreement dated as of June 17, 2015 (as amended, modified and supplemented from time to time, the "**Intercreditor Agreement**"), by and between the Prepetition ABL Agent and the Prepetition Term Loan Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Creditors with respect to the Prepetition Collateral. Subject to certain limitations set forth therein, the Intercreditor Agreement, provides, among other things, that the liens securing the Prepetition Term Loan Obligations are subordinate and junior to the liens securing the Prepetition ABL Obligations.

(d) Equipment/Fixture Financing Notes

19. During fiscal 2013 and 2014, the Company also entered into a series of Equipment/Fixture Financing Notes ("**EFNs**") under the terms of a Master Loan Agreement, dated as of July 26, 2013 (the "**EFN Master Agreement**"), with U.S. Bank Equipment Finance ("**UBEF**"), a division of U.S. Bank National Association. The proceeds of the EFNs were used to finance the purchase of equipment and fixtures in connection with the opening of new and/or remodeled stores. The EFNs are secured by a first priority security interest in equipment and fixtures at designated stores, which have an estimated market value of less than $3 million. The EFNs generally carry fixed interest rates ranging from 2.6% to 3.84%, mature in 4 years from the date of issue, and require monthly payments of interest and principal. As of the Petition Date, the Company owed approximately $17,746,631 in principal plus accrued and unpaid interest on the EFNs.

(e) Debtors' Acknowledgements Regarding the Prepetition Financing

20. Other than the Prepetition ABL Facility, the Prepetition Term Loan Facility, and the EFN Master Agreement, the Debtors do not have any material secured debt.

21. The Prepetition Senior Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected.

22. The Prepetition Senior Liens have priority over any and all other liens, if any, on the Prepetition Collateral, subject only to certain other liens otherwise permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Senior Liens as of the Petition Date, the "**Prepetition Permitted Liens**")[2] and otherwise had priority over any and all other liens on the Prepetition Collateral.

23. The Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors and constitute "allowed claims" within the meaning of Section 502 of the Bankruptcy Code.

24. No offsets, challenges, objections, defenses, claims, impairment or counterclaims of any kind or nature to any of the Prepetition Senior Liens or the Prepetition Secured Obligations exist, and no portion of the Prepetition Senior Liens or the Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, recoupment, reductions, setoff or subordination

[2] The Debtors are not by this Motion seeking a finding or ruling that any such Prepetition Permitted Liens are valid, senior, enforceable, perfected or non-avoidable. Moreover, nothing in the DIP Orders shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the DIP Agent, the Prepetition Secured Creditors and any Committee to challenge, consistent with the terms of the Interim Order, the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Lien and/or security interest. The rights and remedies of any holder of a Prepetition Permitted Lien pursuant to the applicable documents and applicable law are reserved.

(whether equitable, contractual or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

25. The Debtors and their estates have no claims, objections, challenges, causes of actions, counterclaims, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against any of the Prepetition Secured Creditors or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Credit Documents.

26. As of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Secured Obligations exceeded the amount of those obligations, and accordingly the Prepetition Secured Obligations are allowed secured claims within the meaning of Section 506 of the Bankruptcy Code, together with accrued and unpaid and hereafter accruing interest, fees (including, without limitation, attorneys' fees and related expenses), costs and other charges, and further including the Prepetition ABL Indemnity Reserve and Prepetition Term Loan Indemnity Reserve (as defined in the Interim Order).

27. All of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute Cash Collateral and is Prepetition Collateral of the Prepetition Secured Creditors.

28. By virtue of filing petitions for relief under title 11, the Debtors are in default under each of the Prepetition ABL Documents and the Prepetition Term Loan Documents.

DEBTORS' NEED FOR ONGOING FINANCING AND USE OF CASH COLLATERAL

29. The Debtors need access to the cash collateral ("Cash Collateral") and debtor in possession financing ("DIP Financing") to, among other things, (a) purchase goods from and make payments to vendors on a current basis post-petition; (b) continue to pay employees; and

(c) pay ordinary operating expenses, such as rent, utilities, taxes and fees. The Debtors' cash needs are set forth on the Approved Budget.

30. The Debtors have analyzed whether they could finance their operations during the case using only the Cash Collateral and have concluded that DIP Financing is necessary for a number of reasons. First, the Debtors' cash is collected into a blocked account and swept to the prepetition lending facilities on a daily basis. Therefore, the Debtors commence these cases with minimal cash available to them. Second, the Debtors considered such factors as the uncertainty inherent in estimating the timing of receipts and disbursements and the need for access to continued periodic incremental liquidity during these cases in order to maintain the going concern value of these estates. Third, the Debtors require support of their vendors and other suppliers in order to replenish inventory and maintain ordinary course operations during the case. The availability of DIP Financing sends a strong signal of support to such vendors and suppliers that the Debtors will have adequate funding available to pay its post-petition obligations. Fourth, the Debtors considered extraordinary or one-time costs that have been or will be incurred in these cases for professional fees for the Debtors, the Unsecured Creditors Committee and secured creditors, insurance renewal costs and the rights of third parties such as utility companies to demand and receive deposits. In consideration of these factors, the Debtors concluded that the risks associated with attempting to finance the operations with cash collateral outweighed the benefits and certainty provided by the use of DIP financing. Accordingly, if approved, the DIP Financing will preserve and enhance the value of the Debtors' estates and, as such, entry into the DIP Financing is a sound exercise of the Debtors' business judgment.

31. The Debtors sought but did not receive any alternative DIP lending proposals. Houlihan Lokey reached out to 18 parties in relation to provision of DIP financing,

predominantly comprised of hedge funds and alternative investors, to request proposals for either a DIP ABL facility to replace the Prepetition ABL Loan or a junior DIP facility to fund working capital needs. Of these 18 parties, 11 parties received "teasers," which included neither Gander Mountain's name nor any material non-public information. Two additional parties were not sent teasers because they (or an affiliate) were already subject to non-disclosure agreements ("NDAs") and had access to a subset of the electronic data room so they could provide a bid with respect to liquidating 32 stores. Of the 11 parties that received "teasers," 4 parties received NDAs, of which 2 parties executed an NDA and received electronic data room access. No party provided a competing DIP proposal. Of the parties that articulated reasons for deciding not to move forward with the process, primary concerns included (i) inability to get comfortable with the collateral package, (ii) limited interest in retail, (iii) belief that an existing bank group would be able to provide DIP financing on more economic terms and (iv) institutional restrictions on investing in companies that derive a substantial portion of revenues from sales of firearms and / or ammunition.

32. In addition to providing ongoing access to borrowing availability, the DIP financing is being used to retire debt under the pre-petition credit agreement. Borrowings under Tranche A of the DIP revolver bear interest at a rate of Prime plus 3.00%, the same rate as borrowings under the Tranche A pre-petition revolver (after giving effect to default interest). Similarly, the Tranche A-1 DIP loan bears interest at a rate of Prime plus 4.75%, the same rate as borrowings under the pre-petition tranche A-1 loan (after giving effect to default interest). The interest rate on the DIP Facility is no less favorable than what the Debtors would otherwise be paying on the pre-petition debt if they were to leave such debt outstanding and not borrow under the DIP Facility.

33. Under the DIP Financing, the Debtors will pay a 0.25% Arrangement Fee and a 1.0% Commitment Fee. The Debtors have also agreed to pay a 1% Consent Fee to the Term Loan Agent in connection with the provision of adequate protection. As noted in the Spencer Declaration, the fees are in line with market rates and other DIP facilities approved in recent retail cases.

34. The Debtors, with the assistance of Houlihan Lokey and their other advisors, have determined that the proposal submitted by the DIP Lenders is the only proposal available at this time.

35. The Debtors and the DIP Lenders negotiated the DIP Credit Agreement in a good faith and arm's length manner, with the advice of sophisticated counsel and advisors. As described in the Spencer Declaration, the DIP Credit Agreement represents the best and most favorable financing available to the Debtors under the circumstances.

PROPOSED DIP FINANCING

36. Recognizing the Debtors' need for financing, and in consultation with its advisors, the Debtors negotiated with the DIP Agent regarding the terms of potential DIP financing. As the result of good faith, arms-length negotiations, the DIP Lenders have agreed to extend up to $452,000,000 of post-petition financing to roll up the Prepetition ABL Loan on a "creeping" basis and provide the Debtors with operating capital. The terms of the DIP Credit Agreement are summarized above. The DIP Credit Agreement is attached hereto as Exhibit C.

37. Prior to the entry of the Final Order, proceeds of the DIP Collateral will be applied to the Prepetition ABL Obligations, thereby rolling up the Prepetition ABL Obligations into the post-petition DIP loan on a "creeping" basis. The repayment of the Prepetition ABL Obligations in accordance with the Interim Order is necessary, as the Prepetition ABL Creditors

have not otherwise consented to the use of Cash Collateral or the subordination of the Prepetition ABL Agent's liens to the DIP Liens (as defined herein), and the professional fee carve out and the DIP Credit Parties are not willing to provide the DIP Facility unless the Prepetition ABL Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility) are paid in full upon the entry of the Final Order and as otherwise set forth herein. Such payments will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraphs 35 and 36 of the Interim Order.

38. As a condition to entry into the DIP Credit Agreement, the extensions of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Credit Parties require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used (a) for the repayment in full in cash of all remaining Prepetition ABL Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility) upon the entry of the Final Order (other than contingent indemnification obligations), and (b) in a manner consistent with the terms and conditions of the DIP Loan Documents and the Interim Order and in accordance with the Approved Budget, solely for (i) post-petition capital expenditures, operating expenses and other working capital, (ii) certain transaction fees and expenses, (iii) permitted payment of costs of administration of the Cases, including professional fees, (iv)

adequate protection payments to the Prepetition Secured Creditors as set forth herein, and (v) as otherwise permitted under the DIP Loan Documents, as applicable.

39. As a condition to entry into the DIP Loan Documents, the extension of credit under the DIP Facility, and the authorization to use Cash Collateral, the Debtors and the DIP Agent have agreed that the proceeds of DIP Collateral (as defined in the Interim Order) shall be applied in accordance with paragraph 18(a) of the Interim Order. The extension of the DIP Facility and the repayment of the Prepetition ABL Obligations are part of an integrated transaction. Such payments will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraphs 35 and 36 of the Interim Order.

ADEQUATE PROTECTION

40. As a result of the grant of the DIP Liens, the incurrence of the DIP Obligations, the subordination of the Prepetition Senior Liens to the DIP Carve-Out, the use of Cash Collateral, and the imposition of the automatic stay, the Prepetition Secured Creditors are entitled to receive adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and as set forth in paragraphs 12 and 13 of the Interim Order.

41. As adequate protection, the Debtors propose that the Prepetition ABL Creditors shall receive, and the Prepetition Term Loan Creditors shall receive, subject to the Intercreditor Agreement, among other things, (i) the Adequate Protection Liens (as defined in the DIP Orders) to secure the Prepetition Secured Obligations and Adequate Protection Superpriority Claims (as defined in the DIPS Orders) with respect to the Prepetition Secured Obligations; (ii) additional adequate protection in the form of payments of interest at the default rate, fees and expenses (including attorneys' fees and expenses), indemnities (and funded indemnity accounts in certain

circumstances) and other amounts with respect to the Prepetition Secured Obligations in accordance with the Prepetition Credit Documents; (iii) certain rights in connection with the sale of the Debtors' assets; (iv) access to information; and (v) superpriority claims to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral.

NOTICES

42. Prior to the hearing on the Motion for a final order authorizing use of cash, and in settlement of any and all matters raised in this Motion, the Debtors may enter into a stipulation or agreed order with parties claiming a security interest in cash collateral assets of the Debtors concerning the use of cash collateral, adequate protection and other related matters. In the event that the Debtors enter into any such stipulation, they will seek approval of the stipulation without further notice or hearing pursuant to Rule 4001(d)(4) of the Federal Rules of Bankruptcy Procedure, and **DEBTORS HEREBY GIVE NOTICE OF THEIR INTENTION TO SEEK APPROVAL OF ANY SUCH STIPULATION.**

43. Pursuant to Local Rule 9013-2(a), this Motion is accompanied by a memorandum of law proposed order and proof of service.

44. Pursuant to Local Rule 9013-2(c), the Debtors give notice that they may, if necessary, call one or more of the following to testify regarding the facts set forth in this Motion: (a) Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; (b) James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose

business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; or (c) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for Gander Mountain Company and the Director and Secretary of Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101.

WHEREFORE, the Debtors request that the Court enter an interim order (the "Interim Order") and a final order (the "Final Order," and collectively the "DIP Orders"), each substantially in the form attached hereto,

a. granting expedited relief; and

b. authorizing, under Sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain the DIP Facility, on an interim basis for a period through and including the date of the Final Hearing, pursuant to the terms and conditions of the DIP Credit Agreement; and

c. authorizing the Debtors to execute and deliver the DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents; and

d. until the Termination Date, and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Interim Order, authorizing the Debtors, prior to the entry of the Final Order, to request extensions of credit under the DIP Facility up to an aggregate principal amount of $452,000,000 at any one time outstanding; and

e. granting allowed superpriority administrative expense claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in each of the Cases and any Successor Cases to all DIP Obligations; and

f. authorizing the Debtors to use Cash Collateral; and

g. granting to the DIP Agent, for the benefit of the DIP Credit Parties, automatically perfected security interests in and liens on all of the DIP Collateral; and

h. authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Loan Documents as they become due, including, without limitation, continuing commitment fees, closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, the reasonable fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, and all related expenses of the DIP Credit Parties, all to the extent provided by and in accordance with the terms of the respective DIP Loan Documents; and

i. authorizing and directing the Debtors to pay in full the Prepetition ABL Obligations upon the entry of the Final Order and as set forth in the Interim Order, subject to the rights of parties in interest described in paragraphs 35 and 36 of the Interim Order; and

j. providing adequate protection to the Prepetition Secured Creditors to the extent set forth in the Interim Order; and

k. vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order; and

l. granting related relief.

Dated: March 10, 2017

/e/ James C. Brand

Clinton E. Cutler (#0158094)
Cynthia A. Moyer (#0211229)
Ryan T. Murphy (#0311972)
James C. Brand (#387362)
Sarah M. Olson (#0390238)
Steven R. Kinsella (#0392289)
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PROPOSED ATTORNEYS FOR DEBTORS

60680156_9

VERIFICATION

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information, and belief.

Dated: March 10, 2017

Signed: _____
Timothy G. Becker

EXHIBIT A

Gander Mountain Company and Subsidiaries
Cash Forecast

	WEEK ENDED...												12 week
	3/18/2017	3/25/2017	4/1/2017	4/8/2017	4/15/2017	4/22/2017	4/29/2017	5/6/2017	5/13/2017	5/20/2017	5/27/2017	6/3/2017	Total
Total Cash Receipts	19,347,974	19,564,650	20,887,094	22,785,132	26,004,386	25,195,903	25,632,423	26,052,951	25,379,103	26,117,621	25,320,665	27,677,779	289,965,682
Cash Disbursements													
Inventory Vendors	-	8,004,620	9,122,116	8,456,907	8,705,465	7,502,577	7,001,907	8,176,500	5,583,017	8,411,605	8,886,046	8,792,245	88,643,007
Operating Expense	-	4,599,425	3,296,920	3,316,570	3,573,787	3,432,999	3,836,156	3,031,225	3,226,147	3,123,410	3,460,887	3,231,912	38,129,438
Payroll and Benefits	-	6,116,401	569,913	6,051,927	582,871	6,022,703	587,513	6,360,728	252,574	6,108,586	316,134	6,283,555	39,252,905
Rents	-	-	-	9,000,000	2,500,000	-	-	9,000,000	2,500,000	-	-	2,000,000	25,000,000
Sales Taxes	119,145	5,102,481	149,030	68,461	97,020	6,140,788	1,084,989	396,219	94,955	1,116,382	4,889,568	105,069	19,364,106
DNR payments	-	459,739	283,320	342,049	575,065	489,525	794,498	553,534	432,697	416,968	378,064	302,317	5,027,777
Capital Expenditures	-	750,000	150,000	150,000	150,000	700,000	150,000	150,000	230,000	150,000	150,000	150,000	2,880,000
Insurance	-	-	-	300,000	-	-	-	300,000	-	-	-	300,000	900,000
Deposits	1,000,000	2,300,000	-	-	-	-	-	-	-	-	-	-	3,300,000
Professional Fees Accrued													
Debtor Counsel	100,000	95,000	70,000	70,000	70,000	95,000	125,000	125,000	125,000	60,000	50,000	47,500	1,032,500
Debtor CRO	35,000	30,000	30,000	30,000	30,000	35,000	35,000	25,000	20,000	20,000	20,000	20,000	330,000
Debtor FA	-	-	150,000	-	-	-	-	150,000	-	-	-	150,000	450,000
Other Debtor Professionals	10,000	10,000	10,000	7,500	7,500	35,000	10,000	10,000	10,000	5,000	7,500	5,000	127,500
UST Fees	-	-	20,000	-	-	-	-	-	-	-	-	-	20,000
GOB Agent Fees	-	-	320,000	320,000	320,000	320,000	320,000	320,000	320,000	320,000	320,000	320,000	3,200,000
UCC Counsel	-	-	-	-	250,000	-	-	-	-	250,000	-	-	500,000
UCC FA	-	-	-	-	150,000	-	-	-	-	125,000	-	-	275,000
Secured Lenders													
Tranche A/A1 Counsel	300,000	-	-	-	300,000	-	-	-	-	300,000	-	-	900,000
Tranche A/A1 FA	200,000	-	-	-	200,000	-	-	-	-	200,000	-	-	600,000
Term Loan Counsel	175,000	-	-	-	175,000	-	-	-	-	200,000	-	-	550,000
Tranche A Interest	419,719	-	-	1,553,255	-	-	-	1,982,902	-	-	-	1,948,052	5,903,927
Tranche A1 reset	533,044	572,555	227,187	232,244	255,115	341,364	350,094	418,999	453,062	371,688	379,997	431,038	4,566,387
Tranche A1 Interest	52,811	-	-	142,430	-	-	-	142,322	-	-	-	134,552	472,114
L/C issued	2,200,000	-	-	-	-	-	-	-	-	-	-	-	2,200,000
DIP Fee	5,650,000	-	-	-	-	-	-	-	-	-	-	-	5,650,000
Term Loan Interest	-	-	-	279,124	-	-	-	364,536	-	-	-	376,687	1,020,347
Other Finance Costs	-	-	-	50,000	-	-	-	50,000	-	-	-	50,000	150,000
Total Disbursements	10,794,718	28,040,222	14,398,487	30,370,465	17,941,823	25,114,956	14,295,157	31,556,964	13,247,453	21,178,639	18,858,196	24,647,927	250,445,007
Net cash flow	8,553,256	(8,475,572)	6,488,608	(7,585,333)	8,062,563	80,947	11,337,266	(5,504,013)	12,131,650	4,938,983	6,462,469	3,029,852	39,520,675

EXHIBIT B

Gander Mountain Company and Subsidiaries
Cash Forecast

	WEEK ENDED...												12 week
	3/18/2017	3/25/2017	4/1/2017	4/8/2017	4/15/2017	4/22/2017	4/29/2017	5/6/2017	5/13/2017	5/20/2017	5/27/2017	6/3/2017	Total
Borrowing Base Collateral Available	417,276,489	407,969,513	402,819,045	399,475,793	395,112,084	389,654,733	384,258,400	375,371,793	367,355,106	361,420,898	354,610,353	349,530,704	
Revolver Tranche A	340,728,844	321,164,194	300,277,100	277,491,968	251,487,582	226,291,679	200,659,256	174,606,305	149,227,202	123,109,580	97,788,915	70,111,136	
DIP Revolver	10,794,718	38,834,941	53,233,428	83,603,892	101,545,715	126,660,672	140,955,828	172,512,792	185,760,246	206,938,884	225,797,081	250,445,007	
Revolver Debt	351,523,563	359,999,135	353,510,527	361,095,860	353,033,297	352,952,350	341,615,084	347,119,097	334,987,447	330,048,465	323,585,996	320,556,144	
Total Availability Revolver	65,752,926	47,970,378	49,308,518	38,379,932	42,078,787	36,702,383	42,643,316	28,252,695	32,367,658	31,372,434	31,024,357	28,974,560	
Revolver Avail net 7.5% Covenant	34,457,190	17,372,666	18,942,848	8,419,438	12,445,571	7,478,468	13,824,126	100,001	4,816,216	4,266,057	4,428,771	2,890,819	
Tranche A-1 Borrowing Base Collateral	26,483,202	25,910,647	25,577,995	25,345,751	25,090,636	24,749,272	24,399,178	23,879,728	23,426,666	23,054,978	22,674,981	22,335,783	
Original Tranche A-1 Debt	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	30,000,000	
Tranche A-1 Paydown/Reset	3,516,798	4,089,353	4,316,540	4,548,784	4,803,899	5,145,263	5,495,357	5,914,356	6,367,418	6,739,106	7,119,103	7,550,141	
Tranche A-1 Debt	26,483,202	25,910,647	25,683,460	25,451,216	25,196,101	24,854,737	24,504,643	24,085,644	23,632,582	23,260,894	22,880,897	22,449,859	
Pathlight Borrowing Base Collateral	31,551,092	30,878,962	30,645,817	30,245,901	29,924,600	29,533,360	29,149,731	28,570,526	28,001,544	27,592,309	27,108,317	26,643,671	
Term Loan Reserve in BBC	3,448,908	4,121,038	4,354,183	4,754,099	5,075,401	5,466,640	5,850,269	6,429,474	6,998,456	7,407,691	7,891,683	8,356,329	
Pathlight Principal	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	
Pathlight Consent/Prepayment	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000	
Total Pathlight	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	36,050,000	

EXHIBIT C

Choate Draft 3/10/2017

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of March [__], 2017

among

GANDER MOUNTAIN COMPANY,
as the Lead Borrower

For

The Borrowers Named Herein

The Guarantors Named Herein

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Administrative Agent, Collateral Agent, Swing Line Lender,

and

The Lenders Party Hereto

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Joint Lead Arranger and Joint Bookrunner

MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED
as Joint Lead Arranger and Joint Bookrunner

U.S. BANK NATIONAL ASSOCIATION,
as Joint Lead Arranger, Joint Bookrunner and Co-Syndication Agent

BANK OF AMERICA, N.A.,
as Co-Syndication Agent

CITIZENS BUSINESS CAPITAL, f/k/a RBS CITIZENS BUSINESS CAPITAL, a division of CITIZENS ASSET FINANCE, INC., f/k/a RBS ASSET FINANCE, INC.,
as Documentation Agent

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT ("Agreement") is entered into as of [March __], 2017, among Gander Mountain Company, a Minnesota corporation, as a debtor and a debtor-in-possession (the "Lead Borrower"), the Persons named on Schedule 1.01 hereto, each as a debtor and a debtor-in-possession (collectively, the "Borrowers"), the Persons named on Schedule 1.02 hereto, each as a debtor and a debtor-in-possession (collectively, the "Guarantors"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, Collateral Agent, and Swing Line Lender.

On March 10, 2017 (the "Petition Date"), the Lead Borrower and the other Loan Parties commenced cases under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), case numbers 17-30673 and 17-30675 (collectively, the "Chapter 11 Case") by filing voluntary petitions for relief under Chapter 11 with the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court"). The Lead Borrower and the other Loan Parties continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

The Borrowers have requested, and the Agent and the Lenders have agreed, upon the terms and conditions set forth in this Agreement, to make available to the Borrowers a senior secured credit facility in an aggregate principal amount not to exceed $452,000,000 in order to (a) repay the Pre-Petition Obligations as provided herein, (b) fund the Chapter 11 Case in accordance with the Approved Budget and as provided herein (subject to the Permitted Variance), (c) make certain other payments on the Closing Date as more fully provided in this Agreement, and (d) provide working capital for the Borrowers and the other Loan Parties during the pendency of the Chapter 11 Case in accordance with the Approved Budget and as provided herein (subject to the Permitted Variance).

The Borrowers and the other Loan Parties desire to secure the Obligations under the Loan Documents by granting to the Agent, on behalf of itself and the other Credit Parties, a security interest in and liens upon substantially all of their assets, whether now existing or hereafter acquired, in each instance as more fully set forth in the Loan Documents and in the Interim Financing Order (or the Final Financing Order when applicable).

All Obligations of the Loan Parties to the Agent and the Lenders hereunder and under the other Loan Documents shall be full recourse to each of the Loan Parties, secured by the Agent's security interest in and liens on all or substantially all of the assets of the Loan Parties included in the Collateral and entitled to super-priority administrative claim status under the Bankruptcy Code as provided herein and in the Financing Orders. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Document of Title" means, with respect to any Inventory, a tangible, negotiable bill of lading or other Document (as defined in the UCC) that (a) is issued by a common carrier which (i) is not an Affiliate of the Approved Foreign Vendor or any Loan Party and (ii) is in actual possession of such Inventory, (b) is issued to the order of a Loan Party or, if so requested by the Agent, to the order of the Agent, (c) names the Agent as a notify party and bears a conspicuous notation on its face of the Agent's

security interest therein, (d) is not subject to any Lien (other than in favor of the Agent), and (e) is on terms otherwise reasonably acceptable to the Agent.

"Accommodation Payment" as defined in Section 10.21(d).

"Account" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, (e) for energy provided or to be provided, (f) for the use or hire of a vessel under a charter or other contract, (g) arising out of the use of a credit or charge card or information contained on or for use with the card, or (h) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term "Account" includes health-care-insurance receivables.

"ACH" means automated clearing house transfers.

"Acquisition" means, with respect to any Person (a) an investment in, or a purchase of, a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Lease for Store locations of any Person which includes an initial payment of cash for the right to acquire such Lease (for the avoidance of doubt the purchase of real estate for the purpose of subsequently entering into a sale and leaseback or other similar transaction shall not constitute an Acquisition), in each case in any transaction or group of transactions which are part of a common plan.

"Act" shall have the meaning provided in Section10.17.

"Adjusted LIBO Rate" means:

(a) for any Interest Period with respect to any LIBO Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of one percent) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; and

(b) for any interest rate calculation with respect to any Base Rate Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of one percent) equal to (i) the LIBO Rate for an Interest Period commencing on the date of such calculation and ending on the date that is thirty (30) days thereafter multiplied by (ii) the Statutory Reserve Rate.

The Adjusted LIBO Rate will be adjusted automatically as of the effective date of any change in the Statutory Reserve Rate.

"Administrative Agent" means Wells Fargo in its capacity as Administrative Agent under any of the Loan Documents, or any successor thereto.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

"Affiliate" means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (iv) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person.

"Agency Agreement" means that certain letter agreement on terms satisfactory to the Agent among the Borrowers and the Approved Liquidator relating to the Initial Store Closing Sale, as in effect on the Closing Date and as may be amended with the consent of the Agent.

"Agent" means Wells Fargo in its capacity as Administrative Agent and Collateral Agent under any of the Loan Documents, or any successor thereto.

"Agent Parties" shall have the meaning specified in Section 10.02(c).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Aggregate Revolving Commitments" means the sum of the Aggregate Tranche A Commitments and the Aggregate Tranche A-1 Commitments. As of the Closing Date, the Aggregate Revolving Commitments are in the sum of $452,000,000.

"Aggregate Tranche A Commitments" means the Tranche A Commitments of all the Tranche A Lenders. As of the Closing Date, the Aggregate Tranche A Commitments are in the sum of $425,000,000.

"Aggregate Tranche A-1 Commitments" means the Tranche A-1 Commitments of all the Tranche A-1 Lenders. As of the Closing Date, the Aggregate Tranche A-1 Commitments are in the sum of $27,000,000.

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning specified in Section 10.21(d).

"Applicable Commitment Fee Percentage" means 0.375%.

"Applicable Lenders" means the Required Lenders, the Required Tranche A Lenders, and all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" means 3.0%.

"Applicable Percentage" means, in each case as the context requires, (a) with respect to each Credit Extension under the Tranche A Commitments, the Tranche A Applicable Percentage, (b) with respect to each Credit Extension under the Tranche A-1 Commitments, the Tranche A-1 Applicable Percentage, and (c) with respect to all Lenders at any time, the percentage of the sum of the Aggregate Revolving Commitments represented by the sum of such Lender's Revolving Commitment, in each case as the context provides. If the Tranche A Commitments or the Tranche A-1 Commitments have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender shall be determined based on the

Applicable Percentage of such Revolving Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Appraised Value" means with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Eligible Inventory as set forth in the consolidated inventory stock ledger of the Lead Borrower, which value shall be determined from time to time by the most recent appraisal undertaken by an independent appraiser engaged by the Agent.

"Approved Budget" shall mean the debtor-in-possession twelve (12) week budget prepared by the Lead Borrower and furnished to the Agent on or before the Closing Date, as the same may or shall, as applicable, be updated, modified and/or supplemented thereafter from time to time as provided in Section 6.01(b), which budget shall include a weekly cash budget, including information on a line item basis as to (x) projected cash receipts, (y) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees and expenses, including under the heading "Professional Fees Accrued", budgeted for the Case Professionals on a monthly basis), capital expenditures, asset sales and fees and expenses of the Agent and the Lenders (including counsel therefor) and any other fees and expenses relating to the Loan Documents), and (z) a calculation of Tranche A Availability and Tranche A-1 Availability.

"Approved Budget Variance Report" shall mean a weekly report provided by the Lead Borrower to the Agent in accordance with Section 6.01(b): (i) showing by line item actual receipts for both inventory and revenues, actual disbursement amounts, cash on hand, actual invoiced and unpaid professional fees (other than counsel for the Agent and the Lenders) and Tranche A Availability and Tranche A-1 Availability as of Saturday of each week on a cumulative basis from the Petition Date until the fourth (4th) week after the Petition Date and then on a rolling four (4) week basis at all times thereafter, noting therein all variances, on a line-item basis, from amounts set forth for such period in the Approved Budget, and shall include or be accompanied by explanations for all material variances, and (ii) certified by a Responsible Officer of the Lead Borrower.

"Approved Foreign Vendor" means a Foreign Vendor which has not asserted and has no right to assert any reclamation, repossession, diversion, stoppage in transit, Lien or title retention rights in respect of such Inventory.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Approved Liquidator" shall mean a professional liquidator, broker or other advisor acceptable to the Agent.

"Arrangers" means, collectively, Wells Fargo Bank, National Association, LLC, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and U.S. Bank National Association, in their capacities as joint lead arrangers and joint book managers.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit D or any other form approved by the Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Lead Borrower and its Subsidiaries for the Fiscal Year ended January 30, 2016, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year of the Lead Borrower and its Subsidiaries, including the notes thereto.

"Auto-Extension Letter of Credit" shall have the meaning specified in Section 2.03(b)(iii).

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Revolving Lender to make Committed Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Availability Reserves" means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, including without limitation, amounts entitled to priority under Section 503(b) of the Bankruptcy Code, as reasonably determined by the Agent, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's discretion, (but are not limited to) reserves based on: (i) rent; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which have priority over the interests of the Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Borrower, (v) Customer Credit Liabilities, (vi) Customer Deposits, (vii) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals, (viii) warehousemen's or bailee's charges and other Permitted Encumbrances which have priority over the interests of the Agent in the Collateral, (ix) consignment, purchase money and "floor plan financing" payables, (x) Cash Management Reserves, (xi) Bank Products Reserves, (xii) reserves for amounts reasonably acceptable to the Agent that are earned by officers or other employees of the Loan Parties under any Key Employment Retention Plan and Key Employee Incentive Plan, (xiii) the Carve-Out Reserve and (xiv) the Initial Store Closing Sale Reserve.

"Bank Products" means any services of facilities provided to any Loan Party by the Agent, any Lender or any of their respective Affiliates (but excluding Cash Management Services) including, without limitation, on account of (a) Swap Contracts, (b) merchant services constituting a line of credit, (c)

leasing, (d) Factored Receivables, and (e) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases; provided, however, that for any of the foregoing to be included as an "Obligation" for purposes of a distribution under Section 8.03(a), clause Fourteenth, the Lender or Affiliate providing such Bank Product and the Lead Borrower must have previously provided written notice (a "Bank Product Notice") to the Agent of (i) the existence of such Bank Product and (ii) the methodology to be used by such Lender or Affiliate in determining the liabilities and obligations of such Loan Party owing from time to time with respect to such Bank Product; provided further, that no such notice from the Lead Borrower shall be required with respect to any Bank Products provided by the Agent or its Affiliates.

"Bank Products Reserves" means such reserves as the Agent from time to time determines in its discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding; provided that, with respect to any Bank Product provided to any Loan Party by any Lender or Affiliate thereof, Agent shall establish such reserves based upon such Lenders' or Affiliate's reasonable determination of the credit exposure of such Loan Party in respect of such Bank Product as made in accordance with the methodology set forth in the applicable Bank Product Notice.

"Bankruptcy Code" has the meaning specified in the Recitals hereto.

"Bankruptcy Court" has the meaning specified in the Recitals hereto.

"Bankruptcy Milestones" has the meaning specified in Section 6.22(c).

"Base Rate" means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%), (b) the Adjusted LIBO Rate for thirty (30) days plus one percent (1.00%), or (c) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo as its "prime rate." The "prime rate" is a rate set by Wells Fargo based upon various factors including Wells Fargo's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Wells Fargo shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Bidding Procedures Motion" has the meaning provided in Section 6.22(a).

"Bidding Procedures Order" has the meaning provided in Section 6.22(c).

"Blocked Account" has the meaning provided in Section 6.13(a)(ii).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent, establishing control (as defined in the UCC) of such account by the Agent and whereby the bank maintaining such account agrees to comply with the instructions originated by the Agent without the further consent of any Loan Party.

"Blocked Account Bank" means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a Revolving Credit Borrowing or a Swing Line Borrowing, as the context may require.

"Borrowing Base" means the Tranche A Borrowing Base and the Tranche A-1 Borrowing Base.

"Borrowing Base Certificate" means a certificate of the Lead Borrower substantially in the form of Exhibit E hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Lead Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of Minnesota or the state where the Agent's Office is located and, if such day relates to any LIBO Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

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

"Carve-Out" has the meaning given to the term "*DIP Carve-Out*" as set forth in the Interim Financing Order and Final Financing Order, as applicable.

"Carve-Out Reserve" means a Reserve in the amount of the Carve-Out.

"Carve-Out Trigger Notice" means a written notice by the Agent to lead counsel for the Loan Parties, any Statutory Committee and the U.S. Trustee following the occurrence of an Event of Default, expressly stating that no additional Committed Revolving Loans may be requested to fund the Carve-Out.

"Case Professionals" means the Loan Parties' and any Statutory Committee's professionals, retained by either of them by final order of the Bankruptcy Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) under Sections 327 or 1103(a) of the Bankruptcy Code.

"Cash Collateral Account" means a non-interest bearing account established by one or more of the Loan Parties with Wells Fargo, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(g) or 8.02(a)(iii).

"Cash Collateralize" has the meaning specified in Section 2.03(g). Derivatives of such term have corresponding meanings.

"Cash Management Order" means the order of the Bankruptcy Court entered in the Chapter 11 Case, together with all extensions, modifications and amendments that are in form and substance acceptable to the Agent, which, among other matters, authorizes the Loan Parties to use their cash management system, substantially in the form of Exhibit H or another form satisfactory to the Agent.

"Cash Management Reserves " means such reserves as the Agent, from time to time, determines in its discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding, including, without limitation, a reserve for all obligations associated with any purchase cards issued, or deemed to be issued, in connection with this Agreement; provided that, with respect to any Cash Management Services provided to any Loan Party by any Lender or Affiliate thereof, Agent shall establish such reserves based upon such Lenders' or Affiliate's reasonable determination of the credit exposure of such Loan Party in respect of such Cash Management Services as made in accordance with the methodology set forth in the applicable Cash Management Services Notice.

"Cash Management Services" means any cash management services or facilities provided to any Loan Party by the Agent, any Lender or any of their respective Affiliates, including, without limitation, Wells Fargo Merchant Services, L.L.C., including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit or debit cards, (d) any services related to the acceptance and/or processing of payment cards or devices, and (e) purchase cards; provided, however, that for any of the foregoing to be included as an "Obligation" for purposes of a distribution under Section 8.03(a), clause Fourteenth, the Lender or Affiliate providing such Cash Management Services and the Lead Borrower must have previously provided written notice (a "Cash Management Services Notice") to the Agent of (i) the existence of such Cash Management Services and (ii) the methodology to be used by such Lender or Affiliate in determining the liabilities and obligations of such Loan Party owing from time to time with respect to such Cash Management Services; provided further, that no such notice from the Lead Borrower shall be required with respect to any Cash Management Services provided by the Agent or its Affiliates.

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

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than members of the Erickson Family or the Pratt Parties becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Lead Borrower entitled to vote for members of the board of directors or equivalent governing body of the Lead Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right); or

(b) reserved; or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result (unless the Obligations are to be paid in full and all Commitments are to be terminated concurrently with the consummation of such transaction) in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Lead Borrower, or control over the Equity Interests of the Lead Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities, provided that in no event shall the appointment or replacement of the chief restructuring officer by someone reasonably acceptable to the Agent result in a violation of this clause (c); or

(d) the Erickson Family and the Pratt Parties shall cease to own in the aggregate at least sixty percent (60%) or more of the Equity Interests of the Lead Borrower entitled to vote for members of the board of directors or equivalent governing body of the Lead Borrower on a fully-diluted basis; or

(e) the Lead Borrower fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party free and clear of all Liens (other than the Liens in favor of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents.

provided that, in connection with clause (a) and (c) no "Change in Control" shall be deemed to have occurred under such clauses if the results of all bank regulatory requirements with respect to such Person under "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, are reasonably satisfactory to the Agent.

"Chapter 11 Case" has the meaning specified in the Recitals hereto.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Collateral Agent" means Wells Fargo in its capacity as Collateral Agent under any of the Loan Documents, or any successor thereto.

"Commercial Letter of Credit" means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

"Commercial Letter of Credit Agreement" means the Commercial Letter of Credit Agreement relating to the issuance of a Commercial Letter of Credit in the form from time to time in use by the L/C Issuer.

"Commitment" means, as to each Lender, such Lender's Revolving Commitment.

"Committed Borrowing" means a Borrowing consisting of simultaneous Committed Revolving Loans of the same Type and, in the case of LIBO Rate Loans which are Committed Revolving Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01.

"Committed Revolving Loan" means individually, a Tranche A Loan and a Tranche A-1 Loan, and collectively, all Tranche A Loans and all Tranche A-1 Loans.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Concentration Account" has the meaning provided in Section 6.13(d).

"Consent" means actual consent given by a Lender from whom such consent is sought.

"Consolidated" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consultants" means Lighthouse Management Group, Inc. as Chief Restructuring Officer and financial restructuring consultant to the Loan Parties and Houlihan Lokey, Inc. as financial advisor to the Loan Parties, and in each case, another Person reasonably acceptable to the Agent and Lead Borrower.

"Contractual Obligation" means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Cost" means the lower of cost or market value of Inventory, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger.

"Credit Card Issuer" shall mean any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Notifications" has the meaning provided in Section 6.13(a)(i).

"Credit Card Receivables" means each "Account" (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

"Credit Extensions" mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) each L/C Issuer, (iv) the Arrangers, (v) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (vi) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vii) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be

consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring or negotiations in respect of any Obligations; and (b) with respect to the L/C Issuer, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all customary fees and charges (as adjusted from time to time) of Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Loan Parties (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith; and (d) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default, provided that such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

"Customer Credit Liabilities" means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits of the Borrowers.

"Customer Deposits" means at any time, the aggregate amount at such time of (a) deposits made by customers with respect to the purchase of goods or the performance of services and (b) layaway obligations of the Borrowers.

"Customs Broker/Carrier Agreement" means an agreement in form and substance satisfactory to the Agent among a Borrower, a customs broker, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent.

"David Pratt" means David C. Pratt.

"DDA" means other than an Operating Account each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"DDA Notification" has the meaning provided therefor in Section 6.13(b).

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to Committed Revolving Loans plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin for Tranche A Loans plus 2% per annum.

"Defaulting Lender" means (a) any Revolving Lender that has failed to fund any portion of the Committed Revolving Loans, participations in L/C Obligations or participations in Swing Line Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) any Lender that has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, or (c) any Revolving Lender that has been deemed insolvent or become the subject of a proceeding under any Debtor Relief Law.

"Deteriorating Lender" means (a) any Defaulting Lender, or (b) any Revolving Lender as to which the L/C Issuer or the Swing Line Lender has a good faith belief that such Revolving Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (c) any Lender, to the extent a Person that Controls such Lender has been deemed insolvent or become the subject of a bankruptcy, insolvency or similar proceeding.

"Disposition" or "Dispose" means the sale, transfer, license (other than a non-exclusive license in the ordinary course of business), lease or other disposition (whether in one transaction or in a series of transactions) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including (a) any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, and (b) any sale and leaseback transaction.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Loans mature; provided, however, that (i) only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock and (ii) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of the Lead Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Lead Borrower or one of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, resignation, death or disability and if any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not Disqualified Stock, such Equity Interests shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Lead Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"Documentation Agent" means Citizens Business Capital, f/k/a RBS Citizens Business Capital, a division of Citizens Asset Finance, Inc., f/k/a RBS Asset Finance, Inc..

"Dollars" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States of America, any State thereof or the District of Columbia (excluding, for the avoidance of doubt, any Subsidiary organized under the laws of Puerto Rico or any other territory).

"Eligible Assignee" means (a) a Lender or any of its Affiliates, (b) a bank, insurance company, or company engaged in the business of making commercial loans (provided that, in the case of an assignment of a Tranche A Commitment or a Tranche A-1 Commitment, such Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000), (c) an Approved Fund, (d) any Person to whom a Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Lender's rights in and to a material portion of such Lender's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by (x) in the case of an assignment of a Tranche A Commitment or a Tranche A-1 Commitment, the Agent, the L/C Issuer and the Swing Line Lender, and (y) unless an Event of Default has occurred and is continuing, the Lead Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"Eligible Credit Card Receivables" means at the time of any determination thereof, each Credit Card Receivable that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Receivable (i) has been earned by performance and represents the bona fide amounts due to a Borrower from a Credit Card Issuer or Credit Card Processor, and in each case originated in the ordinary course of business of such Borrower or in connection with sales to consumers as part of the Initial Store Closing Sale, and (ii) in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (j) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Receivable, an Account shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Credit Card Issuer or Credit Card Processor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Loan Parties to reduce the amount of such Credit Card Receivable. Except as otherwise agreed by the Agent, any Credit Card Receivable included within any of the following categories shall not constitute an Eligible Credit Card Receivable:

(a) Credit Card Receivable which do not constitute an "Account" (as defined in the UCC);

(b) Credit Card Receivables that have been outstanding for more than four (4) Business Days from the date of sale;

(c) Credit Card Receivables (i) that are not subject to a perfected first-priority security interest in favor of the Agent, or (ii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);

(d) Credit Card Receivables which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(e) Credit Card Receivables as to which the processor has the right under certain circumstances to require a Loan Party to repurchase the Accounts from such credit card processor;

(f) Credit Card Receivables due from an issuer or payment processor of the applicable credit card which is the subject of a proceeding under any Debtor Relief Law;

(g) Credit Card Receivables which are not a valid, legally enforceable obligation of the applicable issuer with respect thereto;

(h) Credit Card Receivables which do not conform to all representations, warranties or other provisions in the Loan Documents relating to Credit Card Receivables;

(i) Credit Card Receivables which are evidenced by "chattel paper" or an "instrument" of any kind unless such "chattel paper" or "instrument" is in the possession of the Agent, and to the extent necessary or appropriate, endorsed to the Agent; or

(j) Credit Card Receivables which the Agent determines in its Permitted Discretion to be uncertain of collection or which do not meet such other reasonable eligibility criteria for Credit Card Receivables as the Agent may determine.

"Eligible In-Transit Inventory" means, as of any date of determination thereof, without duplication of other Eligible Inventory, In-Transit Inventory:

(a) Which has been shipped from a foreign location for receipt by a Borrower, but which has not yet been delivered to such Borrower, which In-Transit Inventory has been in transit for sixty (60) days or less from the date of shipment of such Inventory;

(b) For which the purchase order is in the name of a Borrower and title and risk of loss has passed to such Borrower;

(c) For which an Acceptable Document of Title has been issued, and in each case as to which the Agent has control (as defined in the UCC) over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Agent, by the delivery of a Customs Broker/Carrier Agreement);

(d) Which is insured to the reasonable satisfaction of the Agent (including, without limitation, marine cargo insurance);

(e) the Foreign Vendor with respect to such In-Transit Inventory is an Approved Foreign Vendor;

(f) For which payment of the purchase price has been made by the Borrower or the purchase price is supported by a Commercial Letter of Credit; and

(g) Which otherwise would constitute Eligible Inventory;

provided that the Agent may, in its discretion, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event the Agent determines that such Inventory is subject to any Person's right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Agent to arise which may otherwise adversely impact the ability of the Agent to realize upon such Inventory.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, (i) Eligible In-Transit Inventory, and (ii) items of Inventory of a Borrower that are finished goods,

merchantable and readily saleable to the public in the ordinary course of the Borrowers' business deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;

(b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Loan Party;

(c) Inventory (other than Eligible In-Transit Inventory) that is not located in the United States of America (excluding territories or possessions of the United States);

(d) Inventory (other than Eligible In-Transit Inventory) that is not located at a location that is owned or leased by a Borrower, except (i) Inventory in transit between such owned or leased locations or locations which meet the criteria set forth in clause (ii) below, (ii) to the extent that the Borrowers have furnished the Agent with (A) any UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Agent, or (iii) Inventory temporarily stored in trailers which are located at locations which meet the criteria set forth in clause (e) below, provided that, if any such trailers are leased by a Borrower, the applicable lessor has delivered to the Agent a Collateral Access Agreement;

(e) Inventory that is located in a warehouse or distribution center leased by a Borrower unless if requested by the Agent the applicable lessor has delivered to the Agent a Collateral Access Agreement;

(f) Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work-in-process, raw materials, or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (v) are bill and hold goods;

(g) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent;

(h) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;

(i) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit; or

(j) (i) if the Initial Store Closing Sale is based upon an equity bid, all Inventory subject to such Initial Store Closing Sale, and (ii) if the Initial Store Closing Sale is based upon a

consulting or fee-based structure, then, on or after the sixth (6th) week of the Initial Store Closing Sale, Inventory that is subject to the Initial Store Closing Sale.

"Eligible Letter of Credit" means, as of any date of determination thereof, a Commercial Letter of Credit which supports the purchase of Inventory, (a) which Inventory does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued; (b) which Inventory otherwise would constitute Eligible Inventory when purchased, (c) which Commercial Letter of Credit has an expiry within sixty (60) days of the date of initial issuance of such Commercial Letter of Credit, (d) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after an Acceptable Document of Title has been issued for such Inventory reflecting a Borrower or the Agent as consignee of such Inventory, and (e) which will constitute Eligible In-Transit Inventory upon satisfaction of the requirements of clause (d) hereof.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the UCC.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Erickson Family" means the descendants of Arthur T. and Elsie P. Erickson and Alfred W. and Rose E. Erickson, or other trusts or entities established primarily for the benefit of such descendants and/or their spouses or relatives, or Holiday Companies or Holiday/GMTN Family LLC their respective Affiliates.

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

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Lead Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Lead Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Lead Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization (within the meaning of Section 4241 of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Lead Borrower or any ERISA Affiliate.

"Events and Circumstances" has the meaning assigned to such term in the definition of "Material Adverse Effect".

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.03 hereof.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" means, with respect to the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Loan Party is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Lead Borrower under Section 10.13), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding tax pursuant to Section 3.01(a), (d) any U.S. federal, state or local backup withholding tax, and (e) any U.S. federal withholding tax imposed under FATCA.

"Executive Order" has the meaning set forth in Section 10.18.

"Existing Letters of Credit" means those letters of credit identified on Schedule 1.03 hereto which were issued by Wells Fargo Bank, National Association under the Pre-Petition Credit Agreement.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

"Facility Guaranty" means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"FATCA" means current Section 1471 through 1474 of the Code or any amended version or successor provision that is substantively similar and, in each case, any regulations promulgated thereunder and any interpretation and other guidance issued in connection therewith.

"Factored Receivables" means any Accounts of a Loan Party which have been factored or sold by an account debtor of a Loan Party to Wells Fargo or any of its Affiliates pursuant to a factoring arrangement or otherwise.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Wells Fargo on such day on such transactions as determined by the Agent.

"Fee Letter" means the letter agreement dated as of the date hereof among the Lead Borrower, the other Loan Parties party thereto and the Agent, a copy of which is attached hereto at Exhibit J.

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

"Final Order Entry Date" means the date on which the Bankruptcy Court enters the Final Financing Order.

"Financing Orders" means the Interim Financing Order and Final Financing Order, as applicable.

"Fiscal Month" means any fiscal month of any Fiscal Year, determined in accordance with the fiscal accounting calendar of the Loan Parties, and as set forth on Schedule 1.04 annexed hereto.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, determined in accordance with the fiscal accounting calendar of the Loan Parties, and as set forth on Schedule 1.04 annexed hereto.

"Fiscal Year" means any period of twelve consecutive months, determined in accordance with the fiscal accounting calendar of the Loan Parties, and as set forth on Schedule 1.04 annexed hereto.

"Foreign Asset Control Regulations" has the meaning set forth in Section 10.18.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Lead Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Vendor" means a Person that sells In-Transit Inventory to a Borrower.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

"GRATCO" means GRATCO LLC, a Missouri limited liability company.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion

thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" has the meaning specified in the introductory paragraph hereto and each other Subsidiary of the Lead Borrower that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.12.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holiday Companies" means Holiday Companies, a Minnesota corporation.

"Honor Date" has the meaning specified in Section 2.03(c)(i).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) All Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock, or any warrant, right or option to acquire such Equity Interest), valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract

on any date shall be deemed to be the Swap Termination Value thereof as of such date. In no event shall Indebtedness include the obligations of any Loan Party or their Subsidiaries under any Lease.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Initial Store Closing Motion" has the meaning specified in Section 6.22(a)(iii).

"Initial Store Closing Sale" means the liquidation and closure of up to thirty-two (32) stores (which number may be increased with the consent of the Agent) of the Borrowers pursuant to the Agency Agreement.

"Initial Store Closing Sale Reserve" means an Availability Reserve applicable to the Tranche A Borrowing Base established by the Agent on or after the fourth (4^{th}) week of the Initial Store Closing Sale as contemplated in the Agency Agreement to reflect the discounted selling price of Eligible Inventory which is subject to the Initial Store Closing Sale.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; customer lists; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of June 17, 2015, between the Agent and the Term Loan B Agent and acknowledged by the Loan Parties, as amended by that certain Consent and Amendment to Intercreditor Agreement, dated as of April 28, 2016, in each case, as in effect on April 28, 2016 and as the same may be from time to time thereafter amended, restated, amended and restated, supplemented, replaced or otherwise modified in accordance with the terms thereof.

"Interest Payment Date" means, (a) as to any LIBO Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a LIBO Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first day of each month and the Maturity Date.

"Interest Period" means, as to each LIBO Rate Loan, the period commencing on the date such LIBO Rate Loan is disbursed or converted to or continued as a LIBO Rate Loan and ending on the date twenty-eight (28) days thereafter, as selected by the Lead Borrower in its notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period shall extend beyond the Maturity Date; and

(iv) notwithstanding the provisions of clause (iii) no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBO Borrowing would be for a shorter period, such Interest Period shall not be available hereunder.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interim Financing Order" means, the order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing, substantially in the form attached hereto as Exhibit I and/or otherwise in form and substance satisfactory to the Agent, together with all extension, modifications, and amendments thereto approved by the Agent, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Loan Parties to execute and perform under the terms of this Agreement and the other Loan Documents.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Lead Borrower's and/or its Subsidiaries' internal controls over financial reporting, in each case as described in the Securities Laws.

"In-Transit Inventory" means Inventory of a Borrower which is in the possession of a common carrier and is in transit from a Foreign Vendor of a Borrower from a location outside of the continental United States to a location of a Borrower that is within the continental United States.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Inventory Reserves" means such reserves as may be established from time to time by the Agent in its discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization

upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

(a) Obsolescence;

(b) Seasonality;

(c) Shrink;

(d) Imbalance;

(e) Change in Inventory character;

(f) Change in Inventory composition;

(g) Change in Inventory mix;

(h) Markdowns (both permanent and point of sale);

(i) Retail markons and markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events;

(j) Return to vendor; and

(k) Out-of-date and/or expired Inventory.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, (c) any Acquisition, (d) any other investment of money or capital in order to obtain a profitable return, other than personal property used in such Person's business, or (e) the purchase of real estate. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter Credit Application, the Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to any such Letter of Credit.

"Joinder" means an agreement, in form satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

"Laws" means each international, foreign, Federal, state and local statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means Wells Fargo in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Tranche A Lender selected by the Agent in its discretion). The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer and/or for such Affiliate to act as an advising, transferring, confirming and/or nominated bank in connection with the issuance or administration of any such Letter of Credit, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations" means, as at any date of determination, the aggregate undrawn amount available to be drawn under all outstanding Letters of Credit. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any Rule under the ISP or any article of UCP 600, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Borrower" has the meaning assigned to such term in the preamble to this Agreement.

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

"Lease Extension Order" has the meaning assigned to such term in Section 6.23(b).

"Lender" means, individually, a Revolving Lender, and collectively, all such Persons.

"Lender Group Consultant" has the meaning assigned to such term in Section 6.20(c).

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

"Letter of Credit" means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder, and shall include the Existing Letters of Credit.

"Letter of Credit Application" means an application for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(i).

"Letter of Credit Sublimit" means an amount equal to $10,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Tranche A Commitments. A permanent reduction of the Aggregate Tranche A Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; provided, however, that if the Aggregate Tranche A Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Lead Borrower's option, less than) the Aggregate Tranche A Commitments.

"LIBO Borrowing" means a Borrowing comprised of LIBO Rate Loans.

"LIBO Rate" means, with respect to each Interest Period, the rate for U.S. Dollar deposits with a term equivalent to such Interest Period, which appears on the Reuters Screen LIBOR01 page as of 11:00 a.m., London time, on the second Business Day preceding the first day of such Interest Period (or if such rate does not appear on the Reuters Screen LIBOR01 Page, then the rate as determined by Wells Fargo from another recognized source or interbank quotation). In no event shall the LIBO Rate be less than 0.0%.

"LIBO Rate Loan" means a Loan that bears interest at a rate based on the Adjusted LIBO Rate.

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or "going out of business", "store closing", or other similarly themed sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loan" means all Tranche A Loans, Tranche A-1 Loans and Swing Line Loans.

"Loan Account" has the meaning assigned to such term in Section 2.11(a).

"Loan Documents" means this Agreement, the Intercreditor Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, the Facility Guaranty, the Financing Orders and any other instrument or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by the Agent or any of its Affiliates, each as amended and in effect from time to time; provided that for purposes of the definition of "Material Adverse Effect" and Article VII, "Loan Documents" shall not include agreements relating to Cash Management Services and Bank Products.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party or the Lead Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or the Lenders under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other than existing events would result in a Material Adverse Effect. Notwithstanding the foregoing, (i) the filing of the Chapter 11 Case (and any defaults under pre-petition agreements, so long as the exercise of remedies as a result of such defaults are stayed under the Bankruptcy Code or such agreements are voided or invalidated by the Bankruptcy Court), (ii) events specifically described in the declarations of Timothy Becker and Stephen Spencer in Support of Chapter 11 Petitions and First Day Motions, dated on or about the date hereof and (iii) the incurrence of any claim or liability that is Pre-Petition, unsecured and junior in priority to the Obligations (each of the foregoing clauses (i), (ii) and (iii), collectively, the "Events and Circumstances"), will, individually and collectively, each not be deemed to have a Material Adverse Effect.

"Material Contract" means, with respect to any Person, each contract (other than (i) Leases and (ii) inventory purchase contracts) to which such Person is a party that is material to the business, operations, performance, or properties of such Person, provided that this Agreement and the other Loan Documents and the Term Loan B Agreement and the Term Loan B Documents shall not constitute Material Contracts.

"Material Indebtedness" means all Indebtedness (other than (x) the Obligations and (y) Indebtedness under the Term Loan B Documents) of the Loan Parties in an aggregate principal amount exceeding $500,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

"Maturity Date" means the earliest of: (a) [March ___,] 2018[1]; (b) if the Final Financing Order is not entered within thirty five (35) calendar days after the Petition Date, immediately thereafter, and (c) the closing of a sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Lead Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

[1] This date shall be one year from the date the Interim Financing Order is entered by the Bankruptcy Court.

"Net Proceeds" means (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), and (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)); and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Note" means (a) a Tranche A Note, (b) a Tranche A-1 Note and (c) the Swing Line Note, as each may be amended, supplemented or modified from time to time.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities; provided that the Obligations shall not include any Excluded Swap Obligations. For the avoidance of doubt, as of the Closing Date, all Existing Letters of Credit and all purchase cards existing under the Pre-Petition Credit Agreement and the "Loan Documents" (as defined in the Pre-Petition Credit Agreement) shall be deemed issued and part of the "Obligations" under this Agreement.

"Operating Account" has the meaning provided in Section 6.13(a)(iii).

"Operating Account Bank" means each bank with whom any Loan Party maintains any Operating Account and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any

non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

"Other Liabilities" means any obligation on account of (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (b) any transaction with the Agent, any Lender or any of their respective Affiliates, which arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means (i) with respect to Committed Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans and Swing Line Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date.

"Overadvance" means a Credit Extension to the extent that, immediately after its having been made, Tranche A Availability is less than zero.

"Participant" has the meaning specified in Section 10.06(d).

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Lead Borrower or any ERISA Affiliate or to which the Lead Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Permitted Discretion" means the Agent's commercially reasonable judgment exercised in good faith in accordance with customary business practices for asset-based transactions in the retail industry.

"Permitted Disposition" means any of the following:

(a) dispositions of inventory (i) in the ordinary course of business and (ii) in accordance with the Initial Store Closing Sale as approved by the Bankruptcy Court;

(b) reserved;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business and existing as of the Closing Date;

(e) dispositions of Equipment (i) in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary and (ii) in accordance with the Initial Store Closing Sale as approved by the Bankruptcy Court;

(f) Sales, transfers and dispositions among the Loan Parties or by any Subsidiary to a Loan Party;

(g) Sales, transfers and dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(h) disposition of other assets pursuant to the Permitted Sales, as reasonably consented to by the Agent or as otherwise may be approved by the Bankruptcy Court.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

(d) Deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Reserved;

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

(g) Liens existing on the Closing Date and listed on Schedule 7.01;

(h) Reserved;

(i) Liens in favor of the Agent;

(j) Statutory Liens of landlords and lessors in respect of rent not in default;

(k) Reserved;

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

(m) Liens arising from precautionary UCC filings regarding "true" operating leases;

(n) Adequate protection Liens granted under the Financing Orders;

(o) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and (A) securing obligations that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(p) Reserved;

(q) Reserved;

(r) Liens solely on premium refunds and insurance proceeds granted in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums to the extent permitted by clause (o) of the definition of Permitted Indebtedness; and

(s) Liens in favor of the Term Loan B Agent securing the Term Loan B Obligations to the extent permitted under and subject to the Intercreditor Agreement.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists at the time of incurring such Indebtedness or would arise from the incurrence thereof:

(a) Indebtedness outstanding on the Closing Date as listed on Schedule 7.03;

(b) Indebtedness owing to any Loan Party;

(c) Reserved;

(d) Reserved;

(e) Pre-Petition contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business;

(f) Reserved;

(g) Reserved;

(h) The Pre-Petition Obligations;

(i) The Obligations;

(j) Subordinated Indebtedness;

(k) Reserved;

(l) Pre-Petition Indebtedness consisting of obligations to purchase, redeem, retire or otherwise acquire for value only shares of a Loan Party's capital stock from current and former employees, directors and consultants of such Loan Party or any of its Affiliates, and any estate or personal representative of such employee, director or consultant;

(m) Unsecured Indebtedness in an aggregate principal amount not to exceed $500,000 at any time outstanding;

(n) Guarantees of any Indebtedness permitted by clauses (a) through (m) of this definition;

(o) Indebtedness incurred in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums to the extent incurred in the ordinary course of business; and

(p) Term Loan B Obligations, provided that the aggregate principal amount of the loans thereunder shall not exceed $36,050,000 at any time outstanding.

"Permitted Investments" means each of the following as long as no Default or Event of Default exists at the time of making such Investment or would arise from the making of such Investment:

(a) Investments in the form of deposits made as required by processing and/or payment arrangements listed on Schedule 5.21(b) in an aggregate amount not to exceed $2,000,000;

(b) Reserved;

(c) Reserved;

(d) Reserved;

(e) Reserved;

(f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in Loan Parties and in their respective Subsidiaries outstanding on the Closing Date and (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties including any Subsidiary that becomes a Loan Party in accordance with Section 6.12;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of

business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) Guarantees constituting Permitted Indebtedness;

(j) Reserved;

(k) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(l) Advances to officers, directors and employees of the Loan Parties and Subsidiaries made in the ordinary course of business for travel, entertainment, relocation and analogous ordinary business purposes in an amount not to exceed $100,000 to any individual at any time or in an aggregate amount not to exceed $500,000 at any time outstanding;

(m) Reserved;

(n) Capital contributions made by any Loan Party to another Loan Party;

(o) Reserved;

(p) Reserved;

(q) Reserved;

(r) Reserved; and

(s) Reserved.

"Permitted Overadvance" means an Overadvance made by the Agent, in its discretion, which:

(a) (i) is made to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or (ii) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or (iii) is made to pay any other amount chargeable to any Loan Party hereunder; and

(b) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the Tranche A Borrowing Base at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree.

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Tranche A Lenders' obligations with respect to Letters of Credit or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder, and further provided that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Credit Extensions would exceed the Aggregate Revolving Commitments (as in effect prior to any termination of the Commitments pursuant to Section 2.06 hereof).

"Permitted Prior Liens" means, collectively, Liens permitted by the Pre-Petition Credit Agreement (to the extent any such permitted Liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Liens securing the obligations under the Pre-Petition Credit Agreement as of the Petition Date).

"Permitted Sale" means (i) the sale on terms and conditions acceptable to the Agent of all or substantially all of the Loan Parties' business assets (other than those subject to the Initial Store Closing Sale) as a going concern as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code; provided that any going concern sale shall either (x) be for cash consideration to be paid at the closing of such sale in an amount in excess of all outstanding Obligations and Pre-Petition Obligations and shall not be subject to any financing contingencies, or (y) be consented to in writing by the Agent and Required Lenders, or (ii) a transaction or transactions on terms and conditions acceptable to the Agent combining the sale of all or substantially all of the Loan Parties' Equipment and Inventory and the permanent closing of all or a portion of the Loan Parties' Stores and the sale of all Collateral located therein through the retention by the Loan Parties of one or more Approved Liquidators, as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code, which transaction shall be (x) in the form of an "equity bid" including a payment at closing in an amount in excess of all outstanding Obligations and all Pre-Petition Obligations or (y) consented to in writing by the Agent and Required Lenders. In the case of clauses (i) and (ii) above, all of the proceeds thereof (in an amount up to the outstanding balance of the Pre-Petition Obligations and the Obligations) shall be paid to the Agent for application in accordance with the terms and conditions of this Agreement and the Financing Orders.

"Permitted Variance" has the meaning provided in Section 6.21.

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

"Petition Date" has the meaning specified in the Recitals to this Agreement.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Lead Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Portal" has the meaning specified in Section 2.02(b).

"Post-Petition Obligations" means Indebtedness of any Loan Party that was incurred or accrued after the commencement of the Chapter 11 Case.

"Pratt Parties" means David Pratt, the David C. Pratt Irrevocable Grantor Retained Annuity Trust (or other trusts or entities established primarily for the benefit of the descendants, spouse or other beneficiaries of David C. Pratt), GRATCO, and their respective Affiliates (other than the Borrowers).

"Pre-Petition" means the period prior to the commencement of the Chapter 11 Case.

"Pre-Petition Agent" means the "Agent" as defined in the Pre-Petition Credit Agreement.

"Pre-Petition Credit Agreement" means that certain Credit Agreement dated as of April 11, 2011, among the Borrowers, certain of the Guarantors, Wells Fargo Bank, National Association, as

administrative agent, collateral agent and swing line lender, and the lenders from time to time party thereto, as amended or otherwise modified prior to and in effect on the Petition Date.

"Pre-Petition Indebtedness" means Indebtedness of any Loan Party that was incurred or accrued prior to the commencement of the Chapter 11 Case.

"Pre-Petition Liens" means Liens in favor of Wells Fargo as collateral agent for its benefit and the benefit of the lenders and other credit parties under the Pre-Petition Credit Agreement.

"Pre-Petition Obligations" means all "Obligations" as such term is defined in the Pre-Petition Credit Agreement.

"Pre-Petition Tranche A-1 Deficiency Reserve" means the amount by which the Pre-Petition Tranche A-1 Outstandings exceed the "Tranche A-1 Borrowing Base" as such term is defined in the Pre-Petition Credit Agreement.

"Pre-Petition Tranche A-1 Outstandings" means, as of any date of determination thereof, the then outstanding principal amount of all "Tranche A-1 Loans" as such term is defined in the Pre-Petition Credit Agreement.

"Prepayment Event" means:

(a) Any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of a Loan Party other than to another Loan Party, including pursuant to a Permitted Sale or Initial Store Closing Sale;

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Loan Party, unless the proceeds therefrom are required to be paid to the holder of a Lien on such property or asset having priority over the Lien of the Agent;

(c) The issuance by a Loan Party of any Equity Interests, other than any such issuance of Equity Interests to a Loan Party;

(d) The incurrence by a Loan Party of any Indebtedness for borrowed money (other than Indebtedness permitted under clauses (b) and (i) of the definition of Permitted Indebtedness); or

(e) The receipt by any Loan Party of any Extraordinary Receipts.

"Public Lender" has the meaning specified in Section 6.02.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, any Borrower, any Guarantor or any other guarantor of the Obligations that has total assets exceeding $10,000,000 at the time such Swap Obligation is incurred or such other person as constitutes an "Eligible Contract Participant" (an "ECP") as that term is defined under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

"Register" has the meaning specified in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of the Lead Borrower and its Subsidiaries as prescribed by the Securities Laws.

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

"Released Parties" has the meaning provided in Section 2.15.

"Releasing Parties" has the meaning provided in Section 2.15.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Reports" has the meaning provided in Section 9.12(b).

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Committed Revolving Loans, an electronic notice via the Portal, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and, if required by the L/C Issuer, a Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, at least two (2) Lenders holding more than 50% of the sum of the Aggregate Revolving Commitments or, if the Aggregate Revolving Commitments and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than 50% of the sum of the Total Outstandings (with the aggregate amount of each Revolving Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Revolving Lender for purposes of this definition); provided that the Revolving Commitment of, and the portion in the aggregate of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Required Tranche A Lenders" means, as of any date of determination, at least two (2) Tranche A Lenders holding more than 50% of the sum of the Aggregate Tranche A Commitments or, if the Aggregate Tranche A Commitments and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, at least two (2) Tranche A Lenders holding in the aggregate more than 50% of the sum of the Outstanding Amount of all Tranche A Loans and L/C Obligations (with the aggregate amount of each Tranche A Lender's risk participation and funded participation in L/C Obligations being deemed "held" by such Tranche A Lender for purposes of this definition); provided that the Tranche A Commitment of, and the portion of the Outstanding Amount of all Tranche A Loans and L/C Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Tranche A Lenders.

"Reserves" means all Inventory Reserves and Availability Reserves.

"Responsible Officer" means the chief restructuring officer, chief executive officer, president, chief operating officer, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"Reuters Screen LIBOR01 Page" means the display page LIBOR01 on the Reuters service or any successor display page, other published source, information vendor or provider that has been designated by the sponsor of Reuters Screen LIBOR01 page.

"Revolving Commitment" means, as to each Revolving Lender, its obligation to (a) make Committed Revolving Loans to the Borrowers pursuant to Section 2.01, and (b) with respect to Tranche A Lenders, purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Committed Revolving Loans made by each of the Revolving Lenders pursuant to Section 2.01.

"Revolving Lender" means each Tranche A Lender and each Tranche A-1 Lender having a Revolving Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Acceptance by which such Person becomes a Revolving Lender.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sale Order" has the meaning set forth in Section 6.22(c)(ix).

"Sale Order Motion" has the meaning set forth in Section 6.22(a)(ii).

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time, (a) any a Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, or any other Sanctions-related list maintained by any relevant Sanctions authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic, trade, financial or other sanctions laws, regulations or embargoes imposed, administered or enforced from time to time by: (a) the United States of America, including, without limitation, those administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury, the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (d) any other governmental authority in any jurisdiction in which any Loan Party or any of its Subsidiaries is located or doing business.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the Security Agreement dated as of the Closing Date among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"Security Documents" means the Security Agreement, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Settlement Date" has the meaning provided in Section 2.14(a).

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Lead Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

"Shrink" means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

"Shrink Reserve" means an amount reasonably estimated by the Agents to be equal to that amount which is required in order that the Shrink reflected in Borrowers' stock ledger would be reasonably equivalent to the Shrink calculated as part of the Borrowers' most recent physical inventory.

"Spot Rate" has the meaning given to such term in Section 1.07 hereof.

"Standby Letter of Credit" means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty

insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

"Standby Letter of Credit Agreement" means the Standby Letter of Credit Agreement relating to the issuance of a Standby Letter of Credit in the form from time to time in use by the L/C Issuer.

"Stated Amount" means at any time the maximum amount for which a Letter of Credit may be honored.

"Statutory Committee" means any official committee of unsecured creditors in the Chapter 11 Case pursuant to Section 1102 of the Bankruptcy Code.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Store" means any retail store (which may include any Real Estate, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means all unsecured Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

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

"Swap Obligation" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

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

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Wells Fargo, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Swing Line Note" means the promissory note of the Borrowers substantially in the form of Exhibit B-3, payable to the order of the Swing Line Lender, evidencing the Swing Line Loans made by the Swing Line Lender.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $15,000,000 and (b) the Aggregate Tranche A Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Tranche A Commitments

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

"Term Loan B" means all "Loans" and "Term Loans" in each case as defined in the Term Loan B Agreement.

"Term Loan B Agent" means (a) Pathlight Capital LLC, in its capacity as agent for the Term Loan B Lenders under the Term Loan B Agreement, and any successor to Pathlight Capital LLC by assignment or otherwise and (b) any other party that may become the agent under the Term Loan B Agreement in connection with a refinancing, renewal or replacement thereof.

"Term Loan B Agreement" means that certain Term Loan Credit Agreement, dated as of June 17, 2015, by and among the Lead Borrower, the other Loan Parties, the Term Loan B Lenders and the Term Loan B Agent, as amended by that certain First Amendment to Term Loan Credit Agreement dated as of the April 28, 2016, in each case as in effect as of the Closing Date and as the same may from time to time thereafter be amended, restated, amended and restated, supplemented, refinanced, replaced or otherwise modified in accordance with the terms of this Agreement and the Intercreditor Agreement.

"Term Loan B Documents" means, collectively, the Term Loan B Agreement and each other "Loan Document" under and as defined in the Term Loan B Agreement, in each case, as in effect as of the Closing Date and as the same may from time to time thereafter be amended, restated, amended and restated, supplemented, refinanced, replaced or otherwise modified in accordance with the terms of this Agreement and the Intercreditor Agreement.

"Term Loan B Facility" means the term loan facility under the Term Loan B Agreement.

"Term Loan B Lenders" means each "Lender" under and as defined in the Term Loan B Agreement.

"Term Loan B Obligations" means the "Obligations" under and as defined in the Term Loan B Agreement.

"Term Loan Borrowing Base" means the "Borrowing Base" as defined in the Term Loan B Agreement, as in effect on the Closing Date and as may be amended in accordance with the Intercreditor Agreement.

"Term Loan Reserve" means the amount, if any, by which the aggregate outstanding principal balance of the Term Loan B, without giving effect to the capitalization of any consent or prepayment fees, exceeds the then current amount of the Term Loan Borrowing Base.

"Termination Date" means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Revolving Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the termination of the Revolving Commitments in accordance with the provisions of Section 2.06(a) hereof.

"Total Outstandings" means the aggregate Outstanding Amount of all Committed Revolving Loans, Swing Line Loans and all L/C Obligations.

"Trading with the Enemy Act" has the meaning set forth in Section 10.18.

"Tranche A Applicable Percentage" means with respect to any Tranche A Lender at any time, the percentage (carried out to the fourth decimal place) of the Aggregate Tranche A Commitments represented by such Tranche A Lender's Tranche A Commitment at such time. If the commitment of each Tranche A Lender to make Tranche A Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 2.06 or if the Aggregate Tranche A Commitments have expired, then the Tranche A Applicable Percentage of each Lender shall be determined based on the Tranche A Applicable Percentage of such Tranche A Lender most recently in effect, giving effect to any subsequent assignments. The initial Tranche A Applicable Percentage of each Tranche A Lender is set forth opposite the name of such Tranche A Lender on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Tranche A Lender becomes a party hereto, as applicable.

"Tranche A Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the Tranche A Line Cap

minus

(b) the aggregate unpaid balance of Tranche A Credit Extensions to, or for the account of, the Borrowers.

In calculating Tranche A Availability at any time and for any purpose under this Agreement, the Lead Borrower shall certify to the Agent that all accounts payable and Taxes are being paid in the normal course, except with respect to taxes as set forth on Schedule 5.11 and Pre-Petition accounts payable.

"Tranche A Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by 90%;

plus

(b) the Cost of Eligible Inventory, net of Inventory Reserves, multiplied by 90% multiplied by the Appraised Value of Eligible Inventory (provided that in no event shall Eligible In-Transit Inventory included in Eligible Inventory exceed 10% of the Tranche A Borrowing Base);

minus

(c) the then amount of all Availability Reserves;

minus

(d) the Term Loan Reserve;

minus

(e) the Pre-Petition Tranche A-1 Deficiency Reserve.

"Tranche A Commitment" means, with respect to each Tranche A Lender, the commitment of such Lender hereunder set forth as its Tranche A Commitment opposite its name on Schedule 2.01 hereto or as may subsequently be set forth in the Register from time to time, as the same may be reduced from time to time pursuant to the terms of this Agreement.

"Tranche A Credit Extensions" shall means all Credit Extensions consisting of Tranche A Loans, Swing Line Loans, and L/C Obligations.

"Tranche A Lender" means each Lender having a Tranche A Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Acceptance by which it becomes a Tranche A Lender.

"Tranche A Line Cap" means, at any time of determination, an amount equal to (a) the lesser of (i) the Aggregate Tranche A Commitments or (ii) the Tranche A Borrowing Base, minus (b) the Tranche A Pre-Petition Reserve. For the avoidance of doubt, the Tranche A Line Cap can not be less than zero.

"Tranche A Loans" has the meaning set forth in Section 2.01.

"Tranche A Note" means a promissory note made by the Borrowers in favor of a Tranche A Lender evidencing the Tranche A Loans made by such Tranche A Lender, substantially in the form of Exhibit B-1.

"Tranche A Pre-Petition Reserve" means, at any date of determination, an amount equal to the aggregate outstanding amount of "Tranche A Credit Extensions" as such term is defined in the Pre-Petition Credit Agreement (other than obligations arising in connection with purchase cards and Letters of Credit, all of which shall be deemed to be issued under this Agreement as of the Closing Date).

"Tranche A-1 Applicable Percentage" means with respect to any Tranche A-1 Lender at any time, the percentage (carried out to the fourth decimal place) of the Aggregate Tranche A-1 Commitments represented by such Tranche A-1 Lender's Tranche A-1 Commitment at such time. If the commitment of each Tranche A-1 Lender to make Tranche A-1 Loans has been terminated pursuant to Section 2.06 or if the Aggregate Tranche A-1 Commitments have expired, then the Tranche A-1 Applicable Percentage of each Lender shall be determined based on the Tranche A-1 Applicable Percentage of such Tranche A-1 Lender most recently in effect, giving effect to any subsequent assignments. The initial Tranche A-1 Applicable Percentage of each Tranche A-1 Lender is set forth opposite the name of such Tranche A-1 Lender on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Tranche A-1 Lender becomes a party hereto, as applicable.

"Tranche A-1 Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the Tranche A-1 Line Cap

minus

(b) the aggregate unpaid balance of the Tranche A-1 Loans.

"Tranche A-1 Borrowing Base" means at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by 2.50%;

plus

(b) the Cost of Eligible Inventory, net of Inventory Reserves, multiplied by 5.50% multiplied by the Appraised Value of Eligible Inventory (provided that in no event shall Eligible In-Transit Inventory included in Eligible Inventory exceed 10% of the Tranche A Borrowing Base).

"Tranche A-1 Commitment" shall mean, with respect to each Tranche A-1 Lender, the commitment of such Tranche A-1 Lender hereunder set forth as its Tranche A-1 Commitment opposite its name on Schedule 2.01 hereto or as may subsequently be set forth in the Register from time to time, as the same may be reduced from time to time pursuant to this Agreement.

"Tranche A-1 Interest Rate" means Base Rate plus 4.75%.

"Tranche A-1 Lender" means each Lender having a Tranche A-1 Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Acceptance by which it becomes a Tranche A-1 Lender.

"Tranche A-1 Line Cap" means the lesser of (i) the Aggregate Tranche A-1 Commitments, or (ii) the Tranche A-1 Borrowing Base, minus in each case the Pre-Petition Tranche A-1 Outstandings. For the avoidance of doubt, the Tranche A-1 Line Cap can not be less than zero.

"Tranche A-1 Loans" has the meaning set forth in Section 2.01.

"Tranche A-1 Note" means a promissory note made by the Borrowers in favor of a Tranche A-1 Lender evidencing the Tranche A-1 Loans made by such Tranche A-1 Lender, substantially in the form of Exhibit B-2.

"Type" means, with respect to a Committed Revolving Loan, its character as a Base Rate Loan or a LIBO Rate Loan.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

"UCP 600" means the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce and in effect as of July 1, 2007 (or such later version thereof as may be in effect at the time of issuance).

"UFCA" has the meaning specified in Section 10.21(d).

"UFTA" has the meaning specified in Section 10.21(d).

"Uncapped Tranche A Availability" means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

(a) the Tranche A Borrowing Base

minus

(b) the aggregate unpaid balance of Tranche A Credit Extensions to, or for the account of, the Borrowers

minus

(c) the Tranche A Pre-Petition Reserve.

"Unintentional Overadvance" means an Overadvance which, to the Agent's knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Tranche A Borrowing Base or Tranche A-1 Borrowing Base or misrepresentation by the Loan Parties.

"United States" and "U.S." mean the United States of America.

"U.S. Bank Blocked Account" shall mean the Blocked Account maintained at U.S. Bank National Association ending #4790.

"U.S. Bank Equipment Indebtedness" means the Indebtedness incurred by the Lead Borrower to finance the acquisition of certain Equipment pursuant to that certain Master Loan Agreement dated as of July 26, 2013, between U.S. Bank Equipment Finance, a division of U.S. Bank National Association, and the Lead Borrower.

"Wage Order" means the order of the Bankruptcy Court entered in the Chapter 11 Case, together with all extensions, modifications and amendments that are in form and substance reasonably acceptable to the Agent, which, among other matters, authorizes and directs the Loan Parties to pay certain Pre-Petition wages, benefits and other amounts owing to employees.

"Wells Fargo" means Wells Fargo Bank, National Association and its successors.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit and Bank Products (other than Swap Contracts), providing Cash Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Swap Contracts) other than (i) unasserted contingent indemnification Obligations, (ii) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized, and (iii) any Obligations relating to Swap Contracts that, at such time, are allowed by the applicable provider of such Swap Contracts to remain outstanding without being required to be repaid.

1.03 Accounting Terms

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, (i) each Tranche A Lender severally agrees to make loans (each such loan, a "Tranche A Loan") to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Tranche A Commitment, or (y) such Lender's Tranche A Applicable Percentage of the Tranche A Borrowing Base and (ii) each Tranche A-1 Lender severally agrees to make loans (each such loan, a "Tranche A-1 Loan") to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Tranche A-1 Commitment, or (y) such Lender's Tranche A-1 Applicable Percentage of the Tranche A-1 Borrowing Base, subject in each case to the following limitations:

(i) after giving effect to any Committed Borrowing, the Total Outstandings shall not exceed the sum of the Tranche A Line Cap and the Tranche A-1 Line Cap;

(ii) after giving effect to any Borrowing of Tranche A Loans, the aggregate Outstanding Amount of the Tranche A Loans of any Tranche A Lender, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed the lesser of (x) such Tranche A Lender's Tranche A Commitment and (y) such Tranche A Lender's Tranche A Applicable Percentage of the sum of the Tranche A Borrowing Base minus the Tranche A Pre-Petition Reserve;

(iii) the aggregate outstanding principal amount of Tranche A Loans, Swing Line Loans, and L/C Obligations shall not at any time exceed the Tranche A Line Cap;

(iv) after giving effect to any Borrowing of Tranche A-1 Loans, the aggregate Outstanding Amount of the Tranche A-1 Loans of any Tranche A-1 Lender, shall not exceed the lesser of (x) such Tranche A-1 Lender's Tranche A-1 Commitment and (y) such Tranche A-1 Lender's Tranche A-1 Applicable Percentage of the sum of the Tranche A-1 Borrowing Base minus the Pre-Petition Tranche A-1 Outstandings;

(v) the aggregate outstanding principal amount of the Tranche A-1 Loans shall not exceed the Tranche A-1 Line Cap; and

(vi) the Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow Committed Revolving Loans under this Section 2.01. As set forth in Section 2.02(a) below, all Committed Revolving Loans shall be Base Rate Loans.

(c) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(c) hereof.

(d) The Agent shall have the right, at any time and from time to time after the Closing Date in its discretion to establish, modify or eliminate Reserves.

2.02 Borrowings, Conversions and Continuations of Committed Revolving Loans.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all Loans shall be Base Rate Loans, and the Borrowers shall not have any option to borrow, continue or convert to LIBO Rate Loans.

(b) Each request for a Committed Borrowing consisting of a Base Rate Loan shall be made by electronic request of the Lead Borrower through the Agent's Commercial Electronic Office Portal or through such other electronic portal provided by the Agent (the "Portal"), which must be received by the Agent not later than 2:00 p.m. on the requested date of any Borrowing of Base Rate Loans. The Borrowers hereby acknowledge and agree that any request made through the Portal shall be deemed made by a Responsible Officer of the Borrowers.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers shall not request, and the Tranche A Lenders shall be under no obligation to fund, any Tranche A Loan unless the Borrowers have borrowed the full amount available under the Tranche A-1 Line Cap. If any Tranche A-1 Loan is prepaid in whole or part pursuant to Section 2.05, any Committed Revolving Loans to the Borrowers thereafter requested shall be Tranche A-1 Loans until the maximum principal amount of Tranche A-1 Loans outstanding equals the Tranche A-1 Line Cap and thereafter shall be Tranche A Loans.

(d) The Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans, and if no timely notice of a conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(b). In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by (i) crediting the account of the Lead Borrower on the books of Wells Fargo with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(e) Each Borrowing of Tranche A Loans (other than Swing Line Loans) shall be made by the Tranche A Lenders pro rata in accordance with their respective Tranche A Applicable Percentage and each Borrowing of Tranche A-1 Loans shall be made by the Tranche A-1 Lenders pro rata in accordance with their respective Tranche A-1 Applicable Percentage. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

(f) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby (provided, that after giving effect to such Overadvance, the aggregate outstanding principal amount of Tranche A Loans, Swing Line Loans, and L/C Obligations shall not exceed the Aggregate Tranche A Commitments). The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making

thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(f) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(g) Except as otherwise provided herein, a LIBO Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBO Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as LIBO Rate Loans without the Consent of the Required Lenders.

(h) The Agent shall promptly notify the Lead Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Wells Fargo's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(i) After giving effect to all Committed Borrowings, all conversions of Committed Revolving Loans from one Type to the other, and all continuations of Committed Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to LIBO Rate Loans.

(j) The Agent, the Revolving Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Committed Revolving Loan or Swing Line Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its discretion, make Permitted Overadvances without the consent of the Borrowers, the Tranche A Lenders, the Swing Line Lender, the L/C Issuer or any other Lender and the Borrowers and each Tranche A Lender and L/C Issuer shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Base Rate Loan and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Tranche A Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.03 regarding the Tranche A Lenders' obligations to purchase participations with respect to Letter of Credits or of Section 2.04 regarding the Tranche A Lenders' obligations to purchase participations with respect to Swing Line Loans. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Tranche A Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrowers, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Tranche A Lenders severally agree to participate in Letters of Credit issued for the account of the Borrowers and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings

shall not exceed the sum of the Tranche A Line Cap plus the Tranche A-1 Line Cap, (y) the aggregate Outstanding Amount of the Tranche A Loans of any Tranche A Lender, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Tranche A Lender's Tranche A Commitment or such Tranche A Lender's Tranche A Applicable Percentage of the Tranche A Borrowing Base, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Lead Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The Borrowers and the Credit Parties hereby acknowledge and agree that all Existing Letters of Credit shall constitute Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Existing Letters of Credit were issued by L/C Issuer at the request of the Borrowers on the Closing Date. No Letter of Credit shall be issued if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Standby Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Commercial Letter of Credit would occur more than 180 days after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree) or all the Lenders have approved such expiry date.

(ii) No Letter of Credit shall be issued without the prior consent of the Agent if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Agent and the L/C Issuer, such Letter of Credit is in an initial Stated Amount less than $50,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; provided that if the L/C Issuer, in its discretion, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrowers of the honoring of any drawing under such Letter of Credit shall be paid in Dollars based on the Spot Rate;

(E) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(F) a default of any Tranche A Lender's obligations to fund under Section 2.03(c) exists or any Tranche A Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with the Borrowers or such Tranche A Lender to eliminate the L/C Issuer's risk with respect to such Tranche A Lender.

(iii) The L/C Issuer shall not amend any Letter of Credit if (A) the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) The L/C Issuer shall act on behalf of the Tranche A Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Lead Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least two Business Days (or such other date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Agent and the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Agent or L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Agent and the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Agent or the L/C Issuer may require. Additionally, the Lead Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, and any Issuer Documents (including, if requested by

the L/C Issuer, a Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable), as the L/C Issuer or the Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the Lead Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Tranche A Lender, the Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied or unless the L/C Issuer would not be permitted, or would have no obligation, at such time to issue such Letter of Credit under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance or amendment of each Letter of Credit, each Tranche A Lender shall be deemed to (without any further action), and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer, without recourse or warranty, a risk participation in such Letter of Credit in an amount equal to the product of such Tranche A Lender's Tranche A Applicable Percentage times the Stated Amount of such Letter of Credit. Upon any change in the Tranche A Commitments under this Agreement, it is hereby agreed that with respect to all L/C Obligations, there shall be an automatic adjustment to the participations hereby created to reflect the new Tranche A Applicable Percentages of the assigning and assignee Tranche A Lenders.

(iii) If the Lead Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Standby Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Standby Letter of Credit is issued. Unless otherwise directed by the Agent or the L/C Issuer, the Lead Borrower shall not be required to make a specific request to the Agent or the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Tranche A Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Standby Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Agent shall instruct the L/C Issuer not to permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Standby Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) the L/C Issuer has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or the Lead Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Lead Borrower and the Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Lead Borrower and the Agent thereof not less than two (2) Business Days prior to the Honor Date (as defined below; provided, however, that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the L/C Issuer and the Tranche A Lenders with respect to any such payment. On the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrowers shall be deemed to have requested a Borrowing of Tranche A Loans constituting Base Rate Loans to be disbursed on the Honor Date in an amount equal to the amount of such payment, without regard to the minimum and multiples specified in Section 2.02(b) for the principal amount of Base Rate Loans, and without regard to whether the conditions set forth in Section 4.02 have been met. Any notice given by the L/C Issuer or the Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Tranche A Lender's obligation to make Committed Revolving Loans to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Tranche A Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing and without regard to whether the conditions set forth in Section 4.02 have been met.

(d) Repayment of Participations. If any payment received by the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Tranche A Lender shall pay to the Agent for the account of the L/C Issuer its Tranche A Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Tranche A Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Tranche A Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Subsidiaries; or

(vi) the fact that any Default or Event of Default shall have occurred and be continuing.

The Lead Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Lead Borrower's instructions or other irregularity, the Lead Borrower will immediately notify the Agent and the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Tranche A Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Tranche A Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Required Tranche A Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit or any error in interpretation of technical terms; or (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e) or for any action, neglect or omission under or in connection with any Letter of Credit or Issuer Documents, including, without limitation, the issuance or any amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, or the honoring or dishonoring of any demand under any Letter of Credit, and such action or neglect or omission will bind the Borrowers; provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential, exemplary or punitive damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit; provided further, however, that any claim against the L/C Issuer by the Borrowers for any loss suffered or incurred by the Borrowers shall be reduced by an amount equal to the sum of (i) the amount (if any) saved by the Borrowers as a result of the breach or other wrongful conduct that allegedly caused such loss, and (ii) the amount (if

any) of the loss that would have been avoided had the Borrowers taken all reasonable steps to mitigate such loss, including, without limitation, by enforcing their rights against any beneficiary and, in case of a claim of wrongful dishonor, by specifically and timely authorizing the L/C Issuer to cure such dishonor. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or the L/C Issuer may refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit and may disregard any requirement in a Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer shall not be responsible for the wording of any Letter of Credit (including, without limitation, any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent, unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance the L/C Issuer may provide to the Borrowers with drafting or recommending text for any Letter of Credit Application or with the structuring of any transaction related to any Letter of Credit, and the Borrowers hereby acknowledge and agree that any such assistance will not constitute legal or other advice by the L/C Issuer or any representation or warranty by the L/C Issuer that any such wording or such Letter of Credit will be effective. Without limiting the foregoing, the L/C Issuer may, as it deems appropriate, modify or alter and use in any Letter of Credit the terminology contained on the Letter of Credit Application for such Letter of Credit.

(g) Cash Collateral. Upon the request of the Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Obligation that remains outstanding, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(a)(iii) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(a)(iii), "Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to 105% of the Outstanding Amount of all L/C Obligations (other than L/C Obligations with respect to Letters of Credit denominated in a currency other than Dollars, which L/C Obligations shall be Cash Collateralized in an amount equal to 115% of the Outstanding Amount of such L/C Obligations), pursuant to documentation in form and substance satisfactory to the Agent and the L/C Issuer (which documents are hereby Consented to by the Tranche A Lenders). The Borrowers hereby grant to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo. If at any time the Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations.

(h) Applicability of ISP and UCP 600. Unless otherwise expressly agreed by the L/C Issuer and the Lead Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP and the UCP 600 shall apply to each

Standby Letter of Credit, and (ii) the rules of the UCP 600 shall apply to each Commercial Letter of Credit.

(i) Letter of Credit Fees. The Borrowers shall pay to the Agent for the account of each Tranche A Lender in accordance with its Tranche A Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") (i) for each Standby Letter of Credit equal to the Applicable Margin for Tranche A Loans times the daily Stated Amount under each such Standby Letter of Credit (whether or not such maximum amount is then in effect under such Standby Letter of Credit), and (ii) for each Commercial Letter of Credit equal to the Applicable Margin for Tranche A Loans minus 0.50% times the daily Stated Amount under each such Commercial Letter of Credit (whether or not such maximum amount is then in effect under such Commercial Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first day of each quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under of each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate as provided in Section 2.12(b) hereof.

(j) Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer, for its own account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender agrees, in reliance upon the agreements of the other Tranche A Lenders set forth in this Section 2.04, to make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Tranche A Applicable Percentage of the Outstanding Amount of Tranche A Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Tranche A Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the sum of the Tranche A Line Cap plus the Tranche A-1 Line Cap, and (ii) the aggregate Outstanding Amount of the Tranche A Loans of any Tranche A Lender at such time, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time, plus such Tranche A Lender's Tranche A Applicable Percentage of the Outstanding Amount of all Swing Line Loans at such time shall not exceed such Tranche A Lender's Tranche A Commitment or such Tranche A Lender's Tranche A Applicable Percentage of the Tranche A Borrowing Base, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and provided further that the Swing Line Lender shall not be obligated to make any Swing Line Loan at any time when any Tranche A Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the Swing Line Lender has entered into satisfactory arrangements with the Borrower or such Tranche A Lender to eliminate the Swing Line

Lender's risk with respect to such Tranche A Lender. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Tranche A Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Tranche A Lender's Tranche A Applicable Percentage *multiplied by* the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term "Agent" as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Lead Borrower's irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrowers at its office by crediting the account of the Lead Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Tranche A Lender make a Base Rate Loan in an amount equal to such Tranche A Lender's Tranche A Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Tranche A Commitments and the conditions set forth in Section 4.02. Each Tranche A Lender shall make an amount equal to its Tranche A Applicable Percentage of the amount of such outstanding Swing Line Loan available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the date specified in by the Swing Line Lender, whereupon, subject to Section 2.04(c)(ii), each Tranche A Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted

by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Tranche A Lenders fund its risk participation in the relevant Swing Line Loan and each Tranche A Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Tranche A Lender fails to make available to the Agent for the account of the Swing Line Lender any amount required to be paid by such Tranche A Lender pursuant to the foregoing provisions of this Section 2.04(b) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Tranche A Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Tranche A Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Tranche A Lender's Committed Revolving Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Tranche A Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Tranche A Lender's obligation to make Committed Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(b) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Tranche A Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Tranche A Lender's obligation to make Committed Revolving Loans pursuant to this Section 2.04(b) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Tranche A Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Tranche A Lender its Tranche A Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Tranche A Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Tranche A Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Tranche A Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Tranche A Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Tranche A Lender's Tranche A Applicable Percentage of any Swing Line Loan, interest in respect of such Tranche A Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments; Pre-Petition Obligations.

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Committed Revolving Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. (A) two Business Days prior to any date of prepayment of LIBO Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of LIBO Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. All payments shall be first applied to Tranche A Loans, and upon payment of Tranche A Loans in full, to Tranche A-1 Loans. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBO Rate Loans, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBO Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Committed Revolving Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the sum of the Tranche A Line Cap plus the Tranche A-1 Line Cap, each as then in effect, the Borrowers shall immediately prepay the Pre-Petition Obligations and the Obligations in an aggregate amount necessary to eliminate such excess.

(d) If for any reason the sum of the aggregate Outstanding Amount of the Tranche A Loans, plus Swing Line Loans plus the Stated Amount of Letters of Credit at any time exceed the Tranche A Line Cap as then in effect, the Borrowers shall immediately prepay the Tranche A Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(d) unless after the prepayment in full of the Tranche A Loans, such Outstanding Amounts exceed the Tranche A Line Cap as then in effect.

(e) If for any reason the aggregate Outstanding Amount of the Tranche A-1 Loans of the Tranche A-1 Lenders at any time exceeds the Tranche A-1 Line Cap as then in effect, the Borrowers shall, after making any payments required pursuant to Section 2.05(d), immediately prepay Tranche A-1 Loans in an aggregate amount equal to such excess.

(f) The Borrowers shall prepay the Pre-Petition Obligations, Committed Revolving Loans, the Swing Line Loans and Cash Collateralize the L/C Obligations with the proceeds and collections received pursuant to the provisions of Section 6.13 hereof.

(g) The Borrowers shall prepay the Pre-Petition Obligations, Committed Revolving Loans, the Swing Line Loans and Cash Collateralize the L/C Obligations in an amount equal to the Net Proceeds received by a Loan Party on account any Prepayment Event.

(h) Prepayments made pursuant to clauses (c), (d), (e), (f) and (g) above, first, shall be applied ratably to the outstanding Pre-Petition Obligations in accordance with the Pre-Petition Credit Agreement (other than those obligations arising in connection with Letters of Credit, all of which shall be deemed to be issued under this Agreement as of the Closing Date), second, shall be applied to the Permitted Overadvances, third, shall be applied ratably to the outstanding Swing Line Loans, fourth, shall be applied ratably to the outstanding Tranche A Loans, fifth, shall be applied ratably to the outstanding Tranche A-1 Loans, sixth, shall be used to Cash Collateralize the remaining L/C Obligations; and seventh, the amount remaining, if any, after the prepayment in full of all Pre-Petition Obligations as required above, Permitted Overadvances, Swing Line Loans and Committed Revolving Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrowers for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Tranche A Lenders, as applicable.

(i) No later than one (1) Business Day after the Final Order Entry Date, the Borrowers shall pay in full with the proceeds of Loans hereunder, the total outstanding amount of the Pre-Petition Obligations, together with additional amounts due under Section 2.09 of the Pre-Petition Credit Agreement.

2.06 Termination or Reduction of Commitments

(a) The Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, terminate the Tranche A Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time permanently reduce the Tranche A Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Tranche A Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the aggregate Outstanding Amount of the Tranche A Loans, plus the Outstanding Amount of all L/C Obligations, plus the Outstanding Amount of all Swing Line Loans would exceed the Aggregate Tranche A Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans hereunder would exceed the Swing Line Sublimit.

(b) If, after giving effect to any reduction of the Aggregate Tranche A Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Tranche A Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(c) In the event that the Tranche A Commitments are terminated or are reduced to zero, the Tranche A-1 Commitments shall be automatically terminated.

(d) The Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, the Aggregate Tranche A Commitments or the Aggregate Tranche A-1 Commitments under this Section 2.06; provided that no such notice shall be required with respect to any reduction of the Aggregate Tranche A-1 Commitments pursuant to Section 2.06(c). Upon any reduction of the Aggregate Tranche A Commitments, the Tranche A Commitment of each Tranche A Lender shall be reduced by such Tranche A Lender's Applicable Percentage of such reduction amount. Upon any reduction of the Aggregate Tranche A-1 Commitments, the Tranche A-1 Commitment of each Tranche A-1 Lender shall be reduced by such Tranche A-1 Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, commitment fees and Letter of Credit Fees) and interest in respect of the Aggregate Tranche A Commitments or Aggregate Tranche A-1 Commitments, as applicable, accrued until the effective date of any termination of the such Commitments shall be paid on the effective date of such termination.

(e) The Commitment of each Lender shall automatically terminate upon the consummation of a Permitted Sale.

2.07 Repayment of Loans.

(a) The Borrowers shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of Committed Revolving Loans outstanding on such date.

(b) To the extent not previously paid, the Borrower shall repay the outstanding balance of the Swing Line Loans on the Termination Date.

2.08 Interest.

(a) Subject to the provisions of Section 2.08(d) below, (i) each Tranche A Loan consisting of a LIBO Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBO Rate for such Interest Period plus the Applicable Margin; (ii) each Tranche A Loan consisting of a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) Subject to the provisions of Section 2.08(d) below, each Tranche A-1 Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at the Tranche A-1 Interest Rate.

(c) Reserved.

(d) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise,

such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate until no Event of Default exists to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment.

2.09 Fees. In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee.

(i) The Borrowers shall pay to the Agent for the account of each Tranche A Lender in accordance with its Tranche A Applicable Percentage, a commitment fee equal to the Applicable Commitment Fee Percentage *multiplied by* the actual daily amount by which the Aggregate Tranche A Commitments exceed the sum of (i) the aggregate Outstanding Amount of the Tranche A Loans, plus (ii) the Outstanding Amount of all L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be calculated and due and payable monthly in arrears on the first Business Day after the end of each calendar month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(ii) The Borrowers shall pay to the Agent for the account of each Tranche A-1 Lender in accordance with its Tranche A-1 Applicable Percentage, a commitment fee equal to the Applicable Commitment Fee Percentage *multiplied by* the actual daily amount by which the Aggregate Tranche A-1 Commitments exceed the aggregate Outstanding Amount of the Tranche A-1 Loans. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be calculated and due and payable monthly in arrears on the first Business Day after the end of each calendar month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(b) Reserved.

(c) Other Fees. The Borrower shall pay to the Arrangers and the Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Tranche A Loans or Tranche A-1 Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Tranche A Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Tranche A Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Tranche A Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

(c) Agent shall render monthly statements regarding the Loan Account to the Lead Borrower including principal, interest, fees, and including an itemization of all charges and expenses constituting Credit Party Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Credit Parties unless, within 30 days after receipt thereof by the Lead Borrower, the Lead Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m., at the option of the Agent, shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall

be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Revolving Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Revolving Lender prior to the proposed date of any Borrowing of LIBO Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Revolving Lender will not make available to the Agent such Revolving Lender's share of such Borrowing, the Agent may assume that such Revolving Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Revolving Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Revolving Lender has not in fact made its share of the applicable Revolving Credit Borrowing available to the Agent, then the applicable Revolving Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Revolving Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Revolving Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Revolving Lender pays its share of the applicable Revolving Credit Borrowing to the Agent, then the amount so paid shall constitute such Revolving Lender's Committed Revolving Loan included in such Revolving Credit Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Revolving Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Revolving Lenders hereunder to make Committed Revolving Loans, and in the case of the Tranche A Lenders to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Revolving Lender to make any Committed Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Revolving Lender of its corresponding obligation to do so on such date, and no Revolving Lender shall be responsible for the failure of any other Revolving Lender to so make its Committed Revolving Loan, to purchase its participation or to make its payment hereunder.

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

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Revolving Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders

(a) The amount of each Revolving Lender's Applicable Percentage of outstanding Committed Revolving Loans (including outstanding Swing Line Loans) shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Committed Revolving Loans and Swing Line Loans and repayments of Committed Revolving Loans and Swing Line Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Revolving Loans and

Swing Line Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Tranche A Lender its Tranche A Applicable Percentage of repayments of Tranche A Loans and shall transfer to each Tranche A-1 Lender its Tranche A-1 Applicable Percentage of repayments of Tranche A-1 Loans, and (ii) each Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Tranche A Loans and Tranche A-1 Loans made by each Revolving Lender shall be equal to such Revolving Lender's Applicable Percentage of all Tranche A Loans and Tranche A-1 Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Release. Subject to the terms of the Interim Financing Order or the Final Financing Order, as applicable, each Loan Party hereby acknowledges that no Loan Party has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Loan Parties' liability to repay the Credit Parties as provided in this Agreement and the Pre-Petition Credit Agreement or to seek affirmative relief or damages of any kind or nature from any Credit Party or any "Credit Party" (as defined in the Pre-Petition Credit Agreement). Subject to the terms of the Interim Financing Order or the Final Financing Order, as applicable, each Loan Party, on behalf of itself and its bankruptcy estate, and on behalf of all its successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them (collectively, the "Releasing Parties"), hereby fully, finally and forever releases and discharges each Credit Party and their respective Affiliates, and each of their respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, participants, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to the Pre-Petition Credit Agreement and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing, in each case other than the obligations of the Released Parties arising under this Agreement and the other Loan Documents.

2.16 Waiver of any Priming Rights. Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations or Pre-Petition Obligations shall be outstanding, each Loan

Party hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations or Pre-Petition Obligations, or to approve a claim of equal or greater priority than the Obligations or Pre-Petition Obligations, other than as set forth in a Financing Order.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrowers shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent, each Lender and the L/C Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent, a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Lead Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Lead Borrower (with a copy to the Agent), at the time or times prescribed by applicable law or reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. Such delivery shall be provided on the Closing Date and on or before such documentation expires or becomes obsolete or after

the occurrence of an event requiring a change in the documentation most recently delivered. In addition, any Lender, if requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Lead Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Lead Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrowers within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Lead Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section, it shall pay to the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrowers, upon the request of the Agent, such Lender or the L/C Issuer, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent, such Lender or the L/C Issuer in the event the Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund LIBO Rate Loans, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Lead Borrower through the Agent, any obligation of such Lender

to make or continue LIBO Rate Loans or to convert Base Rate Loans to LIBO Rate Loans shall be suspended until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all LIBO Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a LIBO Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBO Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on LIBO Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBO Rate) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any LIBO Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or LIBO Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBO Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will

compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or liquidity or on the capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a LIBO Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBO Rate Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such LIBO Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, the Committed Revolving Loans, the Swing Line Loans and all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Credit Extensions, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Credit Extensions so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Credit Extensions are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Credit Extension. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif " via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:

(i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) reserved;

(vi) a certificate of the Lead Borrower signed by a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (B) that except with respect to the filing of the Chapter 11 Case and any Material Adverse Effect resulting, directly or indirectly, from the Events and Circumstances, there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (C) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan

Documents to which it is a party, or (2) subject to the entry by the Bankruptcy Court of the Interim Financing Order (as the same may be amended, supplemented or otherwise modified by the Final Financing Order), all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(viii) Reserved;

(ix) the Security Documents and certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(x) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xi) Reserved;

(xii) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;

(xiii) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and the Financing Orders and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent;

(xiv) the Intercreditor Agreement shall be in full force and effect; and

(xv) such other assurances, certificates, documents or consents as the Agent reasonably may require.

(b) After giving effect to (i) the first funding under the Loans, (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby and (iii) all Letters of Credit to be issued at, or immediately subsequent to, such establishment, Uncapped Tranche A Availability shall be not less than $31,000,000 in excess of the amount required to be in compliance with Section 7.15.

(c) The Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the most recent Saturday and executed by a Responsible Officer of the Lead Borrower.

(d) Reserved.

(e) The Loan Parties shall not have any Indebtedness for borrowed money outstanding other than (i) Indebtedness under the Credit Extensions, (ii) existing Indebtedness evidenced by the Pre-Petition Credit Agreement (provided, that such Indebtedness shall be paid in full on the Closing Date); and (iii) Indebtedness set forth on Schedule 7.03.

(f) Reserved;

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

(h) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(i) There shall not have occurred any default in any material respect, after giving effect to any applicable cure period, of any Material Contract of any Loan Party, other than defaults under Material Contracts arising as a result of the filing of the Chapter 11 Case, the exercise of remedies as a result of which are stayed under the Bankruptcy Code.

(j) The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document.

(k) All fees required to be paid to the Agent or the Arrangers on or before the Closing Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(l) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute the Agent's reasonable estimate of such fees, charges and disbursements incurred or to be incurred by each through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(m) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

(n) The Agent and the Lenders shall have received (i) duly executed copies of the engagement letters for the Consultants, which shall be on terms and conditions reasonably acceptable to the Agent and (ii) evidence that the Loan Parties filed a motion on the Petition Date seeking to retain the Consultants on terms reasonably satisfactory to the Agent.

(o) (i) The Bankruptcy Court shall have entered the Interim Financing Order, the Cash Management Order and the Wage Order, and (ii) none of such orders shall have been (A) stayed, vacated or reversed (in whole or in part) or (B) amended or modified other than with the consent of the Agent.

(p) All Pre-Petition amounts authorized by the Wage Order shall have been paid.

(q) The Bidding Procedures Motion, the Initial Store Closing Motion and the Sale Order Motion shall have been filed.

(r) The Agent shall have received evidence that the Lead Borrower and an Approved Liquidator have entered into the Agency Agreement on terms satisfactory to the Agent and such Agency Agreement shall be in full force and effect subject only to the entry by the Bankruptcy Court of an order approving the Initial Store Closing Sale.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension and each L/C Issuer to issue each Letter of Credit is subject to the following conditions precedent:

(a) The representations and warranties of each other Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (other than those subject to materiality and then they shall be true and correct in all respects) on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects, and (iii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 6.01.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred.

(e) No Overadvance shall result from such Credit Extension.

(f) Neither the Interim Financing Order nor the Final Financing Order, as applicable, shall have been (i) stayed, vacated or reversed (in whole or in part), or (ii) amended or modified other than with the consent of the Agent.

(g) Each Credit Extension shall be for purposes and in amounts consistent with the Approved Budget (subject to the Permitted Variance).

Each Request for Credit Extension submitted by the Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a), (b), (d), (f) and (g) have been

satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Lenders otherwise direct the Agent to cease making Loans and issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV (other than Section 4.02(e)), agreed to by the Agent, provided, however, the making of any such Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation (b) subject to any entry of any required orders of the Bankruptcy Court including, without limitation, the entry of the Interim Financing Order and the Final Financing Order, as applicable, has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

5.02 Authorization; No Contravention. Subject to the entry of the Interim Financing Order and the Final Financing Order, as applicable, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents and Liens expressly granted under the Financing Orders); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. Subject to the entry of the Interim Financing Order and the Final Financing Order, as applicable, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required to be obtained or made by any Loan Party in connection with the

execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for such as have been obtained or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Interim Financing Order and the Final Financing Order, as applicable, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Lead Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries dated January 28, 2017, and the related Consolidated and consolidating statements of income or operations, and Consolidated statements of Shareholders' Equity and cash flows for the Fiscal Month ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Lead Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Reserved.

(d) To the best knowledge of the Lead Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base, (iii) of covenant compliance calculations provided hereunder or (iv) of the assets, liabilities, financial condition or results of operations of the Lead Borrower and its Subsidiaries on a Consolidated basis.

(e) The initial Approved Budget was prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of such delivery, the Loan Parties' best estimate of its future financial performance.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except

as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect, and since the Closing Date, there has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 5.06.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Indebtedness, other than defaults under any Material Indebtedness arising as a result of the filing of the Chapter 11 Case, the exercise of remedies as a result of which are stayed under the Bankruptcy Code. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens

(a) Each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business. Each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate that is owned as of the Closing Date by the Loan Parties and each of their Subsidiaries, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth as of the Closing Date the address (including street address, zip code and state) of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof in any material respect, other than the payment of February or March 2017 rent and defaults under such Leases arising as a result of the filing of the Chapter 11 Case, the exercise of remedies as a result of which are stayed under the Bankruptcy Code.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens (other than Liens permitted by clauses (a) through (d), (f), (i), (j), (l), (m), and (o) of the definition of Permitted Encumbrances) on the property or assets of each Loan Party and each of its Subsidiaries as of the Closing Date, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments (other than Investments permitted by clause (g), (h), (i), (l) and (n) of the definition of Permitted Investments) held by any Loan Party or any Subsidiary of a Loan Party as of the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness (other than Indebtedness permitted by clauses (b), (i) and (l) of the definition of Permitted Indebtedness), of each Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.

5.09 Environmental Compliance

Except as specifically disclosed in Schedule 5.09, no Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. Except as set forth on Schedule 5.11, the Loan Parties and their Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are not required to be paid by the Bankruptcy Court and which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or each Loan Party is entitled to rely on an opinion letter issued to the sponsor of a prototype plan and, to the best knowledge of the Lead Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan. No Lien imposed under the Code or ERISA exists or is likely to arise on account of any Plan.

(b) There are no pending or, to the best knowledge of the Lead Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction (within the meaning of Section 406 of ERISA) or violation of ERISA's fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred and to the knowledge of the Loan Parties, no ERISA Event is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan that is subject to Section 430 of the Code, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher, and to the knowledge of the Loan Parties, there are no facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests.

The Loan Parties have no Subsidiaries as of the Closing Date other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents, those in favor of the Term Loan B Agent under the Term Loan B Documents and those expressly granted under the Financing Orders. Except as set forth in Schedule 5.13 as of the Closing Date, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. The Loan Parties have as of the Closing Date no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable (except with respect to the Lead Borrower) and are owned in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents, those in favor of the Term Loan B Agent under the Term Loan B Documents and those expressly granted under the Financing Orders. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act;

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Credit Extensions to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information and the Approved Budget, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Except to the extent non-performance thereof is permitted by the Bankruptcy Code, each of the Loan Parties and each Subsidiary is in compliance (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 10.17 and 10.18.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person which infringement, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Lead Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Matters.

There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18 as of the Closing Date, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. As of the Closing Date there are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. There are no

complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries, which either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

5.19 Security Documents.

(a) The Financing Orders create in favor of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement). Upon entry of the Interim Financing Order (and the subsequent entry of the Final Financing Order), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or analogous document or by obtaining control under the UCC (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC), which, in all cases, shall be prior and superior in right to any other Person. Assuming the entry of the Financing Orders, filings of UCC-1 financing statements and/or the obtaining of "control" (as defined in the UCC) of Collateral is not required to create or perfect a legal, valid, continuing and enforceable security interest in the Collateral.

(b) Subject to the entry of the Interim Financing Order and the Final Financing Order, as applicable, when the Security Agreement (or a short form thereof) is filed in the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the offices specified in Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case, prior and superior in right to any other Person (it being understood that the Agent may request subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office to reflect the Liens on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

5.20 Reserved.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.22 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract after giving effect to any applicable cure period (other than any breach or default arising solely as a result of the Events and Circumstances) and have not received any notice of the intention of any other party thereto to terminate any Material Contract (other than any notice as to a termination that would be voided or invalidated under the Bankruptcy Code).

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 OFAC/Sanctions.

No Loan Party nor any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with the Anti-corruption Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with the Anti-corruption Laws in all material respects. No proceeds of any loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any applicable sanction by any Person (including any Credit Party or other individual or entity participating in any transaction).

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

(b) After the entry of the Interim Financing Order, and pursuant to and to the extent permitted in the Interim Financing Order and the Final Financing Order, the Obligations will constitute

allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expense claims (other than (x) the Carve-Out up to, at any date of determination, the amount of the Carve-Out Reserve, and (y) Permitted Prior Liens) and unsecured claims against the Loan Parties 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) (after entry of the Final Financing Order), 507(a), 507(b), 546(c), 546(d), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(l) of the Bankruptcy Code, subject to the priorities set forth in the Interim Financing Order or the Final Financing Order, as applicable.

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

(d) The Interim Financing Order (with respect to the period on and after entry of the Interim Financing Order and prior to the Final Order Entry Date) or the Final Financing Order (with respect to the period on and after the Final Order Entry Date), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended.

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

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted) , or any Letter of Credit shall remain outstanding, the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Lead Borrower, a Consolidated and consolidating balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Month, and the related Consolidated and consolidating statements of income or operations for such Fiscal Month, and for the portion of the Lead Borrower's Fiscal Year then ended and Consolidated statements of cash flows for the portion of the Lead Borrower's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) the corresponding Fiscal Month of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by a Responsible Officer of the Lead

Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Lead Borrower and its Subsidiaries;

(b) (i) The Approved Budget may be updated, modified or supplemented (with the consent and/or at the reasonable request of the Agent) from time to time, and each such updated, modified or supplemented budget shall be approved by, and in form and substance satisfactory to, the Agent and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget; provided, that during the fifth (5th) week of the initial Approved Budget, the Lead Borrower shall submit a budget for the next successive thirteen week period to the Agent, which budget shall be in form and substance reasonably acceptable to the Agent and Required Lenders and approved by the Agent and Required Lenders; provided, further, that in the event that the Agent and the Lead Borrower cannot, while acting in good faith, agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default hereunder once the period covered by the most recent Approved Budget has terminated. Each Approved Budget delivered to the Agent shall be accompanied by such supporting documentation as requested by the Agent. Each Approved Budget shall be prepared in good faith based upon assumptions which the Lead Borrower believes to be reasonable and are satisfactory to the Agent.

(ii) On or before Wednesday of each week following the Closing Date, the Lead Borrower shall deliver to the Agent an Approved Budget Variance Report.

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP;

(b) on Wednesday day of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Tranche A Borrowing Base, the Tranche A-1 Borrowing Base and the Term Loan Borrowing Base as of the close of business on the immediately preceding Saturday, (provided that the Appraised Value percentage applied to the Eligible Inventory set forth in each Borrowing Base Certificate shall be the percentage set forth in the most recent appraisal obtained by the Agent pursuant to Section 6.10 hereof for the applicable week in which such Borrowing Base Certificate is delivered), each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower and accompanied by the most-recent reports of Eligible Credit Card Receivables and Eligible Inventory prepared by the Borrowers (which reports shall be updated on a weekly basis); provided that at any time the amount of Uncapped Tranche A Availability exceeding the amount required to be in compliance with Section 7.15 is less than $5,000,000, at the election of the Agent, such Borrowing Base Certificate shall be delivered on each Business Day as of the close of business on the immediately preceding day;

(c) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Registered Public Accounting Firm in connection with the

accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;

(e) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(f) as soon as available, upon the Agent's request, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent may reasonably specify;

(g) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(h) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect;

(i) reserved;

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender through the Agent, may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (i) the Lead Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Lead Borrower shall notify the Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Lead Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Agent. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no

responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of any material breach or non-performance of, or any material default under, a Material Contract or with respect to Material Indebtedness, after giving effect to any applicable cure period of any Loan Party or any Subsidiary thereof, other than breaches or defaults arising as a result of the filing of the Chapter 11 Case or the Events or Circumstances, the exercise of remedies as a result of which are stayed under the Bankruptcy Code;

(d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws that could reasonably be expected to have a Material Adverse Effect;

(e) of the occurrence of any ERISA Event;

(f) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof including, without limitation, in the manner in which Cost is calculated;

(g) of any change in any Loan Party's Chief Executive Officer or Chief Financial Officer;

(h) of the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(i) of any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) of knowledge of Lead Borrower of the filing of any Lien for unpaid Taxes in excess of the aggregate amount of $50,000 against any Loan Party;

(k) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(l) of (i) any failure by any Loan Party to pay rent or any other amounts due at (A) any distribution centers or warehouses, or (B) any of such Loan Party's locations when such rent or such other amounts first came due following the Petition Date, unless such non-payment was permitted under the Bankruptcy Code or pursuant to an order of the Bankruptcy Court, and (ii) notice of termination of any Lease;

(m) of any proposed sale or transfer of Equity Interest that would constitute a Change in Control under clause (a) or (c) of the definition of Change of Control thirty (30) days prior to such proposed sale or transfer;

(n) the termination, discharge, or resignation of any of the Consultants; and

(o) the receipt or delivery of any notice (including, without limitation, any notice of any breach or alleged breach) under the Agency Agreement or any agency agreement, asset purchase agreement or other contract relating to a Permitted Sale by any party thereto.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. (a) Subject to the provisions of the Bankruptcy Code, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (ii) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (A) the validity or amount thereof is being contested in good faith by appropriate proceedings, (B) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (D) no Lien has been filed with respect thereto and (E) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement. For the avoidance of doubt, nothing herein requires payment of any obligation subject to the automatic stay of the Bankruptcy Code. (b)

Within one (1) Business Day after the Final Order Entry Date, pay in full all of the Pre-Petition Obligations in accordance with Section 2.05(i).

6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.

6.06 Maintenance of Properties

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(d) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, the Agent or any other party shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to

cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(g) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Except to the extent non-compliance is permitted under the Bankruptcy Code, comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) at all times retain a Registered Public Accounting Firm reasonably satisfactory to the Agent and shall instruct such Registered Public Accounting Firm to cooperate with, and be available

to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm, as may be raised by the Agent.

6.10 Inspection Rights

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Registered Public Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct evaluations of the Loan Parties' business plan, forecasts and cash flows, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Loan Parties acknowledge that the Agent may, in its discretion, undertake such commercial finance examinations at the expense of the Loan Parties as the Agent deems necessary or appropriate; provided, however, prior to the occurrence and continuance of an Event of Default, the Agent shall not conduct more than four (4) commercial finance examinations at the Loan Parties' expense in any twelve (12) month period. Notwithstanding the foregoing, the Agent may cause additional commercial finance examinations to be undertaken (i) as it in its discretion deems necessary or appropriate, at its own expense or (ii) if required by Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

(c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base. The Agent may, in its discretion, undertake such inventory appraisals at the Loan Parties' expense as the Agent deems necessary or appropriate; provided, however, prior to the occurrence and continuance of an Event of Default, the Agent shall not conduct more than four (4) appraisals at the Loan Parties' expense in any twelve (12) month period. Any appraisals referred to in this Section 6.10 as being "at the Loan Parties' expense" shall mean that the Loan Parties shall pay the fees and out-of-pocket expenses of the Agent and such professionals with respect to such appraisals.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions to the extent permitted under applicable Law, the Approved Budget (subject to the Permitted Variance), and the Loan Documents, (a) on the Closing Date, for the payment of transaction expenses in connection with this Agreement, and (b) after the Closing Date, (i) to finance the payoff of the Pre-Petition Obligations in accordance with Section 2.05, (ii) to finance general corporate purposes of the Loan Parties and to finance the acquisition of working capital assets of the Borrowers, including capital expenditures and the purchase of inventory and equipment, in each case in the ordinary course of business or as otherwise approved by the Lenders, (iii) to pay fees, expenses, and costs incurred in connection with the Chapter

11 Case, as well as the payment of any adequate protection payments approved in the Financing Orders, and (iv) to pay the Carve-Out.

6.12 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary, and in each case promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) which is not a CFC, to (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC, the Equity Interests of such Subsidiary to be pledged may be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary and such time period may be extended based on local law or practice), in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.

6.13 Cash Management.

(a) Upon and to the extent requested by the Agent:

(i) deliver to the Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit F which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.21(b);

(ii) enter into a Blocked Account Agreement satisfactory in form and substance to the Agent with each Blocked Account Bank with respect to the applicable deposit accounts at such Blocked Account Bank (collectively, the "Blocked Accounts"); and

(iii) at the request of the Agent and if the applicable Operating Account Bank is a Lender or an Affiliate of a Lender, with the consent of such Lender, enter into a Blocked Account Agreement, satisfactory in form and substance to the Agent and such Operating Account Bank, with each Operating Account Bank with respect to each operating account maintained by the Loan Parties and listed on Schedule 6.13(a)(iii) (collectively, the "Operating Accounts").

(b) At the request of the Agent, the Loan Parties shall deliver to the Agent copies of notifications (each, a "DDA Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of such Loan Party and delivered to each depository institution listed on Schedule 5.21(a).

(c) The Loan Parties shall (i) ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account all amounts on deposit in each DDA and, to the extent not otherwise transmitted directly to a Blocked Account in accordance with clause (ii) hereof, all payments due from credit card processors, (ii) shall direct each credit card

processor to transmit all payments due from such credit card processor directly to a Blocked Account, and (iii) shall (A) with respect to each Blocked Account (other than the U.S. Bank Blocked Account), ACH or wire transfer no less frequently than daily (whether or not there are then any outstanding Obligations) all funds in such account, and (B) with respect to the U.S. Bank Blocked Account, ACH or wire transfer no less frequently than daily (whether or not there are then any outstanding Obligations) all funds in such account in excess of $50,000, in each case (with respect to this clause (iii)) to the Concentration Account in accordance with Section 6.13(d).

(d) Each Blocked Account Agreement shall require with respect to each Blocked Account, ACH or wire transfer no less frequently than daily (whether or not there are then any outstanding Obligations) to the concentration account maintained by the Agent at Wells Fargo (the "Concentration Account"), all cash receipts and collections received by each Loan Party from all sources, including, without limitation, the following:

(i) all available cash receipts from the sale of Inventory and other assets (whether or not constituting Collateral);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event, including, without limitation, any Prepayment Event;

(iv) the then contents of each DDA (net of any balance, the Lead Borrower determines in its reasonable judgment is necessary in the ordinary course of business to cover change orders, returned checks, and other chargebacks);

(v) the then entire ledger balance of each Blocked Account (net of a nominal amount which is necessary in the ordinary course of business to cover change orders, returned checks, and other chargebacks); and

(vi) the proceeds of all credit card charges.

(e) The Concentration Account shall at all times be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied to the Obligations as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 6.13, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

(f) Upon the request of the Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account and each Operating Account to ensure the proper transfer of funds as set forth above.

(g) Notwithstanding anything to the contrary herein, during the period between the Closing Date and payment in full of the "Total Outstandings" (as such term is defined in the Pre-Petition Credit Agreement), all funds on deposit in the Concentration Account shall be applied to the Pre-Petition Obligations.

6.14 Information Regarding the Collateral.

(a) Furnish to the Agent at least fifteen (15) days prior written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto become inaccurate or misleading in any material respect as a result of changes after the Closing Date, the Lead Borrower shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.15 Physical Inventories.

(a) Cause not less than one (1) physical inventory of each Store to be undertaken, at the expense of the Loan Parties, at least every six (6) months and periodic cycle counts for each distribution center and warehouse, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within thirty (30) days following the completion of such inventory of the Stores, shall provide the Agent with a reconciliation of the results of such inventory and within thirty (30) days following the completion of each such inventory shall provide Agent with the results of such cycle count and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) Permit the Agent, in its discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agents as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.

(c) Upon the request of the Agent, cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

(d) Upon the request of the Agent, use commercially reasonable efforts to cause any of its landlords with respect to any distribution center, warehouse or corporate headquarters to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.

6.18 Compliance with Terms of Leaseholds

Except as otherwise expressly permitted hereunder or to the extent non-performance thereof is permitted by the Bankruptcy Code and other than the filing of the Chapter 11 Case and the effect thereof, (a) make all payments of Post-Petition Obligations and, subject to contests permitted by Section 6.04, make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, and (b) not allow such Leases (other than Leases subject to such Initial Store Closing Sale or Permitted Sale, as applicable, following the consummation thereof), to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled.

6.19 Material Contracts. Except to the extent non-performance thereof is permitted by the Bankruptcy Code and other than the filing of the Chapter 11 Case, the Events and Circumstances, and the effects thereof, remain in compliance in all material respects of or under any Material Contract after giving effect to any applicable cure period.

6.20 Retention of Consultants; Communication with Accountants and Other Financial Advisors.

(a) The Agent shall have received evidence by no later than the Petition Date, that the Loan Parties have filed motions seeking to retain the Consultants. The terms and scope of the engagement of and responsibilities of the Consultants shall be acceptable to the Agent and, without limiting the foregoing, the engagement shall grant the Agent the right to communicate directly with the Consultants and authorize and direct the Consultants to communicate directly with the Agent, with the participation of the Borrowers at the Borrowers' option, and to furnish the Agent with such information as the Agent may reasonably request, together with copies of all material written materials provided to the board of directors of the Loan Parties by such Consultant. In the event that the Agent takes the position that the Borrowers or Consultants have not complied with the preceding sentence, the Agent must provide reasonable notice to the Borrowers' CRO and an opportunity to cure such breach within one (1) Business Day prior to declaring an Event of Default based on such breach, whether under Section 8.01(b) or otherwise. Subject to Bankruptcy Court approval, to be obtained by no later than forty-five (45) days after the Petition Date, the Loan Parties shall continue to retain the Consultants, the scope and terms of each such engagement to be reasonably satisfactory to the Agent. There shall be no material modifications to the terms (excluding any decreases in compensation but including any other modification in compensation) of the engagement of the Consultants without the Consent of the Agent. Until such time as all Pre-Petition Obligations and all Obligations have been repaid in full (or Cash Collateralized in accordance with the terms hereof) and all Commitments have been terminated, the Lead Borrower shall continue to retain the Consultants to assist the Loan Parties with the preparation of the Approved Budget and the other financial and Collateral reporting required to be delivered to the Agent pursuant to this Agreement, and approval of all requests for Borrowing and all disbursements by the Borrowers.

(b) The Lead Borrower authorizes the Agent and its representatives to communicate directly with the Loan Parties' independent certified public accountants, appraisers, financial advisors, investment bankers and consultants (including the Consultants), which have been engaged from time to time by the Loan Parties, in all cases, with the participation of the Borrowers at the Borrowers' option, and authorizes and shall instruct those accountants, appraisers, financial advisors, investment bankers and consultants to communicate to the Agent and its representatives information relating to each Loan Party with respect to the business, results of operations, prospects and financial condition of such Loan Party. The Lead Borrower acknowledges and agrees that the Loan Parties and their representatives will reasonably cooperate with the Consultants and any Lender Group Consultant (as defined below). The Consultants shall, together with senior management of the Loan Parties, participate in weekly

telephonic calls with the Agent and Lenders (and/or their advisors and counsel) to discuss various matters, including, without limitation, the Approved Budget, budget variance, and bankruptcy milestones.

(c) Each Loan Party acknowledges that the Agent shall be permitted to engage such outside consultants and advisors (each, a "Lender Group Consultant"), for the sole benefit of the Agent, L/C Issuer, and the Lenders, as the Agent may determine to be necessary or appropriate, in its sole discretion. Each Loan Party covenants and agrees that (i) such Loan Party shall provide its complete cooperation with any Lender Group Consultant (including, without limitation, providing unfettered access to such Loan Party's business, books and records and senior management); (ii) all costs and expenses of any such Lender Group Consultant shall be expenses required to be paid by the Loan Parties under Section 10.04 hereof; and (iii) all reports, determinations and other written and verbal information provided by any Lender Group Consultant shall be confidential and no Loan Party shall be entitled to have access to same.

6.21 Performance within Budget. At all times following the Closing Date, strictly perform in accordance with the Approved Budget, including having made all scheduled payments to the "Lenders" (as defined in the Pre-Petition Credit Agreement) and Lenders, as applicable, as and when required, subject to the following (the "Permitted Variance"): (a) the Borrowers' actual sales and cash receipts shall not be less than 90% of the projected amounts set forth in the Approved Budget on an aggregate basis, and (b) the Borrowers' actual expenses and cash expenditures (other than fees and expenses paid to the Agent and Lenders, which shall not be subject to the limitations in this clause (b)) shall not be greater than 110% of the projected amounts set forth in the Approved Budget on an aggregate basis (other than with respect to professional fees and expenses, which shall be tested on an aggregate basis solely with respect to each professional); provided, however, to the extent any amounts owed to professionals and vendors are permitted to be paid in accordance with the foregoing covenant but are not actually paid during the subject period, such amounts may be paid during a subsequent period. Each of the foregoing covenants shall be tested on Saturday each week (commencing with the third (3rd) week after the Petition Date) on a cumulative basis from the Petition Date until the fourth (4^{th}) week after the Petition Date and then on a rolling four (4) week basis, pursuant to the Approved Budget Variance Report delivered by the Lead Borrower to the Agent in accordance with Section 6.01(b). **Bankruptcy Related Affirmative Covenants.**On or within one (1) Business Day of the Petition Date, the Loan Parties shall have filed the following motions in the Chapter 11 Case with the Bankruptcy Court, each in form and substance acceptable to the Agent:

(i) A motion (the "Bidding Procedures Motion") requesting an order from the Bankruptcy Court approving bidding procedures relating to the solicitation of qualified bids and approval of a sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code, which motion and bidding procedures (including the bidding protections set forth therein) shall be on terms and conditions acceptable to the Agent and shall contain, without limitation, provisions with respect to the Bankruptcy Milestones (it being acknowledged and agreed that, in order for a bid to qualify for consideration under such bidding procedures, it must satisfy the Obligations and the Pre-Petition Obligations in full in cash from the proceeds paid as part of any such bid on the date of consummation); and

(ii) A motion (the "Sale Order Motion") (which may be combined with the Bidding Procedures Motion), which motion shall be in form and substance acceptable to the Agent requesting an order from the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code authorizing the Loan Parties to consummate the Permitted Sale; and

(iii) A motion (the "Initial Store Closing Motion") requesting an order from the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code authorizing the Loan Parties to enter into the Agency Agreement and conduct the Initial Store Closings.

(b) If an Event of Default has occurred and is continuing, at the request of the Agent, the Loan Parties shall promptly engage an Approved Liquidator or Approved Liquidators on terms and conditions reasonably acceptable to the Agent; and

(c) The Borrower shall complete, or shall cause to be completed, the following actions as and when required below (clauses (i) through (x), collectively, the "Bankruptcy Milestones"):

(i) no later than March 27, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Lead Borrower shall have entered into a binding agreement for a Permitted Sale upon terms and conditions acceptable to the Agent;

(ii) no later than March 27, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Bankruptcy Court shall have entered an order (the "Bidding Procedures Order") approving the bidding procedures set forth in the Bidding Procedures Motion, which Bidding Procedures Order shall be in form and substance acceptable to the Agent;

(iii) no later than March 27, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Bankruptcy Court shall have entered an order approving the Agency Agreement as requested in the Initial Store Closing Motion, which order shall be in form and substance acceptable to the Agent.

(iv) no later than April 1, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Loan Parties shall forward so-called "bid packages" to any potential bidders to whom bid packages had not already been delivered prior to the Petition Date, subject to the terms and conditions contained in the Bidding Procedures Order, including, without limitation, potential bidders being qualified and executing an acceptable confidentiality agreement;

(v) no later than April 10, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Bankruptcy Court shall have issued an order authorizing the retention by the Loan Parties of the Consultants;

(vi) no later than April 13, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Bankruptcy Court shall have entered an order approving the Final Financing Order;

(vii) no later than April 24, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), binding bids with respect to a Permitted Sale shall be due and delivered to the Loan Parties in accordance with the Bidding Procedures Order (and copies of such bids shall be provided to the Agent);

(viii) no later than April 27, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), an auction with respect to a Permitted Sale shall have been completed in accordance with the Bidding Procedures Order; and

(ix) no later than May 1, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), the Bankruptcy Court shall have entered one or more orders (the "Sale Order") approving a Permitted Sale as requested in the Sale Order Motion, which Sale Order shall be in form and substance acceptable to the Agent and, if applicable, authorizing the conduct of "going out of business" sales at the Loan Parties' applicable locations.

(x) the closing of the Permitted Sale shall have occurred no later than (A) May 2, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), with respect to any Permitted Sale consisting of a "going out of business" sale approved pursuant to the Sale Order and (B) May 15, 2017 or such later date as agreed to by the Agent (not to exceed three (3) Business Days), with respect to any Permitted Sale consisting of a "going concern" sale approved pursuant to the Sale Order;

(d) The Loan Parties shall provide the Agent with a status report and such other updated information relating to the sale process as may be reasonably requested by the Agent, in form and substance reasonably acceptable to the Agent.

6.23 Leases.

(a) The Loan Parties shall pay all Post-Petition Obligations under the leases of real property and licenses of Intellectual Property, if any, as required by the Bankruptcy Code or the Bankruptcy Court, except to the extent (i) any Loan Party is contesting any such obligations in good faith by appropriate proceedings, (ii) such Loan Party has established proper reserves as required under GAAP, and (iii) the nonpayment of which does not result in the imposition of a Lien. No Loan Party may reject any of its leases without the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed). The assumption or rejection of any lease shall be conducted in a manner consistent with a maximization of the value of the assets of the Loan Parties.

(b) On or before March 17, 2017 or such later date as agreed to by the Agent, the Loan Parties shall have filed a motion seeking an order ("Lease Extension Order") of the Bankruptcy Court extending the time period of the Loan Parties to assume or reject leases to not less than 210 days from the Petition Date, and on or before April 10, 2017 or such later date as agreed to by the Agent, the Bankruptcy Court shall have entered the Lease Extension Order.

6.24 Financing Orders. The Loan Parties shall comply with the Financing Orders, as then in effect, in all respects, and shall not seek any reversal, vacatur, stay, amendment or modification thereto without the prior written consent of the Agent.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or

any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except Permitted Investments.

7.03 Indebtedness; Disqualified Stock

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; or (b) issue Disqualified Stock.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing).

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party.

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness (other (i) than Indebtedness incurred hereunder, (ii) Indebtedness under the Pre-Petition Credit Agreement in accordance with the terms and conditions herein, and (iii) as set forth in the Approved Budget) or make any payment in violation of any subordination terms of any Subordinated Indebtedness.

7.08 Change in Nature of Business. Engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) transactions described on Schedule 7.09 hereto, (c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (d) the issuance of Equity Interests in the Lead Borrower to any officer, director, employee or consultant of the Lead Borrower or any of its Subsidiaries, (e) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Lead Borrower or any of its Subsidiaries, and (f) any issuances of securities of the Lead Borrower (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of,

employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in the Lead Borrower) of the Lead Borrower or any of its Subsidiaries.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than (x) this Agreement or any other Loan Document, (y) the Term Loan B Agreement and the Term Loan B Documents and (z) the Pre-Petition Credit Agreement) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; (b) to make any payments to a Sanctioned Entity or a Sanctioned Person, to finance any investments in a Sanctioned Entity or a Sanctioned Person, to fund any operations of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person; or (c) for purposes other than those permitted under this Agreement.

7.12 Amendment of Material Documents.

Amend, modify or waive any of a Loan Party's rights under (a) (i) its Organization Documents in a manner materially adverse to the Credit Parties, or (ii) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect, or (b) the Term Loan B Agreement or the Term Loan B Documents to the extent that such amendment, modification or waiver is prohibited under the Intercreditor Agreement.

7.13 Fiscal Year.

Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as allowed or required by GAAP.

7.14 Deposit Accounts; Credit Card Processors.

Open new DDAs, Blocked Accounts or Operating Accounts unless the Loan Parties shall have delivered to the Agent appropriate DDA Notifications (to the extent requested by Agent pursuant to the provisions of Section 6.13(b) hereof) or Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.13 hereof.

7.15 Excess Availability. Permit Uncapped Tranche A Availability at any time to be less than 7.50% of the Tranche A Line Cap (without, with respect to the Tranche A Line Cap, giving effect to the Tranche A Pre-Petition Reserve and the Pre-Petition Tranche A-1 Deficiency Reserve).

7.16 Reclamation Claims. Enter into any agreement to return any of its Inventory to any of its creditors for application against any Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims under Section 546(c) of the Bankruptcy Code or agree to allow any creditor to take any setoff or recoupment against any of its Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims based upon any such return pursuant to Section 553(b)(l) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to Pre-Petition Indebtedness, Pre-Petition trade payables and other Pre-Petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed $10,000.

7.17 Bankruptcy Related Negative Covenants. No Loan Party shall seek, consent to, or permit to exist any of the following:Any order which authorizes the rejection or assumption of any Leases of any Loan Party without the Agent's prior consent;

(b) Any modification, stay, vacation or amendment to the Financing Orders to which the Agent has not consented in writing;

(c) A priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (after entry of the Final Financing Order), 507(a), 507(b), 546(c), 546(d), 726, 1114 of the Bankruptcy Code) equal or superior to the priority claim of the Agent and the Lenders in respect of the Obligations and the Pre-Petition Obligations except as set forth in the Financing Orders;

(d) Any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations or Pre-Petition Liens including any adequate protection Liens except as set forth in the Financing Orders;

(e) Any order which authorizes the return of any of the Loan Parties' property pursuant to Section 546(h) of the Bankruptcy Code;

(f) Any order which authorizes the payment of any Indebtedness (other than the Pre-Petition Obligations and Pre-Petition Indebtedness reflected in the Approved Budget (subject to the Permitted Variance)) incurred prior to the Petition Date or, except as set forth in the Financing Orders, the grant of "adequate protection" (whether payment in cash or transfer of property) with respect to any such Indebtedness which is secured by a Lien; or

(g) Any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to, (i) pay any amount of principal of any Loan or any L/C Obligation or any of the Pre-Petition Obligations, in all cases, when and as required to be paid herein, or deposit any funds as Cash Collateral in respect of L/C Obligations when and as required to be paid herein, or (ii) pay any interest on any Loan, any L/C Obligation or any Pre-Petition Obligation when and as required to be paid

herein, or any fee due hereunder or on any Pre-Petition Obligation when and as required to be paid herein, or (iii) within two (2) Business Days of when required to be paid herein, pay any other amount payable hereunder or under any other Loan Document or the Interim Financing Order or Final Financing Order; or

(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.20, 6.21, 6.22, 6.23, 6.24 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 15 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment beyond any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect (x) of any Term Loan B Obligations or (y) of any post-petition or unstayed Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) fails to observe or perform any other agreement or condition relating to (x) any Term Loan B Obligations or (y) any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of the Term Loan B Obligations or such post-petition or unstayed Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries), as applicable, to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than $2,500,000; or

(f) Reserved; or

(g) Attachment. Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 10 days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all

such judgments and orders) exceeding $500,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage, or a right of indemnification from a third party in favor of the Loan Party reasonably acceptable to the Agent), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $2,500,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $2,500,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations and the Pre-Petition Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except for the Initial Store Closing Sale and as otherwise expressly permitted hereunder, any Loan Party shall take any action to suspend the operation of its business in the ordinary course, liquidate all or a material portion of its assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any post-petition payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, such Material Contract to be terminated; or

(o) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, state, municipal, and other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony; or

(p) Guaranty. The termination or attempted termination or revocation of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness or shall be materially breached by any Borrower or any other Loan Party; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(r) Intercreditor Agreement. (i) Any material provisions of the Intercreditor Agreement shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable (other than in accordance with its terms) or shall be materially breached by any party thereto (other than the Agent or a Lender); or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner the effectiveness, validity or enforceability of any of the provisions thereof or deny that it has any further liability or obligations thereunder.

(s) Chapter 11 Case. The occurrence of any of the following in the Chapter 11 Case:

(i) any Loan Party, without the Agent's and Required Lenders' prior written consent, files a motion with the Bankruptcy Court seeking the authority to liquidate all or substantially all of any Loan Party's assets or capital stock unless the transactions that are the subject of the motion will result in payment in full in cash of the Pre-Petition Obligations and the Obligations on the closing of such sale;

(ii) other than in connection with the payment in full or refinancing of the Pre-Petition Obligations and the Obligations, the bringing or supporting of a motion, taking of any action or the filing of any plan or disclosure statement attendant thereto by or on behalf of any Loan Party in the Chapter 11 Case: (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (C) except as provided in the Interim Financing Order or Final Financing Order, as the case may be, to use cash collateral under Section 363(c) of the Bankruptcy Code without the prior written consent of the Agent; (D) that seeks to prohibit Agent or Lenders from credit bidding on any or all of the Loan Parties' assets during the pendency of the Chapter 11 Case; or (E) any other action or actions adverse to the interest of the Agent or the Lenders in their capacities as such or their rights and remedies hereunder or its interest in the Collateral;

(iii) (A) other than in connection with the payment in full or refinancing of the Pre-Petition Obligations and the Obligations on the effective date of such plan, the

filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Loan Party or any other Person to which the Agent does not consent or otherwise agree to treatment of the respective claims of the Agent and the Lenders, (B) the entry of any order terminating the Loan Parties' exclusive right to file a plan of reorganization without the consent of the Agent, or (C) the expiration of the Loan Parties' exclusive right to file a plan of reorganization without the consent of the Agent;

(iv) the entry of an order in the Chapter 11 Case confirming a plan that (A) is not acceptable to the Agent and Required Lenders in their discretion (it being agreed that a plan that satisfies the Obligations and the Pre-Petition Obligations (if any) in full in cash on the effective date thereof is acceptable to the Agent) or (B) does not contain a provision for termination of the Commitments and repayment in full in cash of all of the Pre-Petition Obligations and the Obligations under this Agreement on or before the effective date of such plan or plans;

(v) the entry of an order reversing, amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Pre-Petition Credit Agreement or the Interim Financing Order, the Final Financing Order or the Cash Management Order without the written consent of the Required Lenders or, in the case of an order that would not reasonably be expected to have a material adverse effect on the Lenders, the Agent, or the filing of a motion for reconsideration with respect to the Interim Financing Order or the Final Financing Order or the Interim Financing Order, the Final Financing Order or the Cash Management Order are otherwise not in full force and effect, in each case, without the consent of the Required Lenders or, in the case of an order that would not reasonably be expected to have a material adverse effect on the Lenders, the Agent;

(vi) the Final Financing Order is not entered prior to the expiration of the Interim Financing Order, and in any event within thirty five (35) days of the Petition Date;

(vii) except as set forth in any motions which have been delivered to and are acceptable to the Agent and as contemplated by the Approved Budget (subject to the Permitted Variance), the payment of, or application for authority to pay, any Pre-Petition Indebtedness or Pre-Petition claim without the Agent's prior written consent;

(viii) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Agent, any other Credit Party or any of the Collateral;

(ix) the filing of a motion by a Loan Party or any of their respective Affiliates for, or the entry of an order directing, the appointment of an interim or permanent trustee in the Chapter 11 Case or the appointment of a receiver or an examiner in the Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties; or the sale without the Agent's and Required Lenders' consent of all or substantially all of the Loan Parties' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Case, or otherwise that does not provide for payment in full in cash of the Pre-Petition Obligations and the Obligations and termination of the Commitments on the effective date of such plan or the closing of such sale;

(x) the dismissal of the Chapter 11 Case, or the conversion of the Chapter 11 Case from Chapter 11 to Chapter 7 of the Bankruptcy Code, or any Loan Party files a motion or other pleading seeking the dismissal of the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise;

(xi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (1) to allow any creditor to execute upon or enforce a Lien on any Collateral having a value of $100,000 (or $500,000 in the aggregate) or more (other than with respect to equipment at Store locations after completion of an Initial Store Closing Sale at such location), or (2) with respect to any Lien or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority;

(xii) the commencement of a suit or action against the Agent, any Lender or any other Credit Party (both under this Agreement and as such terms are defined in the Pre-Petition Credit Agreement) by or on behalf of any Loan Party, its bankruptcy estates, or any of their Affiliates;

(xiii) the entry of an order in the Chapter 11 Case avoiding or permitting recovery of any portion of the payments made on account of the Indebtedness owing under this Agreement or the other Loan Documents or the Pre-Petition Credit Agreement;

(xiv) the failure of any Loan Party to perform any of its obligations under the Interim Financing Order, the Final Financing Order or the Cash Management Order or any of its material obligations under the any other order of the Bankruptcy Court;

(xv) the failure of the Bankruptcy Court to, within thirty (30) days after the Petition Date (or such later date to which the Agent may otherwise agree), grant an order extending the time period of the Loan Parties to assume or reject unexpired leases of real property to a date that is two hundred ten (210) days from the Petition Date;

(xvi) the entry of an order in the Chapter 11 Case granting any other super-priority administrative claim or Lien equal or superior to that granted to the Agent, the Lenders and Pre-Petition Agent except as set forth in the Financing Orders; or

(xvii) the failure of any Loan Party to perform any of its obligations under the Bidding Procedures Order.

8.02 Remedies Upon Event of Default.

(a) If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(i) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans and all Pre-Petition Obligations, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(iii) require that the Loan Parties Cash Collateralize the L/C Obligations; and

(iv) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents, the Pre-Petition Loan Documents, or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or the Pre-Petition Loan Documents or any instrument pursuant to which the Obligations or Pre-Petition Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties.

(b) Reserved.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order, in each case whether or not such Obligations are allowed or allowable in any bankruptcy or insolvency proceeding or under any Debtor Relief Law, but in all cases, subject to the Carve-Out:

First, to the payment in full of the Pre-Petition Obligations including the funding of indemnity accounts;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and the Collateral Agent and amounts payable under Article III) payable to the Agent and the Collateral Agent, each in its capacity as such;

Third, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Revolving Lenders and the L/C Issuer (including Credit Party Expenses to the respective Revolving Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Third payable to them (other than any amounts owing to Tranche A-1 Lenders);

Fourth, to the extent not previously reimbursed by the Revolving Lenders, to payment to the Agents of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances and Unintentional Overadvances;

Fifth, to the extent that Swing Line Loans have not been refinanced by a Committed Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Sixth, to the extent that Swing Line Loans have not been refinanced by a Committed Revolving Loan, to payment to the Swing Line Lender of that portion of the Obligations constituting unpaid principal of the Swing Line Loans;

Seventh, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Tranche A Loans and other Obligations (other than Obligations owing to the Tranche A-1 Lenders), and fees (including Letter of Credit Fees), ratably among the Tranche A Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh payable to them until paid in full;

Eighth, to payment of that portion of the Obligations constituting unpaid principal of the Tranche A Loans, ratably among the Tranche A Lenders, in proportion to the respective amounts described in this clause Eighth held by them until paid in full;

Ninth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Tenth, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Tranche A-1 Lenders (including fees, charges and disbursements of counsel to the respective Tranche A-1 Lenders), ratably among them in proportion to the amounts described in this clause Tenth;

Eleventh, ratably to pay any fees then due to the Tranche A-1 Lenders until paid in full;

Twelfth, ratably to pay interest accrued in respect of the Tranche A-1 Loans until paid in full;

Thirteenth, ratably to pay principal due in respect of Tranche A-1 Loans ratably among the Tranche A-1 Lenders, in proportion to the respective amounts described in this clause Thirteenth held by them until paid in full;

Fourteenth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations for which a claim has been made, but excluding (i) any Other Liabilities which are not subject to a Reserve, and (ii) Overadvances that are not Permitted Overadvances or Unintentional Overadvances), ratably among the Credit Parties in proportion to the respective amounts described in this clause Fourteenth held by them;

Fifteenth, to payment of that portion of the Obligations arising from Cash Management Services not subject to a Reserve, ratably among the Credit Parties in proportion to the respective amounts described in this clause Fifteenth held by them;

Sixteenth, to payment of all other Obligations arising from Bank Products not subject to a Reserve, ratably among the Credit Parties in proportion to the respective amounts described in this clause Sixteenth held by them;

Seventeenth, to payment of all other Obligations, including Overadvances other than Permitted Overadvances and Unintentional Overadvances; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Ninth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX
THE AGENT

9.01 Appointment and Authority.

Each of the Revolving Lenders, the Swing Line Lender, and the L/C Issuer hereby irrevocably appoints Wells Fargo to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations and appearing in the Chapter 11 Case on behalf of the Lenders), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

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

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

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

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law; and

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

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

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

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

9.04 Reliance by Agent.

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

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent.

9.06 Resignation of Agent . The Agent may at any time give written notice of its resignation to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the L/C Issuer, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

Any resignation by Wells Fargo as Agent pursuant to this Section shall also constitute its resignation as Swing Line Lender and the resignation of Wells Fargo as L/C Issuer. Upon the acceptance of a successor's appointment as Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents or Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent, a Lender or the L/C Issuer hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i), 2.03(j) and 2.03(k), and, as applicable, 2.09 and 10.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

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

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations and Pre-Petition Obligations (other than contingent indemnification obligations for which no claim has been asserted) and the expiration, termination or Cash Collateralization of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01; and

(b) to release any Guarantor from its obligations under the Facility Guaranty and the other Loan Documents to which it is a party if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

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

(a) agrees to furnish the Agent at such frequency as the Agent may reasonably request with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender;

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

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

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

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a

Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

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

9.14 Indemnification of Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, the L/C Issuer and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, the L/C Issuer and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, the L/C Issuer's and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

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

9.16 Defaulting Lender.

(a) If for any reason any Lender shall become a Defaulting Lender or shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Agent its Applicable Percentage of any Loans, expenses or setoff or purchase its Applicable Percentage of a participation interest in the Swingline Loans and such failure is not cured within one (1) Business Day after receipt from the Agent of written notice thereof, then, in addition to the rights and remedies that may be available to the other Credit Parties, the Loan Parties or any other party at law or in equity, and not at limitation thereof, (i) such Defaulting Lender's right to participate in the administration of, or decision-making rights related to, the Obligations, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, and (ii) a Defaulting Lender shall be deemed to have assigned any and all payments due to it from the Loan Parties, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining non-Defaulting Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations, and (iii) at the option of the Agent, any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Agent as cash collateral for future funding obligations of the Defaulting Lender in respect of any Loan or existing or future participating interest in any Swing Line Loan or Letter of Credit. The Defaulting Lender's decision-making and participation rights and rights to payments as set forth in clauses (i), (ii) and (iii) hereinabove shall be restored only upon the payment by the Defaulting Lender of its Applicable Percentage of any Obligations, any participation obligation, or expenses as to which it is

delinquent, together with interest thereon at the rate set forth in Section 2.13(c) hereof from the date when originally due until the date upon which any such amounts are actually paid.

(b) The non-Defaulting Lenders shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to cause the termination and assignment, without any further action by the Defaulting Lender for no cash consideration (pro rata, based on the respective Commitments of those Lenders electing to exercise such right), of the Defaulting Lender's Commitment to fund future Loans. Upon any such purchase of the Applicable Percentage of any Defaulting Lender, the Defaulting Lender's share in future Credit Extensions and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the or Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance.

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

9.17 Co-Syndication Agents; Documentation Agent and Lead Arrangers. Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Documentation Agent nor the Arrangers shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

9.18 Intercreditor Agreement. The parties hereto acknowledge that the Agent was authorized to enter into the Intercreditor Agreement, and that such agreement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (b) hereby acknowledges that the Intercreditor Agreement remains in full force and effect. The foregoing provisions are intended as an inducement to the Credit Parties to extend credit to the Borrower and such Credit Parties are intended third-party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc.. Except as expressly set forth herein, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving

Commitments hereunder or under any other Loan Document without the written Consent of such Lender;

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(d) as to any Lender, change Section 2.13 or Section 8.03 without the written Consent of such Lender;

(e) change any provision of this Section 10.01 or the last sentence of Section 4.02 without the written Consent of each Lenders, or change the definition of "Required Lenders", "Required Tranche A Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written Consent of each Lender included in any such definition;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(h) increase the Aggregate Revolving Commitments without the written Consent of each Lender;

(i) change the definition of the terms "Tranche A Borrowing Base", "Tranche A-1 Borrowing Base", or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, *provided that* the foregoing shall not limit the discretion of the Agent to change, establish or eliminate any Reserves;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender;

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or Consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the

Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Loan Parties, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its discretion,

agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Swing Line Loan Notices) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other

telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit or any other nominated person with respect to a Letter of Credit seeking to be reimbursed or indemnified or compensated, and any third party seeking to enforce the rights of a Borrower, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds, or holder of an instrument or document related to any Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have

resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it (including through the application of funds, if any, in the Prepetition ABL Indemnity Reserve), each Lender severally agrees to pay to the Agents (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agents (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agents (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, 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 Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit 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 to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable on demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent and the L/C Issuer, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without

duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless the Agent otherwise consents (such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line

Loans, or (B) prohibit any Lender from assigning all or any portion of its rights and obligations with respect to its Tranche A Commitment and its Tranche A-1 Commitment on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) Reserved; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the assignment of any Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement,

notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its

Commitment and Loans pursuant to subsection (b) above, Wells Fargo may, (i) upon 30 days' notice to the Lead Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Lead Borrower, Wells Fargo may resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Lead Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of Wells Fargo as L/C Issuer or Swing Line Lender, as the case may be. If Wells Fargo resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans pursuant to Section 2.03(c)). If Wells Fargo resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(b). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Lead Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable law (including applicable Bankruptcy Law), to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or

therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations that may thereafter arise under Section 10.04.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment in full of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURTS. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE COLLATERAL UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN THE BANKRUPTCY COURT OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW

YORK AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other

information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

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

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material, including any "tombstone" or comparable advertising, on its website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

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

terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

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

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed

by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

10.22 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.

10.23 Attachments.

The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 Keepwell

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Facility Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.24 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.24, or otherwise under the Facility Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until payment in full of the Obligations. Each Qualified ECP Guarantor intends that this Section 10.24 constitute, and this Section 10.24 shall be deemed to constitute, a "keepwell, support , or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

10.25 Intercreditor Agreement

Each of the Borrower, the Agent, the L/C Issuers and the Lenders acknowledge that the exercise of certain of the Agent's rights and remedies hereunder and under the other Loan Documents may be subject to, and restricted by, the provisions of the Intercreditor Agreement. Except as specified herein, nothing contained in the Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Agent, the L/C Issuers and the Lenders shall remain in full force and effect.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

GANDER MOUNTAIN COMPANY, as the Lead Borrower and a Borrower

By: Lighthouse Management Group, Inc.
in its capacity as Chief Restructuring Officer

By: _____
Name: Timothy Becker
Title:

OVERTON'S, INC., as a Borrower

By: Lighthouse Management Group, Inc.
in its capacity as Chief Restructuring Officer

By: _____
Name: Timothy Becker
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent

By: _____
Name:
Its Authorized Signatory

WELLS FARGO BANK, NATIONAL ASSOCIATION as Issuing Bank, as a Lender and Swing Line Lender

By: _____
Name:
Its Authorized Signatory

BANK OF AMERICA, N.A. as a Lender

By: _____
Name:
Its Authorized Signatory

U.S. BANK NATIONAL ASSOCIATION
as a Lender

By: _____
Name:
Its Authorized Signatory

CITIZENS BUSINESS CAPITAL, f/k/a RBS CITIZENS BUSINESS CAPITAL, a division of CITIZENS ASSET FINANCE, INC., f/k/a RBS ASSET FINANCE, INC., as a Lender

By:_____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION
as a Lender

By: _____
Name: _____
Its Authorized Signatory

SUNTRUST BANK
as a Lender

By: _____
Name: _____
Its Authorized Signatory

CIT BANK
as a Lender

By: _____
Name: _____
Its Authorized Signatory

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Gander Mountain Company,

Case No.: 17-30673
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675
Chapter 11 Case

Debtor.

MEMORANDUM IN SUPPORT OF DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) GRANTING EXPEDITED RELIEF, (II) APPROVING POSTPETITION FINANCING, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) AUTHORIZING USE OF CASH COLLATERAL, (V) GRANTING ADEQUATE PROTECTION, (VI) MODIFYING AUTOMATIC STAY, AND (VII) GRANTING RELATED RELIEF

Gander Mountain Company and Overton's, Inc. (the "Debtors") submit this memorandum of law in support of the motion submitted herewith (the "Motion"), in accordance with Local Rule 9013-2(a).

BACKGROUND

The supporting facts are set forth in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions (the "**Becker Declaration**") and the Declaration of Stephen Spencer in Support of the Debtors' Motion For Interim and Final Orders (I) Granting Expedited Relief; (II) Approving Postpetition Financing; (III) Granting Liens and Providing Superpriority Administrative Expense Status; (IV) Authorizing Use of Cash Collateral; (V) Granting Adequate Protection; (VI) Modifying Automatic Stay; and (VII) Granting Related

Relief (the "**Spencer Declaration**"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

LEGAL ANALYSIS

I. THE DEBTORS' REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED

The Debtors request expedited relief on the Motion. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a Motion "for cause shown." Cause exists here to grant the Motion on an expedited basis. As described in the Motion, the liquidity to be provided under the DIP Financing is essential to the Debtors' continued operations and the success of the Debtors' efforts to maximize the value of the estates, and is needed on the most urgent basis possible. Without the proceeds of the DIP Financing, the Debtors will be unable to effectuate an orderly sale process to the prejudice to their creditors, their employees, and other stakeholders. Accordingly, expedited relief requested is necessary to avoid immediate and irreparable harm.

II. THE DEBTORS SHOULD BE AUTHORIZED TO OBTAIN THE DIP FINANCING UNDER SECTION 364 OF THE BANKRUPTCY CODE

The Debtors meet the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain postpetition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides as follows:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; [or]
>
> (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). Further, section 364(d) of the Bankruptcy Code provides:

> (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:
>
> (A) the trustee is unable to obtain such credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
>
> (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g.*, *In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of post petition financing requires, inter alia, an exercise of "sound and reasonable business judgment").

Further, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Loan Documents, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

Here, given all the facts and circumstances present in these cases, the Debtors have satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Financing. The Debtors exercised proper business judgment in securing the DIP Financing on terms that are fair and reasonable and the best available to them in the current market. Given the circumstances, the Debtors could not obtain credit on an unsecured or administrative expense basis, and the Debtors have provided the Prepetition ABL Lenders and Prepetition Term Loan Lenders with adequate protection against any potential diminution in value of their interests. Moreover, the Prepetition ABL Agent and the Prepetition Term Loan Agent have consented to both the terms of the DIP Financing and the adequate protection proposed in connection therewith. For all the reasons discussed further below, therefore, the

Court should grant the Debtors' request to enter into the DIP Financing pursuant to sections 364(c) and (d) of the Bankruptcy Code.

A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Financing

Based on the facts of these Cases, the DIP Financing represents a proper exercise of the Debtors' business judgment. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *Grp. of Institutional Investors v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943); *In re Farmland Indus., Inc.*, 294 B.R. 855, 882 (Bankr. W.D. Mo. 2003) ("Business judgments should be left to the board room and not to this Court.") (quoting *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

In general, a bankruptcy court defers to a debtor's business judgment regarding the need for, and the proposed use of, funds, unless the debtor's decision improperly leverages the bankruptcy process or its purpose is not so much to benefit the estate as it is to benefit a party in interest. *See Ames Dep't Stores*, 115 B.R. at 40; *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *Id*. at 513-14 (footnote omitted).

To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs., Inc.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)).

Here, the Debtors have exercised sound business judgment in determining that the DIP Financing is appropriate. The Debtors are not able to operate solely on the use of cash collateral. The Debtors have analyzed whether they could finance their operations during the case using only cash collateral and have concluded that DIP financing is necessary. The Debtors considered such factors as the uncertainty inherent in estimating the timing of receipts and disbursements and the need for continued periodic incremental liquidity. In consideration of these factors, the Debtor concluded that the risks associated with attempting to finance the operations with cash collateral outweighed the benefits and certainty provided by the use of DIP Financing.

With the assistance of their advisors, the Debtors concluded that the DIP Financing represented the best terms available in the current market. The Debtors were unable to find alternative DIP Financing on better terms. See Spencer Decl. ¶¶ 6-9. Given the need for financing, the Debtors' decision is therefore sound and reasonable under the circumstances.

Further, the Prepetition ABL Agent and Prepetition Term Loan Agent have consented to the terms of the DIP Financing and their treatment thereunder on the terms set forth in the DIP Orders. Their consent to the financing and support for the process are important considerations when planning a successful chapter 11 case. Rather than engaging in a costly and distracting dispute with the Prepetition Secured Creditors regarding the use of cash collateral or a priming

lien, the Debtors are free to concentrate on operating their business, running a comprehensive sale process, and maximizing the value of the estate.

The DIP Financing will send a strong signal to the Debtors' employees, vendors and other parties in interest regarding the viability of the Debtors' process. Accordingly, if approved, the DIP Financing will preserve and enhance the value of the Debtors' estates and, as such, entry into the DIP Financing is a sound exercise of the Debtors' business judgment.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

Section 364(c) of the Bankruptcy Code authorizes a debtor to obtain postpetition financing on a secured or superpriority basis, or both, where the Court finds, after notice and a hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code] . . . ." 11 U.S.C. § 364(c).

Courts have articulated a three-part test to determine whether a debtor is entitled to obtain financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

> (a) the debtor is unable to obtain unsecured credit under section 364(b), i.e., by allowing a lender only an administrative expense claim;
> (b) the credit transaction is necessary to preserve the assets of the estate; and
> (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); *accord In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

In order to satisfy this test, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v.*

Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986); *accord In re Ames Dep't Stores, Inc.*, 115 B.R. at 37 (debtor must show that it has made reasonable efforts to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); *In re Crouse Grp., Inc.*, 71 B.R. at 549 (secured credit under section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id*.; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). This is true especially when time is of the essence. *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). When few lenders are likely to be able and willing to extend the necessary credit, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

As set forth in the Spencer Declaration, the Debtors and their consultants made reasonable efforts to secure the best postpetition financing possible under the circumstances. However, given the Debtors' urgent need for liquidity and the challenging state of the retail industry, the Debtors were unable to solicit any viable proposals that authorized financing on an unsecured or administrative expense basis. On the contrary, the Debtors' negotiations made clear

that the Debtors' only viable option was to obtain financing from their existing senior secured lenders on the terms provided in the DIP Loan Documents. See Spencer Decl. ¶¶ 6-9

The Court should therefore authorize the Debtors to provide the DIP Agent, on behalf of the DIP Credit Parties, superpriority administrative expense status for any obligations arising under the DIP Credit Agreement as provided for in section 364(c)(1) of the Bankruptcy Code, subordinate only to the DIP Liens, the DIP Carve-Out and Prepetition Permitted Liens.

C. The Debtors Should Be Authorized to Obtain Postpetition Financing Secured by Liens that are Senior to the Liens Securing the Prepetition Secured Debt

In addition to authorizing financing under section 364(c) of the Bankruptcy Code, a court may also authorize a debtor to obtain postpetition credit secured by a lien that is senior in priority to existing liens on the encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected or consent is obtained. See 11 U.S.C. § 364(d)(1).

When determining whether to authorize a debtor to obtain credit secured by a lien that is senior or equal to a prepetition lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtor's assets. Courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtor's businesses;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); and
- whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

See, e.g., *Ames Dep't Stores*, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862-79; *Barbara K. Enters.*, 2008 WL 2439649, at *10; *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (16th ed.).

The DIP Financing satisfies each of these factors. First, as described above, despite Houlihan Lokey's efforts, the Debtors were unable to obtain alternative DIP financing. The ultimate agreement reflects the most favorable terms on which the Debtors were able to obtain financing. The Debtors are not able to obtain financing on equal or better terms than the terms provided by the DIP Lenders, or any other source, without granting liens senior in priority to those securing the Prepetition ABL Facility and the Prepetition Term Loan Facility.

Second, the Debtors urgently need the funds to be provided under the DIP Financing to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Financing, the Debtors will be unable to operate and conduct a responsible sale process. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of these Cases is in the best interests of all stakeholders.

Third, the terms of the DIP Financing are reasonable and adequate to support the Debtors' necessary activities through the pendency of these Cases. The interest rates under the DIP Financing are no less favorable than what the Debtors would otherwise be paying on the Prepetition ABL Obligations if they were to leave such debt outstanding and not borrow under the DIP Facility. Furthermore, the fees required under the DIP Credit Agreement are market rates in comparison to the fees in other recent retail cases. See Spencer Decl., ¶¶ 10-11.

Fourth, as described in greater detail above and in the Becker Declaration, the Debtors and the DIP Lenders negotiated the DIP Loan Documents in good faith and at arms'- length, and the Debtors' entry into the DIP Loan Documents is an exercise of their sound business judgment.

The DIP Financing is on the most favorable terms available to the Debtors under current market conditions and the Debtors' financial condition. In light of all these factors, the Debtors should be authorized to secure the DIP Financing with first priority senior priming liens.

D. The Interests of the Prepetition Secured Parties Are Adequately Protected

The DIP Financing adequately protects the interests of the Prepetition ABL Lenders and the Prepetition Term Loan Lenders, both of which are consenting to the DIP Financing on the terms set forth in the DIP Orders. First, the interests of the Prepetition ABL Creditors are protected because DIP Financing rolls up the Preptition ABL Obligations on a "creeping" basis, with all of the remaining Prepetition ABL Obligations rolled up upon the entry of the Final Order. Second, the DIP Orders provide for (i) the Adequate Protection Liens (as defined in the DIP Orders) to secure the Prepetition Secured Obligations and Adequate Protection Superpriority Claims (as defined in the DIP Orders) with respect to the Prepetition Secured Obligations; (ii) additional adequate protection in the form of payments of interest at the default rate, fees and expenses (including attorneys' fees and expenses), indemnities and other amounts with respect to the Prepetition Secured Obligations in accordance with the Prepetition Credit Documents; (iii) certain rights in connection with the sale of the Debtors' assets; (iv) access to information; and (v) superpriority claims to the extent that the Adequate Protection Liens do not adequately protect against any diminution in value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral..

A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may

be provided in various forms, including payment of adequate protection fees, payment of interest or granting of replacement liens or administrative claims. *See, e.g.*, *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985) ("[S]uch matters 'are [to be] left to case-by-case interpretation and development.'") (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 339, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6295); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted).

The critical purpose of adequate protection is to guard against the diminution of a secured creditor's collateral during the period when such collateral is being used by the debtor in possession. *See Martin*, 761 F.2d at 474; *In re Johnson*, 90 B.R. 973, 978 (Bankr. D. Minn. 1988) (holding that secured creditor is not impaired and is not entitled to receive adequate protection payments where value of collateral does not decline); *495 Cent. Park*, 136 B.R. at 631 ("The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization."); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

Further, courts in this district and others have approved similar forms of adequate protection for prepetition secured creditors. *See, e.g.*, *In re Duke and King Acquisition Corp.*, No. 10-38652 (GFK) (Bankr. D. Minn. Jan. 24, 2011) [ECF No. 138] (authorizing replacement liens to prepetition secured creditors for the use of cash collateral); *In re Otter Tail AG Enters., LLC*,

2009 Bankr. LEXIS 5352, at *10-11 (Bankr. D. Minn. Nov. 20, 2009) (granting, inter alia, adequate protection liens for the use of cash collateral); *In re Schwing America, Inc.*, No. 09¬ 36760 (NCD) (Bankr. D. Minn. Oct. 2, 2009) [ECF No. 15] (granting replacement liens in connection with authorizing postpetition financing on an interim basis); *In re Polaroid Corp.*, No. 08-46617 (GFK) (Bankr. D. Minn. Jan. 27, 2009) [ECF No. 70] (authorizing replacement liens to prepetition secured creditors for the use of cash collateral); *In re Premium Protein Prods.*, LLC, 2009 Bankr. LEXIS 5285, at *26–27 (Bankr. D. Neb. Nov. 18, 2009) (granting adequate protection liens and superpriority claims pursuant to 507(b) to prepetition lenders); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 12, 2012) (granting, inter alia, first and second lien adequate protection liens); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2012) [ECF No. 275] (granting, inter alia, DIP liens, adequate protection liens and superpriority claims to secure DIP obligations); *In re NewPage Corp.*, No. 11-12804 (KG) (Bankr. D. Del. Oct. 5, 2011).

Accordingly, the Court should find that the adequate protection provided to the Prepetition Secured Parties is fair and reasonable, and satisfies the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

E. The Roll-Up of the ABL Loan Should Be Approved

Prior to the entry of the Final Order, proceeds of the DIP Collateral will be applied to the Prepetition ABL Obligations, thereby rolling up the Prepetition ABL Obligations on a "creeping" basis. The repayment of the Prepetition ABL Obligations in accordance with the Interim Order is necessary, as the Prepetition ABL Creditors have not otherwise consented to the use of Cash Collateral or the subordination of the Prepetition ABL Agent's liens to the DIP Liens (as defined herein), and the DIP Credit Parties are not willing to provide the DIP Facility unless

the Prepetition ABL Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility) are paid in full upon the entry of the Final Order and as otherwise set forth in the DIP Orders. Taking into account the nature of this proposed transaction, the Debtors carefully considered its terms. The Prepetition ABL Facility was provided by the same Prepetition ABL Lenders that are proposing to provide the DIP Financing. The DIP Financing is essential to a successful Chapter 11 process, and the Prepetition ABL Lenders are the only viable source of this crucial financing. The Debtors submit that the roll-up is appropriate and in the best interests of their estates.

Moreover, such roll-ups of prepetition debt are often approved at the outset of a chapter 11 case. *See, e.g., In re Patriot Coal Corp.*, No. 12-12900 (ALG) (Bankr. S.D.N.Y. July 11, 2012); *In re Eastman Kodak Co.*, No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 20, 2012); *In re NewPage Corp.*, No. 11-12804 (KG) (Bankr. D. Del. Oct. 5, 2011); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011); *In re Bear Island Paper Co., L.L.C.*, No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010); *In re Calpine Corp.*, No. 05¬ 60200 (BRL) (Bankr. S.D.N.Y. Mar. 5. 2007); *In re Rowe Cos.*, No. 06-11142 (KRH) (Bankr. E.D. Va. Oct. 16, 2006).

III. THE DEBTORS SHOULD BE AUTHORIZED TO USE THE CASH COLLATERAL

Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that: The trustee may not use, sell, or lease cash collateral . . . unless—

> (A) each entity that has an interest in such cash collateral consents; or
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of [section 363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

The Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. First, as explained above, the Prepetition ABL Agent and the Prepetition Term Loan Agent have consented to the use of their Cash Collateral on the terms set forth in the DIP Orders. Second, as described above, the Debtors are providing the Prepetition Secured Parties with (i) the Adequate Protection Liens (as defined in the DIP Orders) to secure the Prepetition Secured Obligations and Adequate Protection Superpriority Claims (as defined in the DIP Orders) with respect to the Prepetition Secured Obligations; (ii) additional adequate protection in the form of payments of interest at the default rate, fees and expenses (including attorneys' fees and expenses), indemnities and other amounts with respect to the Prepetition Secured Obligations in accordance with the Prepetition Credit Documents; (iii) certain rights in connection with the sale of the Debtors' assets; (iv) access to information; and (v) superpriority claims to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral. The interests of the Prepetition Secured Parties are thus adequately protected from diminution in value. Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

IV. THE DEBTORS SHOULD BE AUTHORIZED TO PAY THE FEES IN CONNECTION WITH THE DIP FINANCING

As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders in connection with the DIP Financing. Specifically, the Debtors will pay a 0.25% Arrangement Fee and a 1.0% Commitment Fee. The Debtors have also agreed to pay a 1% Consent Fee to the Term Loan Agent in connection with the provision of adequate protection. The fees the Debtors have agreed to pay to the DIP Agent and the DIP Lenders and other obligations under the DIP Credit Agreement represent the most favorable terms on which the DIP Lenders would agree to make the DIP Financing available. The fees are in line with market rates and other DIP facilities approved in recent retail cases. *See* Spencer Decl. ¶ 11. The Debtors considered the fees when determining in their sound business judgment that the DIP Loan Documents constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute these Cases, and paying these fees in order to obtain the DIP Financing is in the best interests of the Debtors' estates and creditors and other parties in interest.

V. THE SCOPE OF THE DIP CARVE-OUT IS APPROPRIATE

The DIP Financing subjects the security interests and administrative expense claims of the DIP Lenders to the DIP Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their professionals in certain circumstances during an event of default under the terms of the debtor's postpetition financing. *See Ames*, 115 B.R. at 40. The DIP Financing does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *Id*. at 38 (observing that courts insist on carve-outs for professionals representing

parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the DIP Carve-Out protects against administrative insolvency during the course of these Cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees of the Debtors and the Creditors' Committee notwithstanding the grant of superpriority claims and the DIP Liens and Adequate Protection Liens.

Courts in this district and others routinely approve of carve-outs agreed to by the debtors and their DIP financing lenders. *See, e.g., In re Genmar Holdings, Inc.*, No. 09-43537 (Bankr. D. Minn. June 4, 2009) [ECF No. 23]; *In re US Fidelis, Inc.*, 2010 Bankr. LEXIS 5837, at *18 (Bankr. E.D. Mo. May 28, 2010); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *18-19 (Bankr. W.D. Mo. July 14, 2009); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011).

VI. THE DIP CREDIT PARTIES AND PREPETITION SECURED CREDITORS SHOULD BE DEEMED TO HAVE ACTED IN GOOD FAITH UNDER SECTION 364(E)

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

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

11 U.S.C. § 364(e).

As explained in detail herein and in the Becker Declaration and the Spencer Declaration, the DIP Loan Documents and proposed DIP Orders are the result of the Debtors' reasonable and informed determination that the DIP Credit Parties offered the most favorable terms on which to obtain needed postpetition financing, and of arm's-length, good faith negotiations between the Debtors, the DIP Credit Parties, and the Prepetition Secured Creditors. The terms and conditions of the DIP Loan Documents are fair and reasonable, the adequate protection provided to the Prepetition Secured Creditors is fair and reasonable, and the proceeds of the DIP Financing will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the DIP Credit Parties and Prepetition Secured Creditors are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

VII. MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED FOR THE DIP LENDERS AND DIP AGENT

The DIP Loan Documents contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the DIP Credit Agreement, and to take various other actions without further order of or application to the Court, subject to the Remedies Notice Period. The Remedies Notice Period provides the Debtors three business days to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred, during which time the DIP Agent may not exercise remedies.

Stay modification provisions of this sort are ordinary features of DIP financing and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In re Premium Protein Prods., LLC,* 2009 Bankr. LEXIS 5285, at *31–32 (Bankr. D. Neb. Nov. 18, 2009); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *19 (Bankr. W.D. Mo. July 14, 2009); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2012); *In re Eastman Kodak Co.*, No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012); *In re Roomstore, Inc.*, No. 11-37790 (KLP) (Bankr. E.D. Va. Jan. 5, 2012); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011); *In re Canal Corp. f/k/a Chesapeake Corp.*, No. 08-36642 (DOT) (Bankr. E.D. Va. Feb. 3, 2009); *In re Circuit City Stores, Inc.*, No. 08-35653 (KRH) (Bankr. E.D. Va. Dec. 23, 2008).

VIII. THE DEBTORS REQUIRE IMMEDIATE ACCESS TO THE DIP FINANCING

The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts in this jurisdiction generally apply the same business judgment standard applicable to other business decisions. *See Ames Dep't Stores*, 115 B.R. at 36.

The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtors to borrow up to $110 million under the DIP Financing, is not granted promptly after the Petition Date. Further, the Debtors anticipate that the commencement of these Cases will significantly and immediately increase the demands on their free cash as a result of, among other things, the costs of administering these Cases and

addressing key constituents' concerns regarding the Debtors' financial health and ability to continue operations in light of these Cases. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, continue the operation of their businesses, maintain their relationships with customers, meet payroll, pay capital expenditures, procure goods and services from vendors and suppliers and otherwise satisfy their working capital and operational needs, all of which is required to preserve and maintain the Debtors' enterprise value for the benefit of all parties in interest.

The importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized in this district and others in similar circumstances. *See, e.g., In re Genmar Holdings, Inc.*, No. 09-43537 (Bankr. D. Minn. June 4, 2009) [ECF No. 23] (approving DIP loan with granting of senior lien); *In re US Fidelis, Inc.*, 2010 Bankr. LEXIS 5837, at *10 (Bankr. E.D. Mo. May 28, 2010) (authorizing secured postpetition financing on a superpriority basis); *In re Premium Protein Prods., LLC*, 2009 Bankr. LEXIS 5285, at *6-9 (Bankr. D. Neb. Nov. 18, 2009) (authorizing debtor to incur postpetition secured indebtedness on an interim basis); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *7 (Bankr. W.D. Mo. July 14, 2009) (authorizing postpetition secured financing with superpriority DIP liens priming prepetition secured construction loan); *In re Va. United Methodist Homes of Williamsburg, Inc.*, No. 13-31098 (KRH) (Bankr. E.D. Va. Mar. 6, 2013) (approving postpetition financing on an interim basis); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Nov. 14, 2012) (same); *In re Patriot Coal Corp.*, No. 12¬12900 (ALG) (Bankr. S.D.N.Y. July 11, 2012); *In re Eastman Kodak Co.*, No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 20, 2012) (same); *In re Roomstore, Inc.*, No. 11-37790 (KLP) (Bankr. E.D. Va. Dec. 14, 2011) (same); *In re Bear Island Paper Co., L.L.C.*, No. 10-31202 (DOT)

(Bankr. E.D. Va. Feb. 26, 2010) (same); *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 8, 2009) (same). Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court grant the relief requested in the Motion.

Dated: March 10, 2017

/e/ James C. Brand

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PROPOSED ATTORNEYS FOR DEBTORS

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Gander Mountain Company,

Case No.: 17-30673
Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

Case No.: 17-30675
Chapter 11 Case

Debtor.

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507 (I) GRANTING EXPEDITED RELIEF, (II) APPROVING POSTPETITION FINANCING, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) AUTHORIZING USE OF CASH COLLATERAL, (V) GRANTING ADEQUATE PROTECTION, (VI) MODIFYING AUTOMATIC STAY, AND (VII) GRANTING RELATED RELIEF

THIS MATTER having come before the Court upon the motion (the "**Motion**") by GANDER MOUNTAIN COMPANY, a Minnesota corporation (the "**Lead Borrower**"), OVERTON'S, INC., a North Carolina corporation, each as a debtor and debtor-in-possession (collectively the "**Debtors**") in the above-captioned Chapter 11 cases (collectively, the "**Cases**"), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 507 of title 11 of the United States Code, (11 U.S.C. §§ 101, *et seq.*, as amended, the "**Bankruptcy Code**"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), seeking entry of an interim order (this "**Interim Order**") and final order, *inter alia*:

(i) authorizing, under Sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain secured, superpriority post-petition loans, advances and other financial accommodations (the "**DIP Facility**"), on an interim basis for a period through and including the date of the Final Hearing (as defined below), pursuant to the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**") by and among (a) the Lead Borrower, (b) the other Borrowers[1] party thereto from time to time, (c) the Guarantors party thereto from time to time, (d) Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities herein, the "**DIP Agent**") for its own benefit and the benefit of the other Credit Parties, and (e) the Lenders from time to time party thereto (the "**DIP Lenders**" and each a "**DIP Lender**"; the DIP Agent, the DIP Lenders and the other Credit Parties under the DIP Loan Documents (as defined below) are collectively referred to herein as the "**DIP Credit Parties**"), filed as Exhibit C to the Motion; and

[1] Capitalized terms used by not defined herein have the meanings given to them in the DIP Loan Documents.

(ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and all other related documents and agreements, including security agreements, deposit account control agreements, pledge agreements, guaranties and promissory notes (collectively, the "**DIP Loan Documents**") and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents; and

(iii) until the Termination Date, and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Interim Order, authorizing the Debtors, prior to the entry of the Final Order, to request extensions of credit under the DIP Facility up to an aggregate principal amount of $110,000,000 at any one time outstanding (the "**Interim Financing**"); and

(iv) granting allowed superpriority administrative expense claim status pursuant to Section 364(c)(1) of the Bankruptcy Code in each of the Cases and any Successor Cases (as defined herein) to all obligations owing under the DIP Credit Agreement and the other DIP Loan Documents (collectively, and including all "Obligations" as described in the DIP Credit Agreement, including, without limitation, all obligations with respect to cash management services, bank products and letters of credit issued or deemed issued under the DIP Credit Agreement, respectively, and, together, the "**DIP Obligations**"), subject to the priorities set forth herein; and

(v) authorizing the Debtors to use "Cash Collateral," as defined in Section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to Bankruptcy Code Section 361 and 363 and Bankruptcy Rules 4001(b) and 6004; and

(vi) granting to the DIP Agent, for the benefit of the DIP Credit Parties, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including,

without limitation, all property constituting "Cash Collateral" as defined in Section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth herein; and

(vii) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Loan Documents as they become due, including, without limitation, continuing commitment fees, closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, the reasonable fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, and all related expenses of the DIP Credit Parties, all to the extent provided by and in accordance with the terms of the respective DIP Loan Documents and the Approved Budget; and

(viii) authorizing and directing the Debtors to pay in full the Prepetition ABL Obligations (as defined herein) upon the entry of the Final Order (as defined herein) and as set forth herein, subject to the rights of parties in interest described in paragraphs 35 and 36 of this Interim Order; and

(ix) providing adequate protection to the Prepetition Secured Creditors (as defined herein) to the extent set forth herein; and

(x) vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;

(xi) granting related relief; and

(xii) scheduling a final hearing (the "**Final Hearing**") to consider the relief requested in the Motion.

The Court having considered the verified Motion, the Declaration of Timothy Becker in support of the Chapter 11 petitions and first day motions, including the Motion and the exhibits

attached thereto, the Declaration of Stephen Spencer of Houlihan Lokey, the DIP Loan Documents, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion (the "**Interim Hearing**"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Bankruptcy Rule 9013-1; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS OF DECLARATIONS, THE FACTS IN THE VERIFIED MOTION AND THE REPRESENTATIONS OF COUNSEL, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW: [2]

A. *Petition Date*. On March 10, 2017 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota (the "**Court**") commencing these Cases.

[2] The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

B. *Debtors in Possession*. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. *Jurisdiction and Venue*. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Interim Order are Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rule 4001-2.

D. *Committee Formation*. As of the date hereof, the Office of the United States Trustee (the "**U.S. Trustee**") has not appointed any official committee of unsecured creditors in these Cases pursuant to Section 1102 of the Bankruptcy Code (a "**Committee**").

E. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraphs 35 and 36 herein, the Debtors (on behalf of and for themselves) admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(x) below are referred to herein as the "**Debtors' Stipulations**"):

(i) *Prepetition ABL Credit Documents*. As of the Petition Date, the Debtors had outstanding secured debt to various lenders pursuant to that certain Credit Agreement dated as of April 11, 2011 (as amended, modified and supplemented from time to time, the "**Prepetition ABL Credit Agreement**" and together with all related documents, guaranties and agreements, the "**Prepetition ABL Credit Documents**"), by and among (a) the Lead Borrower,

(b) the other Borrowers party thereto from time to time, (c) the Guarantors party thereto from time to time, (d) Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities herein, the "**Prepetition ABL Agent**") for its own benefit and the benefit of the other "Credit Parties" (as defined therein), and (e) the Lenders from time to time party thereto (the "**Prepetition ABL Lenders**" and each a "**Prepetition ABL Lender**"; the Prepetition ABL Agent, the Prepetition ABL Lenders and the other "Credit Parties" under the Prepetition ABL Credit Documents are collectively referred to herein as the "**Prepetition ABL Creditors**").

(ii) *Prepetition ABL Obligations*. As of March 9, 2017, the aggregate outstanding principal amount owed by the Debtors under the Prepetition ABL Credit Documents was not less than $389,570,717.99, consisting of Tranche A revolving credit loans in the outstanding principal amount of $359,557,399.02, Tranche A-1 revolving credit loans in the outstanding principal amount of $26,897,592.97 and issued and outstanding letters of credit in the amount of $3,115,726.00 (collectively, together with any interest, fees (including, without limitation, any termination and prepayment fees), costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition ABL Credit Documents, and further including all "Obligations" as described in the Prepetition ABL Credit Agreement, and all interest, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition ABL Obligations**").

(iii) *Prepetition Term Loan Documents*. As of the Petition Date, the Debtors also had outstanding secured debt to various lenders pursuant to that certain Term Loan Credit Agreement dated as of June 17, 2015 (as amended, modified and supplemented from time to time, the "**Prepetition Term Loan Agreement**" and together with all related documents,

guaranties and agreements, the "**Prepetition Term Loan Documents**"), by and among (a) the Lead Borrower, (b) the other Borrowers party thereto from time to time, (c) the Guarantors party thereto from time to time, (d) Pathlight Capital LLC, as administrative agent and collateral agent (in such capacity herein, the "**Prepetition Term Loan Agent**") for its own benefit and the benefit of the other "Credit Parties" (as defined therein), and (e) the Lenders from time to time party thereto (the "**Prepetition Term Loan Lenders**" and each a "**Prepetition Term Loan Lender**"; the Prepetition Term Loan Agent, the Prepetition Term Loan Lenders and the other "Credit Parties" under the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Term Loan Creditors**"). The Prepetition ABL Creditors and the Prepetition Term Loan Creditors are collectively referred to herein as the "**Prepetition Secured Creditors**" and the Prepetition ABL Credit Documents and the Prepetition Term Loan Documents are collectively referred to herein as the "**Prepetition Credit Documents**".

(iv) *Prepetition Term Loan Obligations*. As of the Petition Date, the aggregate outstanding principal amount owed by the Debtors under the Prepetition Term Loan Documents was not less than $35,000,000 (together with any interest, fees (including, without limitation, prepayment fees), costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Term Loan Documents, and further including all "Obligations" as described in the Prepetition Term Loan Agreement, and all interest, fees, costs and other charges allowable under Section 506(b) of the Bankruptcy Code, the "**Prepetition Term Loan Obligations**"; the Prepetition ABL Obligations and the Prepetition Term Loan Obligations are collectively referred to herein as the "**Prepetition Secured Obligations**").

(v) *Prepetition Senior Liens and Intercreditor Agreement.* As more fully set forth in the Prepetition Credit Documents, prior to the Petition Date, the Debtors granted security

interests in and liens on substantially all personal property of the Debtors, including, without limitation, accounts, inventory, equipment and general intangibles (collectively, the "**Prepetition Collateral**"), to the Prepetition ABL Agent and the Prepetition Term Loan Agent (collectively, the "**Prepetition Senior Liens**") to secure repayment of the Prepetition Secured Obligations. Pursuant to that certain Intercreditor Agreement dated as of June 17, 2015 (as amended, modified and supplemented from time to time, the "**Intercreditor Agreement**"), by and between the Prepetition ABL Agent and the Prepetition Term Loan Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Creditors with respect to the Prepetition Collateral. Subject to certain limitations set forth therein, the Intercreditor Agreement, provides, among other things, that the liens securing the Prepetition Term Loan Obligations are subordinate and junior to the liens securing the Prepetition ABL Obligations.

(vi) *Validity, Perfection and Priority of Prepetition Senior Liens and Prepetition Secured Obligations*. The Debtors (without limiting the rights of other parties in interest under paragraphs 35 and 36 of this Interim Order), and the Prepetition Secured Creditors acknowledge and agree that: (a) the Prepetition Senior Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected, (b) the Prepetition Senior Liens have priority over any and all other liens, if any, on the Prepetition Collateral, subject only to certain other liens otherwise permitted by the Prepetition Credit Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Senior Liens as of the Petition Date, the "**Prepetition Permitted Liens**") and otherwise had priority over any and all other liens on the Prepetition

Collateral,[3] provided that, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed or treated hereunder as a Prepetition Permitted Lien; (c) the Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors and constitute "allowed claims" within the meaning of Section 502 of the Bankruptcy Code; (d) no offsets, challenges, objections, defenses, claims, impairment or counterclaims of any kind or nature to any of the Prepetition Senior Liens or the Prepetition Secured Obligations exist, and no portion of the Prepetition Senior Liens or the Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, recoupment, reductions, setoff or subordination (whether equitable, contractual or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law[4]; (e) the Debtors and their estates have no claims, objections, challenges, causes of actions, counterclaims, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against any of the Prepetition Secured Creditors or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Credit Documents; (f) as of the Petition Date, the value of the

[3] For purposes of this Interim Order, Prepetition Permitted Liens shall include liens that were valid, senior, enforceable, nonavoidable, and perfected under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Prepetition Permitted Liens are valid, senior, enforceable, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the DIP Agent, the Prepetition Secured Creditors and any Committee to challenge, consistent with the terms of this Interim Order, the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Lien and/or security interest. The rights and remedies of any holder of a Prepetition Permitted Lien pursuant to the applicable documents and applicable law are reserved.

[4] The Debtors (without limiting the rights of other parties in interest under paragraphs 35 and 35 of this Interim Order) acknowledge and agree that any defenses the Debtors may have had with respect to the accrual of default interest on the Prepetition Secured Obligations prior to the Petition Date have been unconditionally and irrevocably released and discharged by the Debtors pursuant to the terms of this Interim Order.

Prepetition Collateral securing the Prepetition Secured Obligations exceeded the amount of those obligations, and accordingly the Prepetition Secured Obligations are allowed secured claims within the meaning of Section 506 of the Bankruptcy Code, together with accrued and unpaid and hereafter accruing interest, fees (including, without limitation, attorneys' fees and related expenses), costs and other charges, and further including the Prepetition ABL Indemnity Reserve and Prepetition Term Loan Indemnity Reserve (as defined herein).

(vii) *Cash Collateral*. The Debtors acknowledge and stipulate that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute Cash Collateral and is Prepetition Collateral of the Prepetition Secured Creditors.

(viii) *Default by the Debtors*. The Debtors acknowledge and stipulate that the Debtors are presently in default under each of the Prepetition ABL Documents and the Prepetition Term Loan Documents.

(ix) *No Other Liens*. As of the Petition Date, other than the Prepetition Permitted Liens or as permitted by the Prepetition Credit Documents, there were no security interests or liens on the Prepetition Collateral other than the Prepetition Senior Liens.

(x) *Release*. The Debtors hereby forever, unconditionally and irrevocably release, discharge and acquit the Prepetition ABL Agent, the Prepetition Term Loan Agent, the DIP Agent, the DIP Credit Parties, the Prepetition Secured Creditors, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "**Releasees**") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation,

reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the negotiations over and entry into the DIP Facility or the DIP Loan Documents, the Prepetition Credit Documents, the Prepetition Senior Liens and/or the transactions contemplated hereunder or thereunder including, without limitation, (A) any so-called "lender liability" or equitable subordination claims or defenses, (B) any and all claims and causes of action arising under the Bankruptcy Code, and (C) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the DIP Liens, DIP Obligations, Prepetition Credit Documents, Prepetition Secured Obligations and the Prepetition Senior Liens. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Secured Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to the Bankruptcy Court entering this Interim Order and, if applicable, the Final Order.

F. *Intercreditor Agreement.* The Prepetition ABL Agent, the Prepetition Term Loan Agent and the Debtors stipulate and agree that the Intercreditor Agreement is a "subordination agreement" within the meaning of Section 510(a) of the Bankruptcy Code. The DIP Agent, the DIP Lenders and the Prepetition Secured Creditors have agreed that their respective interests in the Prepetition Collateral and DIP Collateral shall continue to be governed by the Intercreditor Agreement unless otherwise expressly provided by this Interim Order.

G. *Findings Regarding the Postpetition Financing*.

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Loan Documents, (b)

repay the remaining Prepetition ABL Obligations upon the entry of the Final Order and as otherwise set forth herein, and (c) use Cash Collateral on the terms described herein to administer their Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing arrangements and use of Cash Collateral arrangements pursuant to a proposed final order (the "**Final Order**"), which shall be in form and substance acceptable to the DIP Agent. Notice of the Final Hearing and Final Order was provided in the Motion.

(ii) *Priming of the Prepetition Senior Liens; Consent to Use of Cash Collateral*. The priming of each of the Prepetition Senior Liens on the Prepetition Collateral by the DIP Liens as set forth in this Interim Order will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. Each Prepetition Secured Creditor has consented to such priming liens, to the Debtors' use of Cash Collateral, and to the subordination of the Prepetition Senior Liens to the DIP Carve-Out on the terms and conditions set forth in this Interim Order and is entitled to receive adequate protection of its interests as more fully described below.

(iii) *Immediate Need for Postpetition Financing and Use of Cash Collateral*. The Debtors' need to use Cash Collateral and to obtain credit pursuant to the DIP Facility is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay their employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders, and the possibility

for a successful administration of these Cases. As demonstrated in the Approved Budget and otherwise, the Debtors do not have sufficient available sources of working capital and financing to operate their businesses or to maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Credit Parties on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. The Debtors made inquiries of third parties seeking alternative funding proposals and no offers of financing on any terms were obtained. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of the DIP Credit Parties, (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims and (3) the other protections set forth in this Interim Order.

(v) *Use of Proceeds of the DIP Facility*. As a condition to entry into the DIP Credit Agreement, the extensions of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Credit Parties require, and the Debtors have agreed, that proceeds of the DIP Facility shall be used (a) for the repayment in full in cash of all remaining Prepetition ABL

Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility) upon the entry of the Final Order (other than contingent indemnification obligations), and (b) in a manner consistent with the terms and conditions of the DIP Loan Documents and this Interim Order and in accordance with the Approved Budget (a copy of which is attached to the Motion as an exhibit, as the same may be modified from time to time consistent with the terms of the DIP Loan Documents, and subject to such variances as may be permitted thereby, the "**Approved Budget**"), solely for (i) post-petition capital expenditures, operating expenses and other working capital, (ii) certain transaction fees and expenses, (iii) permitted payment of costs of administration of the Cases, including professional fees, (iv) adequate protection payments to the Prepetition Secured Creditors as set forth herein, and (v) as otherwise permitted under the DIP Loan Documents, as applicable. The repayment of the Prepetition ABL Obligations in accordance with this Interim Order is necessary, as the Prepetition ABL Creditors have not otherwise consented to the use of Cash Collateral or the subordination of the Prepetition ABL Agent's liens to the DIP Liens (as defined herein), and the DIP Credit Parties are not willing to provide the DIP Facility unless the Prepetition ABL Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility) are paid in full upon the entry of the Final Order and as otherwise set forth herein. Such payments will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraphs 35 and 36 herein.

(vi) *Application of Proceeds of DIP Collateral*. As a condition to entry into the DIP Loan Documents, the extension of credit under the DIP Facility, and the authorization to use Cash Collateral, the Debtors and the DIP Agent have agreed that the proceeds of DIP Collateral (as defined herein) shall be applied in accordance with paragraph 18(a) of this Interim Order. The extension of the DIP Facility and the repayment of the Prepetition ABL Obligations are part of an integrated transaction. Such payments will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraphs 35 and 36 hereunder.

H. *Adequate Protection*. As a result of the grant of the DIP Liens, the incurrence of the DIP Obligations, the subordination of the Prepetition Senior Liens to the DIP Carve-Out, the use of Cash Collateral authorized herein, and the imposition of the automatic stay, the Prepetition Secured Creditors are entitled to receive adequate protection pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and as set forth in paragraphs 12 and 13 of this Interim Order. As adequate protection, the Prepetition ABL Creditors shall receive, and the Prepetition Term Loan Creditors shall receive, subject to the Intercreditor Agreement, among other things, (i) the Adequate Protection Liens (as defined herein) to secure the Prepetition Secured Obligations and Adequate Protection Superpriority Claims (as defined herein) with respect to the Prepetition Secured Obligations, and (ii) additional adequate protection in the form of payments of interest at the default rate, fees and expenses (including attorneys' fees and expenses), indemnities and other amounts with respect to the Prepetition Secured Obligations in accordance with the Prepetition Credit Documents.

I. *Sections 506(c) and 552(b)*. In light of (i) the DIP Agent's agreement to subordinate its liens and superpriority claims, as applicable, to the DIP Carve-Out (as defined

herein); and (ii) each Prepetition Secured Creditor's agreement to subordinate the Adequate Protection Superpriority Claims and the Adequate Protection Liens to the DIP Carve-Out, the DIP Liens, and the DIP Superpriority Claim, in each case as applicable and subject to the Intercreditor Agreement, subject to approval by the Court in the Final Order, each of the DIP Credit Parties and each Prepetition Secured Creditor is entitled to the benefits of a waiver of (a) the provisions of Section 506(c) of the Bankruptcy Code as provided herein or in the Final Order, and (b) any "equities of the case" claims under Section 552(b) of the Bankruptcy Code.

J. *Good Faith of the DIP Credit Parties*.

(i) *Willingness to Provide Financing*. Each of the DIP Credit Parties has indicated a willingness to provide financing to the Debtors subject to: (a) the entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Loan Documents and the payoff of the Prepetition ABL Obligations as contemplated by this Interim Order; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that each of the DIP Credit Parties is extending credit to the Debtors pursuant to the DIP Loan Documents in good faith, and that each of the DIP Credit Parties' claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to this Interim Order and the DIP Loan Documents will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The extension of credit under the DIP Facility reflects the Debtors' exercise of prudent business judgment, consistent with their fiduciary duties, and is supported by reasonably equivalent value

and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Credit Parties. The use of Cash Collateral and credit to be extended under the DIP Loan Documents shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and each of the DIP Credit Parties is therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order.

K. *Notice*. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee for the District of Minnesota; (ii) the Internal Revenue Service; (iii) the collection division of the Minnesota Department of Revenue; (iv) the creditors included on the Debtors' lists of twenty (20) largest unsecured creditors; (v) counsel to the Prepetition ABL Agent; (vi) counsel to the Prepetition Term Loan Agent; and (viii) other parties specified in Local Rule 9013-3(a)(2). The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

L. *Immediate Entry*. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The Motion is granted on an interim basis, the Interim Financing (as defined herein) is authorized and approved on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.

2. Objections Overruled. All objections to the Interim Financing to the extent not withdrawn or resolved are hereby overruled.

DIP Facility Authorization

3. Authorization of the DIP Financing and DIP Loan Documents. The Debtors are expressly and immediately authorized and empowered (i) to execute and deliver the DIP Loan Documents, (ii) to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order, the DIP Loan Documents and the Approved Budget, (iii) to deliver all instruments and documents that may be necessary or required for performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Documents, and (iv) subject to the rights of third parties pursuant to paragraphs 35 and 36 below and the entry of the Final Order, to pay and perform all obligations under the Prepetition Credit Documents in accordance with the terms set forth herein, including to provide for (x) the releases in favor of each of the Prepetition Secured Creditors and the other Releasees and (y) repayment in full in cash of the Prepetition ABL Obligations (other than contingent indemnification obligations and obligations with respect to cash management services, bank products and letters of credit, each of which shall remain outstanding and be deemed to be bank products, cash management services and letters of credit under the DIP Facility). The Debtors are hereby authorized to pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due and without need to obtain further Court approval, including, without limitation, commitment fees,

closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, and the reasonable fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, whether or not the transactions contemplated hereby are consummated, all to the extent provided in the DIP Loan Documents, with invoices to be provided in accordance with paragraph 28 below. All collections and proceeds, whether from ordinary course collections, asset sales, debt issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding, and joint and several, obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

4. Authorization to Borrow. Until the Termination Date, and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Interim Order, and in order to prevent immediate and irreparable harm to the Debtors' estates, the Debtors are hereby authorized, prior to the entry of the Final Order, to request extensions of credit under the DIP Facility up to an aggregate principal amount of $110,000,000 at any one time outstanding. No other corporate action is required for the Debtors to execute and deliver the DIP Loan Documents, perform their obligations thereunder or request any extension of credit under the DIP Facility as set forth herein.

5. DIP Obligations. The DIP Loan Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Cases, or any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the

Cases (collectively, "**Successor Cases**"). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Credit Parties under the DIP Loan Documents or this Interim Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant to the DIP Loan Documents, and shall be joint and several obligations of the Debtors in all respects.

6. Postpetition Liens and Collateral.

(a) Effective immediately upon the entry of this Interim Order, pursuant to Sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Debtors are authorized to grant and do hereby grant to the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) continuing valid, binding, enforceable, non-avoidable and automatically and properly perfected postpetition security interests in and liens on (collectively, the "**DIP Liens**") any and all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following (the "**DIP Collateral**"):[5]

(i) all Accounts;

(ii) all Goods, including Equipment, Inventory and Fixtures;

(iii) all Documents, Instruments and Chattel Paper;

(iv) all Letters of Credit and Letter-of-Credit Rights;

(v) all Securities Collateral;

(vi) all Investment Property;

[5] All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Loan Documents. All terms not specifically defined in the DIP Loan Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code, as applicable.

(vii) all Intellectual Property Collateral;

(viii) all Commercial Tort Claims;

(ix) all General Intangibles (including, without limitation, all Payment Intangibles);

(x) all Deposit Accounts (including, without limitation, the Concentration Account and all Blocked Accounts);

(xi) all Supporting Obligations;

(xii) all money, cash or cash equivalents;

(xiii) all credit balances, deposits and other property now or hereafter held or received by or in transit to the DIP Agent or at any other depository or other institution from or for the account of any Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xiv) all proceeds of leases of real property;[6]

(xv) all owned real property;

(xvi) subject to approval by the Court in the Final Order, all proceeds of claims or causes of action that the Debtors may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors or the estates of the Debtors under Chapter 5 of the Bankruptcy Code and any and all recoveries and settlements thereof (the "**Bankruptcy Recoveries**"), limited to (A) the full amount of any such recovery or settlement to the extent arising under Section 549 of the Bankruptcy Code and (B) all amounts necessary to reimburse the DIP Credit Parties for the amount of the DIP Carve-Out actually funded (the foregoing, the

[6] For the avoidance of doubt, the DIP Liens extend only to the proceeds of leased real property and are not direct liens on the Debtors' leases of real property unless such liens are expressly permitted pursuant to the underlying lease documents.

"**Specified Bankruptcy Recoveries**"); *provided, however*, for the avoidance of doubt, the DIP Superpriority Claim (as defined below) and the Adequate Protection Superpriority Claims (as defined below) of the Prepetition Secured Creditors shall be payable out of all Bankruptcy Recoveries;

(xvii) subject to approval by the Court in the Final Order, the Debtors' rights under Section 506(c) of the Bankruptcy Code and the proceeds thereof;

(xviii) to the extent not otherwise described above, all receivables and all present and future claims, rights, interests, assets and properties recovered by or on behalf of any Debtor;

(xix) copies of all books, records, and information relating to any of the foregoing and/or to the operation of any Debtor's business, and all rights of access to such books, records, and information, and all property in which such books, records and information are stored, recorded and maintained; and

(xx) to the extent not otherwise covered by clause (i) through (xix) above, all other personal property of each Debtor, whether tangible or intangible and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing, and any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.[7]

(b) Effective upon the entry of this Interim Order, (i) all DIP Liens and the DIP Carve-Out shall each be and remain at all times senior to the Prepetition Senior Liens, subject to the terms hereof, (ii) all existing blocked account agreements, deposit account control

[7] Notwithstanding anything to the contrary contained in this Interim Order, the DIP Liens shall not extend to, and the term "DIP Collateral" shall not include, any Excluded Property (as defined in the DIP Loan Documents).

agreements, securities account control agreements, credit card acknowledgements, credit card agreements, collateral access agreements, landlord agreements, warehouse agreements, bailee agreements, carrier agency agreements, customs broker agency agreements, subordination agreements (including any intercompany subordination agreements), and freight forwarder agreements constituting Prepetition ABL Credit Documents, and all existing Uniform Commercial Code filings and all existing filings with the United States Patent and Trademark Office or the United States Copyright Office with respect to the recordation of an interest in the intellectual property of the Debtors, which in each case were filed by the Prepetition ABL Agent, shall in each case be deemed to be delivered and/or filed in connection with the DIP Facility, shall constitute DIP Credit Documents and shall remain in full force and effect without any further action by the Debtors, the DIP Agent or any other person, and in each case the DIP Agent shall be deemed to be a party thereto, (iii) any and all references in any such agreements or documents referred to in clause (ii) above to the "Credit Agreement" shall hereafter be deemed to mean and refer to the Prepetition ABL Credit Agreement and the DIP Credit Agreement, and (iv) any and all references in any such agreements or documents referred to in clause (ii) above to the "Loan Documents" shall hereafter be deemed to mean and refer to the Prepetition ABL Credit Documents and the DIP Credit Documents, in each case as amended, modified, supplemented or restated and in effect from time to time. The DIP Agent is hereby deemed to be the successor to the Prepetition ABL Agent under the terms of the Intercreditor Agreement and shall have all of the rights, remedies and obligations accorded to the "ABL Agent" under the Intercreditor Agreement. Except as expressly set forth herein, nothing in this Interim Order shall be deemed to impair or otherwise modify the rights of the Prepetition ABL Agent or the

Prepetition Term Loan Agent under the Intercreditor Agreement as in effect prior to the date hereof.

7. DIP Lien Priority.

(a) *DIP Liens*. The DIP Liens shall be junior only to the (i) DIP Carve-Out, and (ii) the Prepetition Permitted Liens, and shall otherwise (subject to the terms hereof) be senior in priority and superior to the Prepetition Senior Liens and the Adequate Protection Liens (as defined herein) and the Adequate Protection Superpriority Claims (as defined herein) and any other security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral. Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases or any claim for reclamation or return (whether asserted pursuant to Section 546(c) of the Bankruptcy Code or otherwise), except as otherwise expressly permitted under the DIP Loan Documents. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to cases under Chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to challenge under Sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

(b) *Prepetition Senior Liens*. For the avoidance of doubt, the Prepetition Senior Liens shall be, subject to the Intercreditor Agreement, junior to the (i) DIP Carve-Out; (ii) DIP Liens; (iii) the Adequate Protection Liens described in paragraph 12 below; and (iv) the Adequate Protection Superpriority Claims.

(c) *Continuing Effect of Intercreditor Agreement.* Except as otherwise expressly set out herein: (x) the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition Term Loan Agent, and the Prepetition Secured Creditors shall remain bound by the terms and conditions set forth in the Intercreditor Agreement, including, without limitation, with respect to the Prepetition Collateral and the DIP Collateral, (y) nothing contained in this Interim Order shall be deemed to abrogate or limit the respective rights, claims and obligations of each of the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition Term Loan Agent, and the Prepetition Secured Creditors under the Intercreditor Agreement, and (z) the Intercreditor Agreement shall apply and govern the respective rights, obligations, and priorities of each of the DIP Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition Term Loan Agent, and the Prepetition Secured Creditors with respect to the Prepetition Collateral and the DIP Collateral in these Cases. All loans and advances made by the DIP Agent and/or DIP Lenders pursuant to and under the DIP Facility and all other DIP Obligations outstanding thereunder shall be deemed to be "ABL Obligations" under the Intercreditor Agreement.

8. DIP Superpriority Claim.

(a) *DIP Agent Superpriority Claim.* Upon entry of this Interim Order, the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) is hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the "**DIP Superpriority Claim**") for all DIP Obligations. The DIP Superpriority Claim shall be subordinate only to the DIP Liens, the DIP Carve-Out and Prepetition Permitted Liens, and shall otherwise have priority over any and all administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c)

(subject to approval by the Court in the Final Order), 507(a), 507(b), 546(c), 546(d), 726 and 1114 of the Bankruptcy Code.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof, including the Specified Bankruptcy Recoveries, subject only to the payment in full in cash of the DIP Obligations, the DIP Carve-Out and amounts secured by the Prepetition Permitted Liens to the extent paid from identifiable proceeds of the assets subject to such Prepetition Permitted Liens.

9. No Obligation to Extend Credit. No DIP Credit Party shall have any obligation to make any loan or advance under the DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit or the issuance of such letter of credit under the applicable DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Agent, in its sole discretion.

10. Use of DIP Facility Proceeds. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents, and in compliance with the Approved Budget, a copy of which has been delivered to the DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent.

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Loan Documents, and in accordance with the Approved Budget, the Debtors are authorized to use Cash Collateral until (i) the Termination Date or (ii) following the payment in full in cash of the DIP Obligations and the Prepetition ABL Obligations, the delivery of a Cash Collateral Termination Notice in the manner set forth in and subject to paragraph 26;

provided, however, that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral solely to meet payroll (other than severance) and payroll taxes and to pay expenses critical to the preservation of the Debtors and their estates as agreed by the DIP Agent in its sole discretion, in each case in accordance with the terms and provisions of the Approved Budget. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business (which shall be subject to further Orders of this Court), or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order and the DIP Loan Documents and in accordance with the Approved Budget.

Adequate Protection Provisions

12. Adequate Protection Liens; Adequate Protection Payments; Adequate Protection With Respect to Sales; Access to Records. As adequate protection for the interest of the Prepetition Secured Creditors in the Prepetition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, the incurrence of the DIP Obligations, the subordination of the Prepetition Senior Liens to the DIP Carve-Out, the Debtors' use of Cash Collateral, and any other diminution in value arising out of the imposition of the automatic stay or the Debtors' use, sale, depreciation, or disposition of the Prepetition Collateral and Cash Collateral during the pendency of the Cases, including the disposition of assets through Permitted Sales and the Initial Store Closing (collectively, "**Diminution in Value**"), the Prepetition Secured Creditors shall receive adequate protection as follows:

(a) *Creation of Adequate Protection Liens.* Each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Creditors) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Creditors) is hereby

granted, pursuant to Sections 361, 363 and 364(d) of the Bankruptcy Code, valid and perfected replacement and additional security interests in, and liens on all of the Debtors' right, title and interest in, to and under all DIP Collateral (the "**Adequate Protection Liens**"). To the extent provided in the Intercreditor Agreement, the Adequate Protection Liens granted to the Prepetition ABL Agent shall secure the Prepetition ABL Obligations and shall be senior to the Adequate Protection Liens granted to the Prepetition Term Loan Agent to secure the Prepetition Term Loan Obligations. The Adequate Protection Liens are and shall be (x) valid, binding enforceable and fully perfected as of the date hereof, (y) subordinate and subject only to (i) the DIP Liens, (ii) the Permitted Prior Liens and (iii) the DIP Carve-Out, and (z) in all instances, subject to the Intercreditor Agreement. Other than as set forth herein, until the indefeasible payment in full in cash of the Prepetition Secured Obligations, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to cases under Chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Cases or Successor Cases.

(b) *Adequate Protection Payments*. The Prepetition Secured Creditors shall receive additional adequate protection in the form of the following:

(i) in the case of the Prepetition ABL Creditors, (A) the current payment of the reasonable and documented out-of-pocket fees and expenses of the financial advisors and attorneys of the Prepetition ABL Creditors, (B) until repayment in full of the Prepetition ABL Obligations, on the first day of each calendar month payment of all accrued and unpaid interest

at the "Default Rate" as provided in the Prepetition ABL Credit Agreement, (C) payment of the Prepetition ABL Obligations from the proceeds of DIP Collateral as set forth in paragraph 18(a) below, (D) upon the entry of the Final Order, the payment in full of any remaining Prepetition ABL Obligations, and (E) upon the earliest to occur of (x) closing of a sale of all or substantially all of the Debtors' assets, (y) May 15, 2017, and (z) commencement of a Challenge (as defined herein), payment to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Creditors, of $500,000 into a non-interest bearing account maintained at Wells Fargo Bank, National Association (the "**Prepetition ABL Indemnity Reserve**") to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition ABL Credit Documents (the "**Prepetition ABL Indemnity Obligations**"). The Prepetition ABL Indemnity Reserve shall (A) secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred by the Prepetition ABL Agent and the Prepetition ABL Lenders in connection with or responding to (1) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraphs 35 and 36 hereof, or (2) any Challenge against the Prepetition ABL Agent or Prepetition ABL Lenders related to the Prepetition ABL Loan Documents, the Prepetition ABL Obligations, or the Prepetition Senior Liens granted to the Prepetition ABL Agent, as applicable, whether in these Cases or independently in another forum, court, or venue; (B) the Prepetition ABL Indemnity Obligations shall be secured by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral (subject in all respects to the Intercreditor Agreement); (C) subject to paragraph 28 below, the Prepetition ABL Agent and Prepetition ABL Lenders may apply amounts in the Prepetition ABL Indemnity Reserve against the Prepetition ABL Obligations as and when they arise, without further notice

to or consent from the Debtors, any Committee, or any other parties in interest and without further order of this Court; and (E) until the Challenge Period Termination Date (as defined below), the Prepetition ABL Agent (for itself and on behalf of the Prepetition ABL Lenders) shall retain and maintain the Prepetition Senior Liens granted to the prepetition Prepetition ABL Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve; provided, that the retention of the Prepetition Senior Liens herein shall in all respects remain subject to the terms of the Intercreditor Agreement; provided, further, that (i) any such indemnification claims shall (a) be subject to the terms of the Prepetition ABL Loan Documents and (b) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraphs 35 and 36 hereof, and (ii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition ABL Indemnity Reserve shall be subject to the DIP Liens and the Adequate Protection Liens, subject to the priority set forth herein. The Prepetition ABL Indemnity Reserve shall be released and the funds applied in accordance with paragraph 18(a) of this Interim Order upon the indefeasible payment in full in cash of the Prepetition ABL Obligations and the receipt by the Prepetition ABL Agent and the Prepetition ABL Lenders of releases from the Debtors and their estates, with respect to any claims arising out of or related to the Prepetition ABL Credit Agreement and the Prepetition ABL Credit Documents, acceptable to the Prepetition ABL Agent and each other Prepetition ABL Lender in their sole discretion.

(ii) in the case of the Prepetition Term Loan Creditors, (A) the current payment of the reasonable and documented out-of-pocket fees and expenses of the financial advisors and attorneys of the Prepetition Term Loan Creditors, (B) until repayment in full of the

Prepetition Term Obligations, on the first day of each calendar month, payment of all accrued and unpaid interest at the "Default Rate" as provided in the Prepetition Term Loan Agreement, (C) upon the payment in full in cash of all DIP Obligations and Prepetition ABL Obligations, but subject to the Adequate Protection Superpriority Claims and Adequate Protection Liens of the Prepetition ABL Agent, payment to the Prepetition Term Loan Agent, for the benefit of the Prepetition Term Loan Lenders, of $500,000 into a non-interest bearing account maintained at First Republic Bank (the "**Prepetition Term Loan Indemnity Reserve**") to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition Term Loan Documents (the "Prepetition Term Indemnity Obligations"), and (D) a "Consent Fee" in the amount of $350,000 to the Prepetition Term Loan Agent as set forth in the Fee Letter; provided, that, other than the payments provided for in this clause (ii), no cash payments of principal, interest or other amounts in respect of the Prepetition Term Loan Obligations may be paid until the Prepetition ABL Obligations and the DIP Obligations have been paid in full in cash in accordance with paragraph 18(a) and all commitments under the DIP Facility have been terminated. The Prepetition Term Loan Indemnity Reserve shall (A) secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred by the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders in connection with or responding to (1) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraphs 35 and 36 hereof, or (2) any Challenge against the Prepetition Term Loan Agent or Prepetition Term Loan Lenders related to the Prepetition Term Loan Documents, the Prepetition Term Loan Obligations, or the Prepetition Senior Liens granted to the Prepetition Term Loan Agent, as applicable, whether in these Cases or independently in another forum,

court, or venue; (B) the Prepetition Term Indemnity Obligations shall be secured by a first lien on the Prepetition Term Loan Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral (subject in all respects to the Intercreditor Agreement); (C) subject to paragraph 28 below, the Prepetition Term Loan Agent and Prepetition Term Loan Lenders may apply amounts in the Prepetition Term Loan Indemnity Reserve against the Prepetition Term Loan Obligations as and when they arise, without further notice to or consent from the Debtors, any Committee, or any other parties in interest and without further order of this Court; and (E) until the Challenge Period Termination Date (as defined below), the Prepetition Term Loan Agent (for itself and on behalf of the Prepetition Term Loan Lenders) shall retain and maintain the Prepetition Senior Liens granted to the prepetition Prepetition Term Loan Agent as security for the amount of any Prepetition Term Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition Term Loan Indemnity Reserve; provided, that the retention of the Prepetition Senior Liens herein shall in all respects remain subject to the terms of the Intercreditor Agreement; provided, further, that (i) any such indemnification claims shall (a) be subject to the terms of the Prepetition Term Loan Documents and (b) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraphs 35 and 36 hereof, and (ii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition Term Loan Indemnity Reserve shall be subject to the DIP Liens and the Adequate Protection Liens, subject to the priority set forth herein. The Prepetition Term Loan Indemnity Reserve shall be released and the funds applied in accordance with paragraph 18(a) of this Interim Order upon the indefeasible payment in full in cash of the Prepetition Term Loan Obligations and the receipt by the Prepetition Term Loan Agent and the

Prepetition Term Loan Lenders of releases from the Debtors and their estates, with respect to any claims arising out of or related to the Prepetition Term Loan Agreement and the Prepetition Term Loan Documents, acceptable to the Prepetition Term Loan Agent and each other Prepetition Term Loan Lender in their sole discretion.

(c) *Term Loan Reserve.* Notwithstanding the provisions of Section 362 of the Bankruptcy Code, subject to the terms and conditions of the Intercreditor Agreement, the Prepetition Term Loan Agent may deliver to the DIP Agent a Term Loan Reserve Correction Notice (as defined in the Intercreditor Agreement). The reserve implemented upon the closing of the DIP Facility in connection with amounted budgeted for Key Employee Retention Plans ("**KERP**") or Key Employee Incentive Plans ("**KEIP**") shall be maintained until the indefeasible payment in full of the DIP Obligations, Prepetition ABL Obligations and the Prepetition Term Loan Obligations. Notwithstanding the inclusion of KEIP or KERP payments in the Approved Budget, no payment shall be made on account of the KEIP and/or KERP until the indefeasible payment in full of the DIP Obligations, Prepetition ABL Obligations and the Prepetition Term Loan Obligations. The inclusion of KEIP and KERP payments in the Approved Budget does not constitute approval of such payments, and the rights of all parties to object to any such payments are fully preserved.

(d) *Adequate Protection With Respect to Sales.* The Debtors shall keep the DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent fully informed of the Debtors' efforts to consummate Permitted Sales, the Initial Store Closing Sale and any other sales of equity interests and/or assets of the Debtors after the Petition Date, and without limiting the generality of the foregoing, the Debtors shall (A) promptly provide to the DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent copies of all offers for the purchase

of any asset(s) and/or equity interests of any of the Debtors and copies of all bids from liquidators, (B) provide, no less frequently than weekly, status updates on the Debtors' efforts to consummate Permitted Sales, the Initial Store Closing Sale and/or any other sales, and (C) promptly advise the DIP Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent of any expressions of interest in any or all of the Debtors' assets and/or equity interests. Upon the disposition of Prepetition Collateral in connection with a Permitted Sale, the Initial Store Closing and/or any other sales, any such Prepetition Collateral shall be sold free and clear of the Prepetition Liens, the Adequate Protection Liens and the DIP Liens; provided, however, that such Prepetition Liens, Adequate Protection Liens and DIP Liens shall attach to the proceeds of any such Permitted Sale in the same extent, validity and priority as set forth herein and such proceeds shall be applied as set forth in paragraph 18(a) herein.

(e) *Credit Bidding.* In connection with any sale process authorized by the Court, the Prepetition ABL Agent, Prepetition Term Loan Agent and Prepetition Secured Creditors may, subject to the terms of the Intercreditor Agreement, seek to credit bid some or all of their claims for their respective collateral (each a "**Credit Bid**") pursuant to section 363(k) of the Bankruptcy Code; provided, however, that any Credit Bid by the Prepetition Term Loan Agent or any Prepetition Term Loan Lender, if accepted, shall result in the payment in full in cash of the DIP Obligations and the Prepetition ABL Obligations upon the consummation thereof (subject to the terms of the Intercreditor Agreeement). A Credit Bid may be applied only to reduce the cash consideration with respect to those assets in which the party submitting such Credit Bid holds a perfected security interest. Each of the Prepetition ABL Agent, Prepetition Term Loan Agent and Prepetition Secured Creditors shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the assets by Credit Bid.

(f) *Access to Records*. In addition to, and without limiting, whatever rights to access the Prepetition Secured Creditors have under their respective Prepetition Credit Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents and employees of the Prepetition Secured Creditors (i) to have access to and inspect the Debtors' properties, (ii) to examine the Debtors' books and records, (iii) to discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors (and in the case of financial advisors, the Debtors shall have the right to have an officer of the Debtors participate as provided in the DIP Loan Documents), and (iv) otherwise have full cooperation of the Debtors . Without limiting the foregoing, the Debtors shall provide copies to each Prepetition ABL Agent and the Prepetition Term Loan of any documents, notices or other materials provided to any DIP Credit Party simultaneously with the delivery of such documents, notices or materials to such DIP Credit Party.

13. Adequate Protection Superpriority Claims.

(a) *Superpriority Claims of Prepetition ABL Agent and Prepetition Term Loan Agent.* As further adequate protection of the interests of (i) the Prepetition ABL Agent and the other Prepetition ABL Creditors with respect to the Prepetition ABL Obligations and (ii) the Prepetition Term Loan Agent the other Prepetition Term Loan Creditors with respect to the Prepetition Term Loan Obligations, each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Creditors) and the Prepetition Term Loan Agent (for the benefit of itself and the other Prepetition Term Loan Creditors) is hereby granted an allowed administrative claim against the Debtors' estates under Sections 503 and 507(b) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claims**") to the extent that the Adequate Protection Liens

do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's and the Prepetition Term Loan Agent's respective interests in the Prepetition Collateral.

(b) *Priority of Adequate Protection Superpriority Claims*. The Adequate Protection Superpriority Claim granted to the Prepetition ABL Agent shall be senior in all respects to the Adequate Protection Superpriority Claim granted to the Prepetition Term Loan Agent. The Adequate Protection Superpriority Claims granted to each of the Prepetition ABL Agent and the Prepetition Term Loan Agent shall be junior to the DIP Carve-Out, the Prepetition Permitted Liens, the DIP Liens, the DIP Superpriority Claim and the Adequate Protection Liens and shall otherwise have priority over administrative expenses of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code.[8]

Provisions Common to DIP Financing and Use of Cash Collateral Authorizations

14. Amendments. The DIP Loan Documents may from time to time be amended, modified or supplemented by the parties thereto without notice or a hearing if: (i) in the reasonable judgment of the Debtors and the DIP Agent, the amendment, modification, or supplement (A) is in accordance with the DIP Loan Documents, (B) is not prejudicial in any material respect to the rights of third parties, and (C) has been consented to by the DIP Agent, and (ii) a copy (which may be provided through electronic mail or facsimile) of the form of amendment, modification or supplement is provided to counsel for any Committee, the Prepetition Term Loan Agent and the U.S. Trustee at least one (1) Business Day prior to the effective date of any non-material amendment, modification or supplement, and at least three (3) Business Days prior to any material amendment, modification or supplement.

[8] Notwithstanding anything to the contrary set forth in this Interim Order and for the avoidance of doubt, none of the Adequate Protection Liens or Adequate Protection Superpriority Claims shall apply, or have recourse to, any of the Excluded Property.

15. Approved Budget Maintenance. The Approved Budget and any modification to, or amendment or update of, the Approved Budget shall be in form and substance satisfactory to the DIP Agent and approved by the DIP Agent. The Debtors shall comply with and update the Approved Budget from time to time in accordance with the DIP Loan Documents (provided that any update shall be in form and substance satisfactory to the DIP Agent and approved by the DIP Agent). The Debtors shall consult with and provide prior notice to the Prepetition Term Loan Agent prior to agreeing to any material changes to the Approved Budget and any extensions of the case and/or sale or liquidation milestones. On or before Wednesday of each week, the Debtors shall deliver to the DIP Agent a Budget Variance Report (with delivery of the same to the United States Trustee and, the Prepetition ABL Agent, the Prepetition Term Loan Agent and the Committee, if any, each week after delivery to the DIP Agent). During the fifth (5^{th}) week of the initial Approved Budget, the Debtors shall submit a budget for the next successive thirteen week period to the DIP Agent (with delivery of the same to the United States Trustee, the Prepetition ABL Agent, the Prepetition Term Loan Agent and the Committee, if any, after delivery to the DIP Agent), which budget shall be in form and substance satisfactory to the DIP Agent and approved by the DIP Agent and the "Required Lenders" as such term is defined in the DIP Credit Agreement.

16. Modification of Automatic Stay. The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claim, and the Adequate Protection Superpriority Claims; and (b) authorize the Debtors to pay, and the DIP Credit Parties

and Prepetition Secured Creditors to retain and apply, payments made in accordance with the terms of this Interim Order.

17. Perfection of DIP Liens and Adequate Protection Liens.

(a) *Automatic Perfection of Liens.* This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, collateral access agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Credit Parties or the Prepetition Secured Creditors to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Secured Creditors are authorized to file such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence any of the DIP Liens or the Adequate Protection Liens, as applicable, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create, perfect or enforce the DIP Liens or the Adequate Protection Liens, as applicable. The Debtors are authorized to execute and deliver promptly upon demand to the DIP Agent or the Prepetition Secured Creditors all such financing statements, mortgages, control agreements, notices and other documents as the DIP Agent or the Prepetition Secured Creditors may reasonably request. The DIP Agent or the

Prepetition Secured Creditors may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

18. Application of Proceeds of DIP Collateral.

(a) Subject to the limitations set forth in the Intercreditor Agreement (including with respect to Excess Term Obligations and Excess ABL Obligations, in each case as defined in the Intercreditor Agreement), the proceeds of DIP Collateral shall be applied as follows: (i) all payments received by the DIP Agent and all funds transferred and credited to the "Concentration Account" maintained at Wells Fargo Bank, National Association and (ii) all net proceeds from any Disposition of DIP Collateral, each shall be applied as follows: *first*, to payment of the Prepetition ABL Obligations in accordance with the terms of the Prepetition ABL Credit Documents, *second*, to payment of fees, costs and expenses, including Credit Party Expenses, payable and reimbursable by the Debtors under the DIP Credit Agreement and the other DIP Loan Documents; *third*, to payment of all DIP Obligations in accordance with the DIP Loan Documents; *fourth*, to cash collateralize Letters of Credit in accordance with the DIP Loan Documents; *fifth*, upon payment in full in cash of the Prepetition ABL Obligations and DIP Obligations, to payment of the Prepetition Term Loan Obligations in accordance with the terms of the Prepetition Term Loan Documents, and *sixth*, upon payment in full in cash of the Prepetition Term Loan Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto.

(b) As between the DIP Agent, the DIP Lenders and the other DIP Credit Parties, nothing provided herein shall be deemed to modify the allocation of the proceeds of DIP Collateral set forth in the DIP Loan Documents.

(c) The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal of, premium, if any, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than (i) the DIP Obligations, (ii) the Prepetition ABL Obligations, (iii) the Prepetition Term Loan Obligations (each in accordance with the DIP Loan Documents, the Intercreditor Agreement and this Interim Order), and (iv) obligations authorized by an order of the Court.

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in these Cases or any Successor Cases shall obtain credit or incur debt pursuant to Sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the repayment in full in cash of all Prepetition ABL Obligations, all Prepetition Term Loan Obligations, all DIP Obligations, and the termination of the DIP Credit Parties' obligations to extend credit under the DIP Facility, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to any or all of the Debtors and the Debtors' estates, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent (or to the extent expressly provided in the Intercreditor Agreement, the Prepetition Term Loan Agent) to be applied as set forth in paragraph 18(a) herein.

20. Maintenance of DIP Collateral and Prepetition Collateral. Until the payment in full in cash of all Prepetition Secured Obligations and all DIP Obligations and the termination of the DIP Credit Parties' obligations to extend credit under the DIP Loan Documents, as provided therein, the Debtors shall (a) insure the Prepetition Collateral and the DIP Collateral as required under the DIP Facility and the Prepetition Credit Documents, and (b) maintain the cash

management system which has been agreed to by the DIP Agent or as otherwise required by the DIP Loan Documents and the Prepetition Credit Documents.

21. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral except as permitted by the DIP Loan Documents. Nothing provided herein shall limit the right of any DIP Credit Party or any Prepetition Secured Creditor to object to any proposed disposition of the DIP Collateral.

22. Termination Date. On the Termination Date, (i) all DIP Obligations shall be immediately due and payable, (ii) all commitments to extend credit under the DIP Facility will terminate, and (iii) all authority to use Cash Collateral shall cease, provided, however, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.

23. Events of Default. The occurrence of an "Event of Default" under the DIP Credit Agreement shall constitute an event of default under this Interim Order (each, an "**Event of Default**").

24. Rights and Remedies Upon Event of Default.

(a) *DIP Facility Termination.* Immediately upon the occurrence and during the continuance of an Event of Default, the DIP Agent may in its discretion (or shall in accordance with the DIP Loan Documents) (i) declare the DIP Facility terminated (such declaration, a "**Termination Declaration**") or (ii) send a reservation of rights notice to the Debtors, which notice may advise the Debtors that any further advances under the DIP Facility will be made in the sole discretion of the DIP Agent and/or the DIP Lenders.

(b) Upon the issuance of a Termination Declaration to the Debtors in accordance with the DIP Credit Agreement: (I) all or any portion of the Commitments of the DIP

Credit Parties to make loans or otherwise extend credit may be suspended or terminated in accordance with the DIP Loan Documents; (II) all DIP Obligations may be deemed immediately due and payable in accordance with the DIP Loan Documents; (III) the DIP Agent and the DIP Lenders may exercise all other rights and remedies available to them under Section 8.02 of the DIP Credit Agreement; and (IV) after expiration of the Remedies Notice Period, any right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the DIP Agent, provided that, during the Remedies Notice Period, the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.

(c) With respect to the DIP Collateral, following the Termination Declaration, subject to the Remedies Notice Period, the DIP Credit Parties and the Prepetition ABL Agent may exercise all rights and remedies available to them under the DIP Loan Documents or the Prepetition ABL Credit Documents, as applicable, or applicable law against the DIP Collateral, and without limiting the foregoing, the DIP Credit Parties and the Prepetition ABL Agent may, subject to the Remedies Notice Period, (i) enter onto the premises of any Debtor in connection with an orderly liquidation of the DIP Collateral; and/or (ii) exercise any rights and remedies provided under the DIP Loan Documents or the Prepetition ABL Credit Documents, as applicable, or at law or equity, including all remedies provided under the Bankruptcy Code and pursuant to this Interim Order and the Final Order. For the avoidance of doubt, no party-in-interest (other than the DIP Credit Parties, the Prepetition ABL Agent, and, subject to the Intercreditor Agreement, the Prepetition Term Loan Agent) may at any time exercise any rights and remedies available to them against the DIP Collateral until the DIP Obligations and the Prepetition ABL Obligations are paid in full in cash. Following the termination of the Remedies Notice Period, the DIP Agent may require the Debtors to seek authority from the Court to retain

an Approved Liquidator for the purpose of conducting a liquidation or "going out of business" sale and/or the orderly liquidation of the DIP Collateral, and, if the Debtors refuse to seek such authority, the DIP Agent shall be entitled to seek such authority directly.

(d) *Notice of Termination.* Any Termination Declaration shall be given by facsimile (or other electronic means, including electronic mail) to the Debtors, counsel to the Debtors, counsel to each Prepetition Secured Creditor, counsel to any Committee, and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "**Termination Declaration Date**"). The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Declaration Date, except as provided in paragraphs 11, 24 and 26 of this Interim Order. Any automatic stay otherwise applicable to the DIP Credit Parties and the Prepetition ABL Agent is hereby modified so that three (3) business days after the Termination Declaration Date (the "**Remedies Notice Period**") the DIP Credit Parties and the Prepetition ABL Agent shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Loan Documents or the Prepetition ABL Credit Documents, as applicable, and this Interim Order, and shall be permitted to satisfy the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and Adequate Protection Superpriority Claims, subject only to the DIP Carve-Out and Prepetition Permitted Liens. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the DIP Credit Parties and the Prepetition ABL Agent shall be permitted to exercise all

remedies set forth herein, in the DIP Credit Agreement, the DIP Loan Documents, the Prepetition ABL Credit Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under Sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to (x) the DIP Agent with respect thereto pursuant to the DIP Credit Agreement, the other DIP Loan Documents or this Interim Order and (y) the Prepetition ABL Agent with respect thereto pursuant to the Prepetition ABL Credit Agreement and the other Prepetition ABL Credit Documents or this Interim Order.

25. Access to Leased Premises. The DIP Agent's exercise of its remedies pursuant to paragraph 24 shall be subject to: (i) any agreement in writing between the DIP Agent or Prepetition ABL Agent and any applicable landlord, (ii) pre-existing rights of the DIP Agent and any applicable landlord under applicable nonbankruptcy law, (iii) consent of the applicable landlord, or (iv) further order of the Court following notice and a hearing.

26. Cash Collateral Termination Event. In the event that (a) all Prepetition ABL Obligations and DIP Obligations have been paid in full in cash and (b) all commitments under the DIP Facility have been irrevocably terminated, the Debtors, in consultation with any Committee, the Prepetition ABL Agent, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall consult with each other as to the terms and conditions of the continued consensual use of Cash Collateral in light of the then present circumstances in these Cases. If the Debtors, any Committee, the Prepetition ABL Agent, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders are not able to agree on such terms and conditions, the Prepetition Term Loan Agent shall be entitled to declare that the Debtors' rights to use Cash

Collateral on the terms provided in this Interim Order are terminated (a "**Cash Collateral Termination Event**") with such termination to take effect immediately upon delivery of a notice (a "**Cash Collateral Termination Notice**") by the Prepetition Term Loan Agent to the Debtors and their counsel, the U.S. Trustee, and lead counsel to any Committee. Following the delivery of the Cash Collateral Termination Notice, the Debtors shall be entitled to an emergency hearing before this Court, with any such hearing to be held on not less than three (3) days' notice to the Committee, the Prepetition ABL Agent, the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders, including for the purposes of determining whether the use of Cash Collateral by the Debtors should be granted and on what terms and conditions, even if on a non-consensual basis. Unless and until the Court enters an order authorizing the use of Cash Collateral, the Debtors may not use Cash Collateral without the prior written consent of the Prepetition Term Loan Agent; provided, however, that the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.

27. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Credit Parties and Prepetition Secured Creditors have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) and Section 363(m) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, amended or vacated by a subsequent order of this Court, or any other court, the DIP Credit Parties and Prepetition Secured Creditors are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made

hereunder, or lien, claim or priority authorized or created hereby, provided that the Interim Order was not stayed by court order after due notice had been given to the DIP Agent, Prepetition ABL Agent and Prepetition Term Loan Agent at the time the advances were made or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Credit Parties and Prepetition Secured Creditors hereunder arising prior to the effective date of any such reversal, modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein, provided that the Interim Order was not stayed by court order after due notice had been given to the DIP Agent, Prepetition ABL Agent, and Prepetition Term Loan Agent at the time the advances were made or the liens, claims or priorities were authorized and/or created.

28. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented out-of-pocket expenses (and the Prepetition ABL Agent, the Prepetition Term Loan Agent, or the DIP Agent, as applicable, are authorized to make advances or charges against the applicable loan account to pay such expenses) of (x) the DIP Credit Parties in connection with the DIP Facility (including, without limitation, expenses incurred prior to the Petition Date), as provided in the DIP Loan Documents, and (y) the Prepetition ABL Creditors and the Prepetition Term Loan Creditors (including, without limitation, expenses incurred prior to the Petition Date) as provided in the Prepetition Credit Documents, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses, upon the Debtors' receipt of invoices for the payment thereof. Payment of all such fees and expenses shall not be subject to allowance by the Court

and professionals for the DIP Credit Parties and the Prepetition Secured Creditors shall not be required to comply with the U.S. Trustee fee guidelines. The professionals for the DIP Credit Parties and the Prepetition Secured Creditors shall deliver a copy of their respective invoices to counsel for any Committee and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained therein. Any objections raised by the Debtors, the U.S. Trustee or any Committee with respect to such invoices within ten (10) days of the receipt thereof will be subject to resolution by the Court. In the event of any objection, the provisions of Section 107 of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure shall apply. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable fees, costs and expenses of the DIP Agent, the DIP Lenders, the Prepetition ABL Agent and the Prepetition Term Loan Agent, incurred on or prior to such date without the need for any professional engaged by the DIP Agent, the DIP Lenders, the Prepetition ABL Agent or the Prepetition Term Loan Agent to first deliver a copy of its invoice as provided for herein.

29. Indemnification.

(a) *Generally*. The Debtors shall indemnify and hold harmless the DIP Agent and each other DIP Credit Party, and each of their respective shareholders, members, directors, agents, officers, subsidiaries and affiliates, successors and assigns, attorneys and professional advisors, in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related

to the DIP Loan Documents, the DIP Facility or the transactions contemplated thereby and by this Interim Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Loan Documents and as further described therein and herein, or in connection with these Cases, any plan, or any action or inaction by the Debtors; provided, that such indemnity shall not, as to any indemnified party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted directly from the gross negligence or willful misconduct of such indemnified party. The indemnity includes indemnification for the DIP Agent's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, each of the DIP Agent and each other DIP Credit Party shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

(b) *DIP Indemnity Account*. Upon the earlier of (A) payment in full in cash of the DIP Obligations or (B) conclusion of the Remedies Notice Period, the Debtors shall pay $500,000 from proceeds of the DIP Collateral into an indemnity account (the "**DIP Indemnity Account**") subject to first priority liens of the DIP Agent, for the benefit of the DIP Credit Parties. The DIP Indemnity Account shall be released and the funds applied in accordance with paragraph 18(a) of this Interim Order upon the indefeasible payment in full in cash of the DIP Obligations and the receipt by the DIP Agent and each other DIP Credit Party of releases from the Debtors and their estates, with respect to any claims arising out of or related to the DIP Credit Agreement and the DIP Loan Documents, acceptable to the DIP Agent and each other DIP Credit Party in their sole discretion.

30. Proofs of Claim. None of the DIP Credit Parties or the Prepetition Secured Creditors will be required to file proofs of claim or requests for approval of administrative expenses in any of the Cases or Successor Cases, and the provisions of this Interim Order relating to the amount of the DIP Obligations, the DIP Superpriority Claim, the Prepetition ABL Obligations and the Prepetition Term Loan Obligations shall constitute timely filed proofs of claim and/or administrative expense requests in each of the Cases.

31. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Credit Parties under the DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent reasonable access to the Debtors' premises and their books and records in accordance with the DIP Loan Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and provide to the DIP Agent all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Debtor.

32. DIP Carve-Out.

(a) *DIP Carve-Out*. As used in this Interim Order, the "**DIP Carve-Out**" means, collectively, the sum of: (a) all allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of the Court, and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; and (b) all fees and expenses allowed at any time by the Court (the "**Allowed Professional Fees**") and incurred by professionals retained by the

Debtors or the Committee, if any, in accordance with a final order of the Court (which order has not been reversed, vacated or stayed) under Sections 327(a) or 1103(a) of the Bankruptcy Code (the "**Case Professionals**"), which amount under this clause (b) shall not exceed the sum of: (x) commencing with the week ending March 18, 2017, an aggregate amount per week limited to the amounts set forth in the Approved Budget for "Professional Fees Accrued" for "Debtor Counsel", "Debtor CRO", "Debtor FA", "Other Debtor Professionals", "UCC Counsel" and "UCC FA" incurred prior to the delivery of a written notice by the DIP Agent to the Debtors and their counsel, the Prepetition ABL Agent, the Prepetition Term Loan Agent, the United States Trustee, and lead counsel to any Committee, which notice may be delivered at any time following the occurrence and continuance of any Event of Default (a "**Carve-Out Trigger Notice**"), solely to the extent that such amounts described in this clause (x) are actually funded into the Professional Fee Account referred to below, and which amount shall be funded into a non-interest bearing account maintained at Wells Fargo (the "**Professional Fee Account**") on Wednesday of each week (or such other day of the week agreed to by the Debtors and the DIP Agent) in accordance with the Approved Budget, provided, that (I) the Debtors have sufficient Availability (as defined in the DIP Credit Agreement) on such date, (II) the Termination Date has not occurred; and (III) no Event of Default has occurred and is continuing; plus (y) $1,000,000 for Allowed Professional Fees incurred from and after the delivery of a Carve-Out Trigger Notice (the "**Post Trigger Notice Carve Out Amount**"). Within three (3) business days of delivery of a Carve-Out Trigger Notice, the DIP Agent shall fund the Post Trigger Carve Out Amount into the Professional Fee Account.

(b) *Professional Fee Account.* No portion of the DIP Carve-Out, nor any cash collateral or proceeds of the Loans may be used in violation of this Interim Order, including

paragraph 33 hereof. Notwithstanding anything to the contrary contained in this Interim Order, (A) until an Event of Default or the Termination Date has occurred, the Debtors shall be permitted to borrow under the DIP Credit Agreement on a weekly basis to fund the Professional Fee Account in the amounts contemplated under clause (x) of the immediately preceding paragraph, subject to there being sufficient Availability for such borrowings, (B) the Debtors shall be permitted to pay, from the Professional Fee Account, as and when the same may become due and payable, the Allowed Professional Fees of Case Professionals regardless of whether an Event of Default or the Termination Date has occurred, and (C) the aggregate amount of Allowed Professional Fees of Case Professionals paid by the Debtors prior to the delivery of a Carve-Out Trigger Notice from any amounts funded into the Professional Fee Account pursuant to clause (x) of the immediately preceding paragraph (but not, for the avoidance of doubt, amounts paid from any retainers held by such Case Professionals) shall not exceed the amount of such Allowed Professional Fees set forth in the Approved Budget. None of the provisions of this Interim Order or any DIP Loan Document shall prohibit or restrict the payment of the fees and expenses of any Case Professional from any retainers held by such Case Professional. Any amounts remaining in the Professional Fee Account after the payment in full of all Allowed Professional Fees of Case Professionals pursuant to final fee applications and orders shall be returned to the DIP Agent, which amounts shall be applied in accordance with paragraph 18(a) hereof. The DIP Liens and Adequate Protection Liens shall attach to the Professional Fee Account subject to the payment of DIP Carve-Out.

(c) *No Direct Obligation to Pay Professional Fees.* Except for funding the Professional Fee Account as provided herein, none of the DIP Credit Parties or the Prepetition Secured Creditors shall be responsible for the funding, direct payment or reimbursement of any

fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Credit Parties or the Prepetition Secured Creditors in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing in this Interim Order or otherwise shall be construed to increase the DIP Carve-Out if actual fees, disbursements, costs and expenses incurred of any Case Professional are higher in fact than the estimated fees and disbursements reflected in the Approved Budget. Notwithstanding anything to the contrary contained in this Interim Order, the Approved Budget or the DIP Loan Documents, none of the DIP Credit Parties or the Prepetition Secured Creditors shall be responsible for funding into the Professional Fee Account any "success", "restructuring", "transaction" or similar fee payable to the Debtors' investment banker or financial advisor, and in no event shall any such amounts be paid out of the DIP Carve-Out or any funds in the Professional Fee Account. For the avoidance of doubt, until such time as the DIP Obligations and the Prepetition Secured Obligations have been indefeasibly paid in full in cash, (x) any fees or disbursements of any Case Professional shall be paid solely from the Professional Fee Account and any retainer, as applicable and (y) no "success", "restructuring", "transaction" or similar fee shall be paid to the Debtors' investment banker or financial advisor.

(d) *Payment of DIP Carve-Out*. The funding of the DIP Carve-Out shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law. Upon funding of the Professional Fee Account in accordance with the terms and conditions hereof, the DIP Agent, the DIP Lenders and the

Prepetition Secured Creditors shall not have any further liability or responsibility with respect thereto.

33. Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and the DIP Carve-Out. The DIP Facility, the DIP Collateral, the Cash Collateral and the DIP Carve-Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to or against the interests of the DIP Credit Parties or the Prepetition Secured Creditors or their rights and remedies under the DIP Loan Documents, the Prepetition Credit Documents or this Interim Order or the Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors, any Committee or any other person in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, any DIP Obligations or Prepetition Secured Obligations, (iii) for monetary, injunctive or other affirmative relief against the DIP Credit Parties or the Prepetition Secured Creditors or their respective collateral, (iv) preventing, hindering or otherwise delaying the exercise by the DIP Credit Parties or the Prepetition Secured Creditors of any rights and remedies under this Interim Order or the Final Order, the DIP Loan Documents, the Prepetition Credit Documents or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the DIP Agent upon any of the DIP Collateral or by the Prepetition ABL Agent or the Prepetition Term Loan Agent with respect to its Adequate Protection Liens, (v) asserting that the value of the Prepetition Collateral is less than the Prepetition Secured Obligations, (vi)

contesting payment of the Prepetition ABL Obligations from the proceeds of DIP Collateral as set forth in paragraph 18(a), or (vii) to pursue litigation against any DIP Credit Party, the Prepetition ABL Agent, the Prepetition Term Loan Agent or any other Prepetition Secured Creditor; (b) to make any distribution under a plan of reorganization in any Chapter 11 Case; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body to the extent not expressly permitted under the DIP Loan Documents; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors; (e) objecting to, contesting, or interfering with, in any way, the DIP Credit Parties' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred, except as provided for in this Interim Order or Final Order, or seeking to prevent the DIP Agent from credit bidding in connection with any proposed plan or reorganization or liquidation or any proposed transaction pursuant to Section 363 of the Bankruptcy Code; (f) using or seeking to use Cash Collateral while the DIP Obligations or the Prepetition Secured Obligations remain outstanding in a manner inconsistent with the Approved Budget; (g) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent; (h) incurring Indebtedness (as defined in the DIP Credit Agreement) outside the ordinary course of business, except as permitted under the DIP Loan Documents; (i) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of the DIP Credit Parties or the Prepetition Secured Creditors; (j) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against the DIP Credit Parties or the Prepetition Secured Creditors; or (k) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of

any of the DIP Obligations, the Prepetition Secured Obligations, the DIP Liens or the Prepetition Senior Liens or any other rights or interests of the DIP Credit Parties or the Prepetition Secured Creditors; provided, that the foregoing limitations shall not encompass any investigation of the Prepetition Secured Obligations and the Prepetition Senior Liens conducted by Case Professionals retained by any Committee so long as the costs, fees and expenses incurred by such Case Professionals do not exceed $50,000 in the aggregate.

34. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right of the DIP Credit Parties or the Prepetition Secured Creditors to object to the allowance and payment of such fees and expenses.

35. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

(a) The stipulations, findings, representations and releases contained in this Interim Order and the DIP Loan Documents with respect to the Prepetition Secured Creditors and the Prepetition Secured Obligations shall be binding upon all parties-in-interest, any trustee appointed in these cases, any Committee and any other person (each, a "**Challenge Party**"), unless and solely to the extent that (i) the Debtors or, subject to clause (b) below, any other Challenge Party initiates an action or adversary proceeding relating to a Challenge (defined below) during the Challenge Period (defined below) and (ii) the Court rules in favor of the plaintiff or movant in any such timely and properly filed Challenge. For purposes of this paragraph 35: (a) "**Challenge**" means any claim or cause of action against any of the Prepetition Secured Creditors on behalf of the Debtors or the Debtors' creditors and interest holders or any other person, or to object to or to challenge the stipulations, findings or Debtors' Stipulations set forth herein, including, but not limited to those in relation to: (i) the validity, extent, priority, or

perfection of the mortgage, security interests, and liens of any Prepetition Secured Creditor; (ii) the validity, allowability, priority, or amount of any of the Prepetition Secured Obligations (including any fees included therein); (iii) the secured status of any of the Prepetition Secured Obligations; (iv) any liability of any of the Prepetition Secured Creditors with respect to anything arising from any of the respective Prepetition Credit Documents; or (v) the releases set forth in the DIP Loan Documents; and (b) "**Challenge Period**" means (i) with respect to any person or any party-in-interest other than the Committee, the period from the Petition Date until the date that is seventy five (75) calendar days after the entry of this Interim Order and (ii) with respect to the Committee, the period from the date such Committee is formed until the date that is sixty (60) calendar days thereafter.

(b) During the Challenge Period, a Challenge Party shall be entitled to determine whether a basis to assert a Challenge exists. If a Challenge Party identifies a basis to assert a Challenge, it must notify the Debtors, the DIP Agent and the Prepetition Secured Creditors during the Challenge Period of its demand that the Debtors initiate an action or adversary proceeding relating thereto against each and every Prepetition Secured Creditor against which a Challenge Party seeks to assert a Challenge, and from the date that the Debtors, the DIP Agent and the Prepetition Secured Creditors are so notified, the Debtors shall have five (5) days to notify the Challenge Party of whether the Debtors intend to initiate such action (or a settlement in lieu of an adversary proceeding) and ten (10) days to initiate such action. If the Debtors notify such Challenge Party that the Debtors do not intend to initiate an action, settlement, or adversary proceeding, the Challenge Party shall have ten (10) days from the receipt of such notice to seek standing to initiate an action or adversary proceeding. Nothing herein shall be deemed to grant standing in favor of any Challenge Party absent further order of

this Court. The Debtors, if timely notified of a potential Challenge and if such Challenge is commenced in a timely manner as set forth herein, shall retain authority to prosecute, settle or compromise such Challenge in the exercise of their business judgment and subject to any applicable further order of court.

(c) Upon the expiration of the Challenge Period without the filing of a Challenge (the "**Challenge Period Termination Date**"): (A) any and all such Challenges and objections by any party (including, without limitation, any Committee, any Chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any Chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, (B) all matters not subject to the Challenge, and all findings, Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to each Prepetition Secured Creditors' claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates and all creditors, all interest holders, any person and any other party in interest in these Cases and any Successor Cases; and (C) any and all claims or causes of action against the Prepetition Secured Creditors relating in any way to the Debtors or the Prepetition Credit Documents shall be forever waived and released by the Debtors' estates, all creditors, interest holders and other parties in interest in these Cases and any Successor Cases.

36. Reservation of Rights: Notwithstanding anything to the contrary contained in this Interim Order, in the event there is a timely and successful Challenge by any party in interest in accordance with paragraph 35 hereof, this Court may unwind the repayment of the applicable Prepetition Secured Obligations and order the repayment of such amount to the extent that such payment resulted in the payment of any Prepetition Secured Obligations consisting of an

unsecured claim or other claim or amount not allowable under Section 502 of the Bankruptcy Code. Notwithstanding the foregoing, a successful Challenge shall not in any way affect the validity, enforceability or priority of the DIP Obligations or the DIP Liens.

37. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

38. Section 506(c) Claims. Subject to approval by the Court in the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Credit Parties or the DIP Collateral or the Prepetition Secured Creditors or the Prepetition Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

39. No Marshaling/Applications of Proceeds. Subject to approval by the Court in the Final Order, none of the DIP Credit Parties or the Prepetition Secured Creditors shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

40. Section 552(b). The DIP Agent and the other DIP Credit Parties shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code. Subject to approval by the Court in the Final Order, the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the DIP Credit Parties or the Prepetition Secured Creditors with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

41. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood,

however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Loan Documents.

42. No Superior Rights of Reclamation. Based on the findings and rulings herein concerning the integrated nature of the DIP Facility and the Prepetition ABL Credit Documents and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens.

43. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, none of the DIP Obligations, the DIP Superpriority Claim or the DIP Liens shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. The Debtors expressly stipulate, and the Court finds and adjudicates that, none of the Adequate Protection Liens or Adequate Protection Superpriority Claims shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the Adequate Protection Superpriority Claims and claims secured by the Adequate Protection Liens have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. None of the Debtors shall propose or support any plan or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of all DIP Obligations and Adequate Protection Superpriority Claims.

44. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or

implicitly: (a) DIP Credit Parties' or the Prepetition Secured Creditors' right to seek any other or supplemental relief in respect of the Debtors (including the right to seek additional adequate protection, including, without limitation, in the form of reimbursement of fees and expenses of counsel to the Prepetition Secured Creditors); (b) the rights of any of the Prepetition Secured Creditors to seek the payment by the Debtors of post-petition interest or fees pursuant to Section 506(b) of the Bankruptcy Code; or (c) any of the rights of the DIP Credit Parties or the Prepetition Secured Creditors under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of Section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans. Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Credit Parties and the Prepetition Secured Creditors are preserved.

45. No Waiver by Failure to Seek Relief. The failure of the DIP Credit Parties to seek relief or otherwise exercise rights and remedies under this Interim Order, the DIP Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Credit Parties.

46. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, any Committee or any other court appointed committee appointed in the Cases, and all other

parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case. Notwithstanding anything contained herein with respect to the obligations or limitations when a Final Order is entered, the terms of the Final Order shall be what is binding on all parties.

47. No Modification of Interim Order. Until and unless the DIP Obligations have been paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Agent (i) any reversal, modification, stay, vacatur or amendment to this Interim Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in Sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claim, other than the DIP Carve-Out; (b) any order allowing use of Cash Collateral resulting from DIP Collateral; and (c) any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, of the DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent.

48. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents or this Interim Order, the provisions of this Interim Order shall govern and control.

49. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Credit Parties and Prepetition Secured Creditors pursuant to this Interim Order and/or the DIP Loan Documents, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until (i) all DIP Obligations have been indefeasibly paid in full in cash and all commitments to extend credit under the DIP Facility are terminated and (ii) all Prepetition Term Loan Debt has been indefeasibly paid in full in cash. The terms and provisions in this Interim Order concerning indemnification shall continue in the Cases and in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Loan Documents and/or the repayment of the DIP Obligations.

50. Notice of Entry of Interim Order: On or before March 13, 2017, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of this Interim Order upon the notice parties required to be served under Local Rule 9013-(a)(2) who do not receive electronic notice of the entry of this Interim Order pursuant to Local Rule 9006-1(a).

51. Objection Deadline: Objections, if any, to the relief sought in the Motion at the final hearing shall be in writing, shall set forth with particularity the grounds for such objections or other statement of position, and shall be filed and served as provided in Local Rule 9006-1(c) and Local Rule 9013-3(b) so as to be received by such parties and the following parties no later than five (5) days before the final hearing: (a) Choate, Hall & Stewart LLP (Attn: Kevin J. Simard, Esq. and Sean M. Monahan, Esq.) and Fox Rothschild LLP (Attn: Thomas Hoffman), attorneys for the DIP Agent and the Prepetition ABL Agent; and (b) Morgan, Lewis & Bockius LLP (Attn: Julia Frost-Davies, Esq. and Mark D. Silva, Esq.) and Gray Plant Mooty (Attn: Phillip L. Kunkel and Abigail M. McGibbon), attorneys for the Prepetition Term Loan Agent.

52. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect immediately, notwithstanding anything to the contrary proscribed by applicable law.

53. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated:

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ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE