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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	Chapter 11
THE GYMBOREE CORPORATION, *et al.*,[1]	)	Case No. 17-32986 (___)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: The Gymboree Corporation (5258); Giraffe Intermediate B, Inc. (0659); Gym-Card, LLC (5720); Gym-Mark, Inc. (6459); Gymboree Manufacturing, Inc. (6464); Gymboree Retail Stores, Inc. (6461); Gymboree Operations, Inc. (6463); and S.C.C. Wholesale, Inc. (6588). The location of the Debtors' service address is 71 Stevenson Street, Suite 2200, San Francisco, California 94105.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (this "Motion"):[2]

Relief Requested[3]

1. The Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order (the "Final Order"[4] and, together with the Interim Order, the "DIP Orders"):

a. authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of up to $273,450,000 (the "DIP ABL Credit Facility"), which shall include (a) an $88,000,000 sublimit for the issuance of letters of credit and (b) a $30,000,000 sublimit for swingline loans, consisting of (x) $219,000,000 in revolving "tranche A" commitments (the "DIP ABL Tranche A Commitments," and the loans extended thereunder, the "DIP ABL Tranche A Loans"); (y) $6,000,000 in revolving FILO commitments (the "DIP ABL FILO Commitments," and the loans extended thereunder, the "DIP ABL FILO Loans," and the DIP ABL FILO Loans together with the DIP ABL Tranche A Loans, the "DIP Revolving Loans"); and (z) $48,450,000 in ABL term loan commitments (the "DIP ABL Term Loan Commitments," and the loans made thereunder, the "DIP ABL Term Loans," and the DIP ABL Term Loans and the DIP Revolving Loans, together, the "DIP ABL Loans"), pursuant to the terms and conditions of that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP ABL Agreement"), by and among the Company and the Loan Parties, as borrowers, Holdings, as guarantor, Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the "DIP ABL Administrative Agent") and Pathlight Capital LLC, as ABL term loan agent (in

[2] A detailed description of the Debtors and their business, and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases, is set forth in greater detail in the *Declaration of James A. Mesterharm, Chief Restructuring Officer of The Gymboree Corporation, in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), on June 11, 2017 (the "Petition Date"). The First Day Declaration is fully incorporated herein by reference.

[3] Capitalized terms used but not defined in this section have the meanings ascribed to such terms further below in this Motion or in the Interim Order, as applicable.

[4] The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

such capacity, the "DIP ABL Term Agent" and together with the DIP ABL Administrative Agent, the "DIP ABL Agents") for and on behalf of themselves and the other lenders party thereto (collectively, including the DIP ABL Agents, the "DIP ABL Lenders"), substantially in the form of **Exhibit B**[5];

b. authorizing the Debtors to execute and deliver the DIP ABL Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP ABL Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL Agreement, the "DIP ABL Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Documents;

c. granting the DIP ABL Credit Facility and all obligations owing thereunder and under, or secured by, the DIP ABL Documents to the DIP ABL Agents and DIP ABL Lenders (collectively, and including all "Obligations" as described in the DIP ABL Agreement, the "DIP ABL Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases;

d. authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of $105,000,000 (the "DIP Term Loan Facility," and all amounts extended under the DIP Term Loan Facility, the "DIP Term Loans," and the DIP Term Loan Facility together with the DIP ABL Credit Facility, the "DIP Facilities"), consisting of (a) a $35,000,000 new money multiple draw term loan facility ("New Money DIP Term Loans") and (b) $70,000,000 of term loans resulting from the "roll-up" of amounts outstanding under the Prepetition Term Loan Agreement (as defined herein), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP Term Loan Agreement," and together with the DIP ABL Agreement, the "DIP Agreements"), by and among the Company, as borrower, Holdings and the other Loan Parties party thereto, as guarantors, and Credit Suisse AG, Cayman Islands Branch as

5 Upon entry of the Interim Order, all Prepetition ABL Obligations (as defined below) and all accrued and unpaid interest thereon and fees and expenses shall be fully-rolled into the DIP ABL Credit Facility and shall constitute DIP ABL Obligations thereunder.

administrative agent (the "DIP Term Loan Agent," and, together with the DIP ABL Agents, the "DIP Agents") for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Term Loan Agent, the "DIP Term Loan Lenders," and, together with the DIP ABL Lenders, the "DIP Lenders"), substantially in the form attached hereto as **Exhibit C**;

e. authorizing the Debtors to execute and deliver the DIP Term Loan Agreement and any other agreements, instruments, security agreements, pledge agreements, guarantees, control agreements, and other Loan Documents (as defined in the DIP Term Loan Agreement) and documents related thereto (as amended, restated, supplemented, wavied, and/or modified from time to time, collectively, with the DIP Term Loan Agreement, the "DIP Term Loan Documents," and together with the DIP ABL Documents, the "DIP Documents"), and to perform such other acts as may be necessary or desirable in connection with the DIP Term Loan Documents;

f. granting the DIP Term Loan Facility and all obligations owing thereunder and under, or secured by, the DIP Term Loan Documents to the DIP Term Loan Agent and DIP Term Loan Lenders (collectively, and including all "Obligations" as described in the DIP Term Loan Agreement, the "DIP Term Loan Obligations," and together with the DIP ABL Obligations, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases;

g. granting to each of (a) the DIP ABL Administrative Agent, for the benefit of itself and the DIP ABL Lenders and the other Secured Parties (as defined in the DIP ABL Agreement) under the applicable DIP Documents and (b) the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders and the other Secured Parties (as defined in the DIP Term Loan Agreement) under the applicable DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth in the Interim Order;

h. authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative

agent's fees, the reasonable fees and disbursements of the DIP Agents' attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

i. authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein), and providing adequate protection to the Prepetition ABL Parties and Prepetition Term Loan Parties for any diminution in value resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of their respective interests in the Prepetition Collateral, including by the Carve Out, ("Diminution in Value") of their respective interests in the Prepetition Collateral, including the Cash Collateral in accordance with the Interim Order;

j. 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 Documents and the Interim Order;

k. scheduling a final hearing (the "Final Hearing") within 35 days of the Petition Date to consider the relief requested in this Motion and approving the form of notice with respect to the Final Hearing; and

l. granting related relief.

2. In support of this Motion, the Debtors respectfully submit: (a) the First Day Declaration, (b) the *Declaration of David S. Kurtz in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Kurtz Declaration"), and (c) the *Declaration of James A. Mesterharm in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to*

Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "Mesterharm Declaration"), filed contemporaneously herewith.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Eastern District of Virginia (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated July 10, 1984. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Rule 4001(a)-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules").

6. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of James A. Mesterharm, Chief Restructuring Officer of The Gymboree Corporation, in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously with this Motion.

Basis for Emergency Relief

7. As set forth in the Kurtz Declaration, the Mesterharm Declaration, and the First Day Declaration, this Motion is brought on an emergency basis in light of the immediate and irreparable harm that would be suffered by the Debtors' bankruptcy estates if the Debtors were denied the financing needed to sustain on-going business operations during the critical first weeks of these cases. Several extraordinary circumstances justify the relief requested here:

a. **The Debtors' Estates will Suffer Immediate and Irreparable Harm if the Requested Relief is not Granted**:

(1) As set forth herein and in the Mesterharm Declaration, the Debtors are entering chapter 11 with limited cash on hand, and the Debtors require immediate access to the liquidity provided by the DIP Facilities to operate their businesses postpetition.

(2) As set forth herein and in the Kurtz Declaration, the DIP Facilities represent the most favorable and executable transaction available to the Debtors. Because the Debtors have no other viable source of available third-party debtor-in-possession financing, absent the funds provided by the DIP Facilities, on the terms negotiated, the Debtors would run out of cash and would have no alternative but to convert these cases to cases under chapter 7. Under such a forced liquidation, stakeholders would receive lesser recoveries than they would in a chapter 11 reorganization, and all parties in interest, including thousands of employees, would suffer in the process.

(3) The requested relief is necessary to avoid the immediate and irreparable harm that would otherwise result if the Debtors are denied the liquidity that would be provided through their proposed interim borrowings, on the terms and conditions set forth in the DIP Documents and the Interim and Final Orders.

b. **The Proposed DIP Facilities are the Best and Only Available Option For the Debtors**

(1) The Debtors, with assistance from experienced financial and legal advisors, sought to solicit offers from third parties

to provide postpetition financing on more favorable terms than the DIP Lenders.

(2) Negotiations with potential and interested financing parties, including the DIP Lenders, were conducted in good faith and at arms' length. Notwithstanding the marketing efforts of the Debtors' advisors, the DIP Facilities remain the best and only workable option.

(3) The DIP Facilities provide the Debtors with reasonable restructuring milestones and covenants, and represent the only source of financing available to the Debtors that provides a reasonable prospect of a successful balance sheet restructuring, thereby maximizing value for all stakeholders.

c. **The Proposed DIP Facilities Will Send a Positive Signal to the Market**:

(1) As described in the First Day Declaration, the Debtors operate in a highly competitive market, which has faced increasing headwinds in recent years.

(2) The Debtors expect that their vendors, landlords, and other stakeholders will be focused on whether the chapter 11 cases are appropriately capitalized, such that the Debtors can continue operating as a going concern. If there is any significant doubt about the Debtors' viability, vendors may not be willing to accept new purchase orders on anything other than cash-in-advance terms, especially purchase orders with long-lead times. By contrast, access to the DIP Facilities will allow the Debtors to purchase fresh inventory, to maintain normalized trade credit terms with their vendors, and to negotiate credibly with their landlords.

(3) The Debtors' industry is highly seasonal, and the proposed DIP Facilities will provide the Debtors with the liquidity necessary to fund their operations. Any delay in the delivery of inventory for the fall and critical winter season would irreparably harm the Debtors' estates. Additionally, the DIP Facilities are part of a global deal that will allow the Debtors to emerge from chapter 11 with a strategically sound business plan and right-sized capital structure, which will help drive improved performance during the holiday shopping season and beyond.

d. **The Debtors' Proposed Conversion of their Prepetition ABL Obligations into DIP ABL Obligations Will Benefit Stakeholders**:

(1) The conversion of the Prepetition ABL Obligations into DIP ABL Obligations will benefit the Debtors and their estates and was a necessary condition to the extension of the DIP ABL Obligations.

(a) The conversion of the Prepetition ABL Obligations into DIP ABL Obligations is expected to create availability under the DIP ABL Credit Facility over the pendency of the case, allowing the Debtors to purchase critical inventory at an interest rate under the DIP ABL Credit Facility that is lower than the current default interest rate under the Prepetition ABL Facility. The conversion of the Prepetition ABL Obligations into DIP ABL Obligations also allows the Debtors to borrow at increased advance rates against their inventory.

(b) As set forth more fully herein and in the Kurtz Declaration, the Debtors believe that obligations outstanding under their Prepetition ABL Facility are fully secured by perfected, first priority liens with respect to, among other things, inventory and receivables, with a value in excess of outstanding borrowings. The conversion merely accelerates the satisfaction of the Prepetition ABL Obligations and converts such obligations into DIP ABL Obligations without affecting recovery to other creditors.

(c) The Debtors seek to use Cash Collateral. Nevertheless, as set forth herein, in the Mesterharm Declaration, and in the First Day Declaration, the Cash Collateral alone is not sufficient to meet the Debtors' liquidity needs during these chapter 11 cases, and the use of Cash Collateral requires the consent or adequate protection of the Prepetition ABL Lenders. Similarly, access to the proposed DIP Term Loans (i) would be insufficient to fund these chapter 11 cases alone and (ii) is conditioned upon availability of commitments under the DIP ABL Credit Facility.

(d) The Debtors intend to convert the Prepetition ABL Obligations into DIP ABL Obligations upon entry

of the Interim Order, and to draw on the DIP ABL Credit Facility to fund their working capital needs during the pendency of these chapter 11 cases, in each case on a daily basis. Access to the proposed DIP Term Loans would be insufficient to fund these chapter 11 cases alone and without the additional liquidity provided by the DIP ABL Credit Facility the Debtors would be forced to liquidate, to the detriment of all parties in interest.

e. **The Proposed Conversion of a Portion of the Prepetition Term Loan Into Postpetition Debt (and Then Equity) Will Benefit Stakeholders**:

(1) Under the terms of the DIP Term Loan Documents, $70 million of the DIP Term Loan Lenders' Prepetition Term Loans will be converted into DIP Term Loans, pursuant to the Interim Order, and subsequently converted into common stock in the reorganized Debtors at their emergence from chapter 11, as and to the extent set forth in the DIP Term Loan Documents.

(2) This conversion of a portion of the Prepetition Term Loans into postpetition debt was a necessary prerequisite to the DIP Term Loan Lenders' provision of $35 million in new, postpetition financing under the DIP Term Loan Documents. Notably, no Prepetition Term Loans will roll into DIP Term Loans unless the holder of those Prepetition Term Loans provides its pro rata share of New Money DIP Term Loans. Moreover, the opportunity to provide commitments to participate in the New Money DIP Term Loans is available to all Prepetition Term Loan Lenders through 14 days after entry of the Interim Order.

(3) Absent the $35 million in new financing from the DIP Term Loan Lenders, it is likely that the Debtors would have no alternative other than to liquidate their business, or to run a "fire-sale" sale process, with all stakeholders receiving lesser recoveries than they otherwise would under a chapter 11 plan. Accordingly, the proposed repayment of a portion of the Debtors' Prepetition Term Loans would benefit all stakeholders, because it will allow the Debtors to access the additional liquidity necessary to finance their working capital during these chapter 11 cases.

f. **The Proposed DIP Lenders Have Proceeded in "Good Faith"**:

(1) As further detailed herein and in the Kurtz Declaration, the Debtors' negotiations with their DIP Lenders were vigorous, hard fought, and conducted at arms' length with the assistance of the Debtors' advisors.

(2) Each alternative proposal was duly reviewed and analyzed by the Debtors and their experienced professionals. Ultimately, the Debtors selected the postpetition financing that was fully-committed with favorable terms, including substantial operational flexibility and appropriate case milestones. After exploring alternative proposals, no third party provided a proposal that could serve as a viable alternative for the Debtors. Therefore, the DIP Facilities represent the best and only option available to provide the Debtors with access to liquidity to bridge the Debtors from the Petition Date through emergence from chapter 11.

8. The DIP Loans provide the Debtors with the funding needed to operate and maintain their business, to pay necessary expenses during the pendency of their chapter 11 cases, and to pursue what is currently the best and only path to the continuation of their business as a going concern. The Debtors are unable to obtain such financing as unsecured credit pursuant to sections 364(a) or (b) of the Bankruptcy Code, allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, or as secured credit pursuant to section 364(c) of the Bankruptcy Code on more favorable terms from other sources. Moreover, absent the DIP Facilities, on the terms negotiated, the Debtors would run out of cash and be forced to liquidate their business, with all stakeholders receiving lesser recoveries than they would in a reorganization. Failure to obtain the financing provided by the DIP Facilities would also result in future harm to the Debtors' vendors (through loss of future orders), landlords (through loss of a stable tenant), and thousands of employees (through loss of their employer).

9. The use of Cash Collateral alone would be insufficient to meet the Debtors' postpetition liquidity needs. The Debtors therefore respectfully request approval of the DIP Facilities, which is supported by their prepetition lenders, and the terms and conditions described herein and set forth in the DIP Documents.

Concise Statements Pursuant to Bankruptcy Rule 4001(b)[6]

I. Concise Statement Regarding the DIP Facilities

10. The chart below contains a summary of the material terms of the proposed DIP Facilities, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B).

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
Borrower(s) Bankruptcy Rule 4001(c)(1)(B)	The Gymboree Corporation Gymboree Manufacturing, Inc. Gymboree Operations, Inc. Gymboree Retail Stores, Inc. Gym-Card, LLC Gym-Mark, Inc. S.C.C. Wholesale, Inc. *See* DIP ABL Agreement Preamble	The Gymboree Corporation *See* DIP Term Loan Agreement Preamble
Guarantor(s) Bankruptcy Rule 4001(c)(1)(B)	Giraffe Intermediate B, Inc. *See* DIP ABL Agreement Preamble	Giraffe Intermediate B, Inc. and each wholly-owned domestic subsidiary of the Borrower. *See* DIP Term Loan Agreement Preamble.
Lenders Bankruptcy Rule 4001(c)(1)(B)	Bank of America, N.A. as DIP ABL Administrative Agent, Collateral Agent, L/C Issuer, and Swing Line Lender, Pathlight Capital LLC, as DIP ABL Term Agent, and each lender from time to time party thereto. *See* DIP ABL Agreement Preamble.	Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent, and each lender from time to time party thereto. *See* DIP Term Loan Agreement Preamble.

[6] The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Agreements and the Interim Order. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Interim Order, as applicable.

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
Reporting Information Bankruptcy Rule 4001(c)(l)(B)	Delivery of all reports and notices and other documents set forth under the sections entitled "Financial Statements," "Certificates; Other Information," "Physical Inventories," "Approved Budget," and "Collateral Updates," in each case, when and as required under the DIP ABL Credit Facility. *See* DIP ABL Agreement §§ 5.01, 5.02, 5.16, 5.18, and 5.22.	Delivery of all reports and notices and other documents set forth under the sections entitled "Financial Statements; Budget", "Certificates; Other Information", "Notices", and "Additional Collateral; Additional Guarantors" in each case, when and as required under the DIP Term Loan Facility. *See* DIP Term Loan Agreement §§ 6.01, 6.02, 6.03, and 6.11.
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	Prepetition ABL Lenders under the Prepetition ABL Credit Agreement and the Prepetition Term Loan Lenders under the Prepetition Term Loan Credit Agreement *See* Interim Order Preamble.	Prepetition ABL Lenders under the Prepetition ABL Credit Agreement and the Prepetition Term Loan Lenders under the Prepetition Term Loan Credit Agreement *See* Interim Order Preamble.
Term Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B)	Stated Maturity Date. December [_], 2017 *See* DIP ABL Agreement §1.01.	Stated Maturity Date. December 11, 2017 *See* DIP Term Loan Agreement § 1.01.
Adequate Protection Bankruptcy Rules 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii)	Adequate Protection Liens. Subject and subordinate to the Carve Out as set forth in the Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the "Prepetition ABL Adequate Protection Liens"). Adequate Protection Superpriority Claims. Subject and subordinate to the Carve Out as set forth in the Interim Order, as further adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Administrative Agent, on behalf of itself and the Prepetition ABL Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any	Adequate Protection Liens. Subject and subordinate to the Carve Out as set forth in the Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the "Prepetition Term Loan Adequate Protection Liens," and together with the Prepetition ABL Adequate Protection Liens, the "Adequate Protection Liens"). Adequate Protection Superpriority Claims. Subject and subordinate to the Carve Out as set forth in the Interim Order, as further adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	Successor Cases (the "Prepetition ABL Superpriority Claim"). Adequate Protection Payments and Protections for Prepetition ABL Parties. Subject to the Carve Out as set forth in the Interim Order, as further adequate protection (the "Prepetition ABL Adequate Protection Payments"), the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) solely to the extent that any Prepetition ABL Obligations remain outstanding after entry of the Interim Order, interest (at the default rate) and principal due under the Prepetition ABL Documents, subject to the rights preserved in paragraph 43 of the Interim Order, (ii) immediately upon entry of the Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agents arising prior to the Petition Date, and (iii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agents arising subsequent to the Petition Date; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition ABL Agents shall be made solely from DIP ABL Priority Collateral. *See* Interim Order ¶ 12, 14, 16.	administrative expense claim in each of the Cases and any Successor Cases (the "Prepetition Term Loan Superpriority Claim," and together with the Prepetition ABL Superpriority Claim, the "Adequate Protection Superpriority Claims"). Adequate Protection Payments and Protections for Prepetition Term Loan Parties. Subject to the Carve Out as set forth in the Interim Order, as further adequate protection (the "Prepetition Term Loan Adequate Protection Payments," and together with the Prepetition ABL Adequate Protection Payments, the "Adequate Protection Payments"), the Debtors are authorized and directed to provide adequate protection to the Prepetition Term Loan Parties in the form of payment in cash, without the need for the filing of formal fee applications: (i) immediately upon entry of the Interim Order, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Term Loan Parties arising prior to the Petition Date; and (ii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Term Loan Parties arising subsequent to the Petition Date; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition Term Loan Parties shall be made solely from the DIP Term Priority Collateral. *See* Interim Order ¶¶ 12, 14, 17.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Interim Order, including, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority	Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Interim Order, including to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate

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	Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and the Interim Order; (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order; and (e) permit any Prepetition Term Loan Party to that certain Restructuring Support Agreement dated as of June 11, 2017 (as amended, the "Restructuring Support Agreement") to take any actions authorized under the Restructuring Support Agreement, including to take steps necessary (including sending any notice contemplated thereunder) to effectuate its termination, in each case, without the need to seek or obtain further relief from the Court. *See* Interim Order ¶ 22.	Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and the Interim Order; (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order; and (e) permit any Prepetition Term Loan Party to that certain Restructuring Support Agreement dated as of June 11, 2017 (as amended, the "Restructuring Support Agreement") to take any actions authorized under the Restructuring Support Agreement, including to take steps necessary (including sending any notice contemplated thereunder) to effectuate its termination, in each case, without the need to seek or obtain further relief from the Court. *See* Interim Order ¶ 22.
Carve Out Bankruptcy Rule 4001(c)(1)(B);	*See* Interim Order ¶ 40.	*See* Interim Order ¶ 40.
506(c) Waiver Bankruptcy Rule 4001(c)(l)(B)(x)	Section 506(c) Claims. Subject to entry of a 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 ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL	Section 506(c) Claims. Subject to entry of a 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 ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the

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	Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders. *See* Interim Order ¶ 45.	Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders. *See* Interim Order ¶ 45.
Section 552(b) Bankruptcy Rule 4001(c)(l)(B)	Section 552(b). Subject to entry of a Final Order, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral. *See* Interim Order ¶ 47.	Section 552(b). Subject to entry of a Final Order, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral. *See* Interim Order ¶ 47.
Commitment Bankruptcy Rule 4001(c)(1)(B)	Commitments. As of the Closing Date, the commitments total $273,450,000. *See* DIP ABL Agreement Schedule 1.01.	Initial New Money Loans. Initial New Money Commitment of $35,000,000. Roll-Up Loans. $70,000,000. *See* DIP Term Loan Agreement §§ 1.01; 2.01; 2.02.
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B)	Conditions of Effectiveness of Credit Agreement. Administrative Agent and Lenders shall not be required to fund unless the following conditions are satisfied: • Delivery of the requisite Loan Documents and certain customary closing deliverables, a Borrowing Base Certificate, Legal Opinion, Secretary's Certificate, Officer's Certificate, financial statements, and the Approved Budget. • The DIP ABL Administrative Agent, the DIP ABL Term Loan Agent, the Arranger, and the Lenders shall have received all applicable fees prior to the	Conditions Precedent to Closing Date. The DIP Term Loan Agreement shall become effective as of the Business Day of and, subject to, the satisfaction, or waiver by the Required Lenders in accordance with the DIP Term Loan Agreement of the following conditions: • The Chapter 11 Cases shall have been commenced in the Bankruptcy Court and all of the "first day orders" and all related pleadings to be entered at the time of commencement of the Chapter 11 Cases or shortly thereafter shall be in form and substance reasonably satisfactory to the Required Lenders.

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	Closing Date. • The Collateral Agent or the collateral agent under the DIP Term Loan Facility shall have received customary Uniform Commercial Code filing, judgment and tax lien searches, certificates or instruments representing Pledged Collateral (as defined in the Security Agreement) of the Loan Parties and evidence of the completion of all other actions, recordings and filings of or with respect to any Security Document to create in favor of the Collateral Agent a legal, valid, and enforceable and perfected security interest and Lien upon the Collateral. • Combined Availability (as defined in the DIP ABL Agreement) shall not be less than $30,000,000 and Availability (as defined in the DIP ABL Agreement) shall not be less than $50,000,000. • No Material Adverse Effect. • No Default or Event of Default shall exist or would result from the proposed borrowing. • The representations and warranties set forth in the Loan Documents are true and correct in all material respects. • Since the Petition Date, there has been no material increase in the liabilities of the Loan Parties • Since the Petition Date, other than those changes resulting from the commencement of the Chapter 11 Cases, there shall have been no adverse change in the ability of the Administrative Agent and the enders to enforce the Loan Documents • (i) Bankruptcy Court shall have have entered the Interim Order by no later than five (5) Business Days after the Petition Date in	• The Interim Bankruptcy Court Order shall have been entered by the Bankruptcy Court and the Administrative Agent shall have received a true and complete copy of such order and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Administrative Agent and the Required Lenders. • All orders entered by the Bankruptcy Court pertaining to cash management and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent). • No trustee, examiner, or receiver has been appointed with respect to the Debtors' chapter 11 cases and no motion is pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral. • The Prepetition Term Agent and the Prepetition Term Lenders shall have each received adequate protection in respect of the Liens securing their respective Prepetition Obligations pursuant to the Adequate Protection Orders. • The Administrative Agent shall have received UCC, tax and judgment lien searches and other appropriate evidence, in form and substance reasonably satisfactory to the Administrative Agent. • The Administrative Agent, for its benefit and the benefit of each Lender, shall have been granted a

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	form and substance satisfactory to the Administrative Agent and the AB Term Loan Agent; (ii) the Loan Parties shall have established or shall maintain the cash management systems and the Loan Parties shall have taken steps to comply with the Cash Management Order; (iii) the Administrative Agent shall have received drafts of the "first day" pleadings for the Chapter 11 Cases; and (iv) all motions, orders, and other documents to be filed with and submitted to the Bankruptcy Court on the Petition Date shall be in form and substance reasonably satisfactory to the DIP ABL Administrative Agent and the DIP ABL Term Loan Agent, and the Bankruptcy Court shall have approved and entered all "first day" orders, including the Cash Management Order and an order approving the Specified Store Closing Sales. • Receipt of evidence, prior to or concurrently with the effectiveness of the DIP ABL Agreement, the DIP Term Loan shall be in full force and effect; (ii) the [Lead Borrower] has received gross proceeds under the DIP Term Loan Facility of not less than $13,284,217 and (iii) net proceeds realized from the disposition of Play & Music in an amount not less than $13,500,000 shall have been applied to the Revolving Obligations. • The Administrative Agent shall have received all documentation and other information about the Loan Parties required under applicable "know your customer" and anti-money laundering rules and regulations without limitation the USA Patriot Act. <u>Conditions Precedent to All Credit Extensions</u>. The obligation of each Lender to make each Loan and of the Issuing Banks to issue each Letter of Credit is	perfected lien on the Collateral by the Bankruptcy Court Orders on the terms and conditions set forth herein and in the other Loan Documents. • The Administrative Agent shall have received appropriate UCC-1 financing statements for filing under the UCC of each jurisdiction of organization of each Loan Party. • The ABL Facility Documentation shall be in form and substance reasonably satisfactory to the Required Lenders in their sole discretion. • The Administrative Agent shall have received the Budget. • The Borrower shall have paid to the Administrative Agent and Lenders the fees and expenses then due and payable under the Loan Documents (including the fees and expenses of the DIP Term Loan Agent Advisors (as defined below) subject to and in accordance with the Bankruptcy Court Orders. • The Administrative Agent shall have received customary certificates of resolutions or other action, incumbency certificates of Responsible Officers of each Loan Party evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the DIP Term Loan Agreement and the other Loan Documents to which such Loan Party is a party and certificates (including Organization Documents and good standing certificates) relating to the organization, existence and good standing of each Loan Party in its jurisdiction of organization, in each case, as certified by the Secretary or an Assistant Secretary of such Loan Party.

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	subject to the satisfaction of the following conditions: • The DIP ABL Administrative Agent and/or the DIP ABL Term Agent shall have received the requisite notices. • The aggregate amount of the sum of the Credit Extension plus Pre-Petition Credit Extensions would not (x) cause Availability to be less than zero or (y) as of the initial borrowing in each calendar week, exceed the aggregate amount of the sum of the Credit Extensions plus Pre-petition Credit Extensions projected to be outstanding in the Approved Budget as of the end of the immediate prior week, subject to permitted variance of 10%. • The representations and warranties contained in the DIP ABL Agreement and the other Loan Documents shall be true and correct in all material respects. • Before and after giving effect to each Borrowing or issuance of each Letter of Credit, no Default or Event of Default shall have occurred and be continuing. • Except in the issuances of Letters of Credit, the Borrowers shall have, or shall project in good faith that it shall have as of the proposed Borrowing date, less than $1,000,000 in cash (including the amounts in the Disbursement Account and each of the DIP Term Loan Specified Accounts) available and the Borrowers shall have paid the balance of all fees and expenses then due and payable. • (i) The Final Order shall have been entered following the expiration of the Interim Order, (ii) the Interim Order or the Final Order, as applicable, shall be in full force and effect, (iii) no motion for reconsideration of the	• The Administrative Agent shall have received executed counterparts of the DIP Term Loan Agreement and the other Loan Documents executed by each party thereto, each of which shall be in form and substance reasonably satisfactory to the Required Lenders. <u>Conditions to each Borrowing and to each Withdrawal Date</u>. The obligation of each Lender to make Term Borrowings on a Credit Date, and the Borrower's right to make a Withdrawal on each Withdrawal Date, also are subject to (other than in respect of Withdrawals for the payment of amounts due and payable in accordance with Section 10.05(e) of the DIP Term Loan Agreement) the satisfaction, or waiver in accordance with the DIP Term Loan Agreement, of the following further conditions precedent: • With respect to any Term Borrowing that is on or after 35 days following the Petition Date, the final Bankruptcy Court Order shall have been signed and entered by the Bankruptcy Court, and (i) the Administrative Agent shall have received a true and complete copy of such order, (ii) such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion and (iii) such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent). • The Borrower shall have delivered to the Administrative Agent, a duly executed and completed Borrowing Notice or Notice of Withdrawal, as

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	Interim Order or the Final Order, as applicable shall have been timely filed by Debtor or any of its Subsidiaries and (iv) no appeal of the Interim Order or the Final Order, as applicable, shall have been timely filed. *See* DIP ABL Agreement §§4.01; 4.02.	applicable. • The Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, shall be in full force and effect and shall contain customary terms for loans of this nature, including waivers of section 506(c) and the "equities of the case" exception under section 552 of the Bankruptcy Code, and shall not (in whole or in part) have been enjoined temporarily, preliminarily or permanently, reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any challenge. • The Loan Parties shall be in compliance with all material respects with to the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be. • The Loan Parties shall be in compliance in all material respects with each Cash Management Order. • The following statements shall be true and correct: (i) the representations and warranties contained in Article 5 of the DIP Term Loan Agreement and in each other Loan Document are true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and warranties shall be true and correct in all respects) on and as of such Credit Date or Withdrawal Date, as applicable, as though made on and as of such date, except to the extent that any such representation or warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
		warranties shall be true and correct in all respects) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on such Credit Date or Withdrawal Date, as applicable, or would result from the making of such Term Borrowing or Withdrawal on such date. • With respect to each Final Loan, the Borrower shall have no availability to draw amounts under the ABL Credit Agreement (after giving effect to the $5,000,000 borrowing reserve set forth in Section 5.21(c) thereof). • With respect to each Final Loan, the Bankruptcy Court shall have entered an order approving the disclosure statement in support of the Approved Plan of Reorganization and such order shall be in full force and effect and shall not (in whole or in part) have been enjoined temporarily, preliminarily or permanently, reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any challenge. *See* DIP Term Loan Agreement §§ 4.01; 4.02.
Interest Rates Bankruptcy Rule 4001(c)(1)(B)	Rates and Payment of Interest. • The Revolving Obligations shall bear interest: (i) if a Prime Rate Loan, at the Prime Rate plus the Applicable Margin for Revolving Credit Loans; and (ii) if a LIBOR Loan, at the Adjusted LIBOR Rate plus the Applicable Margin for Revolving Credit Loans • The Term Loan Obligations shall bear interest: (i) ABL Term Loan Rate plus	Interest on Loans. • The Obligations consisting of Loans shall bear interest: (i) if an ABR Borrowing, at the Alternate Base Rate plus the Applicable Margin and (ii) if a Eurodollar Borrowing, at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin. "Applicable Margin" means (a) in the case of New Money Loans, (i) 12.00% per annum for Eurodollar Term Loans and (ii) 11.00% per annum for ABR Term Loans and (b) in

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	eleven percent (11%); or (ii) if the DIP ABL Term Agent cannot determine the ABL Term Loan Rate, then the Prime Rate plus ten percent (10%). • During any Event of Default, the Administrative Agent may (and shall at the direction of Required Lenders) elect to apply Default Rate interest. *See* DIP ABL Agreement §§ 1.01; 2.08; 2.12.	the case of Roll-up Loans, (i) 3.50% per annum for Eurodollar Term Loans and (ii) 2.50% per annum for ABR Term Loans. During the continuance of an Event of Default, the Borrower shall pay interest on all amounts owed under the DIP Term Loan Agreement at a fluctuating interest rate per annum at all times, after as well as before judgment, equal to (a) in the case of principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 of the DIP Term Loan Agreement plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days at all times) equal to the rate that would be applicable to an ABR Loan plus 2.00% per annum, and such interest shall be payable on demand. *See* DIP Term Loan Agreement §§ 1.01; 2.06; 2.07.
Milestones Bankruptcy Rule 4001(c)(1)(B)	Milestones. Milestones. Achieve each of the following milestones: • On the Petition Date, the Debtors shall file a motion seeking approval of the DIP Senior Credit Facility and the DIP Term Loan Facility. • On or before 3 business days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court. • No later than 10 days following the Petition Date, the Debtors shall have filed, and within 35 days after the Petition Date shall have obtained, a motion to extend the lease assumption and rejection period to 210 days. • On or before 35 days after the Petition Date, the Final Order authorizing and approving the DIP Senior Credit Facility and DIP Term Loan Facility on a final basis shall have been entered by the Bankruptcy Court. • On or before 5 days after the	Milestones. Achieve each of the following milestones: • On or before 3 business days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court. • On or before 5 days after the Petition Date, the Debtors shall have filed a chapter 11 plan, disclosure statement, proposed solicitation materials, a motion to approve the disclosure statement and solicitation materials, and a motion seeking entry of an order approving the Debtors' entry into the Backstop Commitment Agreement. • No later than 10 days after the Petition Date (June 21, 2017), the Debtors shall have filed a motion seeking entry of an order approving going out-of-business sales and related relief (the "GOB Order"). • No later than 10 days following the Petition Date (June 21, 2017), the Debtors shall have filed a motion seeking to extend the date by which to assume or reject unexpired leases

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	Petition Date, the Debtors shall have filed a chapter 11 plan of reorganization and a disclosure statement relating to such plan of reorganization, which plan shall be supported by committed financing and a plan support agreement from the lenders under the Prepetition Term Loan Credit Agreement acceptable to the DIP ABL Administrative Agent and the DIP ABL Term Agent and shall provide, among other things, for payment in full in cash of the DIP Facility Obligations and the Prepetition Obligations on the effective date, and the DIP ABL Administrative Agent and the DIP ABL Term Agent shall be satisfied that such plan is reasonably anticipated to become effective on or prior to the 100th day after the Petition Date (any such chapter 11 plan, an "Acceptable Plan"). • On or before 55 days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court approving the disclosure statement and voting and solicitation procedures for an Acceptable Plan; if not approved by such date, the Debtors shall file on or before 60 days after the Petition Date, a motion to approve a sale of substantially all of the Debtors' assets (the "Sale") pursuant to Section 363 of the Bankruptcy Code (the "Sale Motion"), and the terms of such Sale Motion and related bidding procedures shall be in form and substance reasonably acceptable to the DIP ABL Agent and the DIP Term Loan Agent. • On or before 95 days after the Petition Date, either (A) the Debtors shall have obtained an order form the Bankruptcy confirming an Acceptable Plan or (B) the Debtors shall have obtained a stalking horse bid	of non-residential real property. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained entry of the Final DIP Orders. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained entry of the BCA Approval Order. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained entry of the GOB Order. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained one or more proposals containing a description of the material terms and conditions for the Exit ABL Term Loan Replacement Facility or demonstrated to the reasonable satisfaction of the Required Consenting Creditors that such proposals were not available. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained one or more proposals containing a description of the material terms and conditions for (a) an Exit Term Loan Facility sufficient to refinance the New Money DIP Loan Claims and (b) an Exit Term Loan Facility sufficient to refinance both the Exit Term Loan Facility and the ABL Term Loan Facility Claims, or shall have demonstrated to the reasonable satisfaction of the Required Consenting Creditors that such proposals were not available. • No later than 35 days following the Petition Date (July 16, 2017), the Debtors shall have obtained one or more proposals containing a description of the material terms and conditions for the refinancing of the DIP ABL Facility (which need not be a traditional asset-backed financing arrangement), or shall have demonstrated to the reasonable

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	approved by the DIP ABL Agent and the DIP ABL Term Agent for a liquidation on an equity basis of the entire chain of Stores of the Debtors and all of the assets relating thereto under Section 363 of the Bankruptcy Code (the "Full Chain Liquidation"), which Full Chain Liquidation shall generate sufficient proceeds to repay in full in cash all of the Obligations and Pre-Petition Obligations. In the event that the Debtors have not met Milestone (A) above, on or before 100 days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court approving bidding procedures for the Full Chain Liquidation, which bidding procedures shall be in form and substance reasonably acceptable to the DIP ABL Agent and the DIP ABL Term Agent. In the event that the Debtors have not met Milestone (A) above, on or before 105 days after the Petition Date, either (x) the Debtors shall have obtained an order from the Bankruptcy Court confirming an Acceptable Plan, which order shall be of immediate effect and include a waiver of the 14-day stay provision or (y) the Debtors shall have conducted an auction for the Full Chain Liquidation. • On or before 110 days after the Petition Date, either (A) the Debtors shall have obtained an order of the Bankruptcy Court approving the Full Chain Liquidation, or (B) the effective date of the Acceptable Plan shall have occurred in accordance with its terms, and the Debtors shall have emerged from chapter 11. In the event Milestone (B) above shall not have been met, on or before 111 days after the Petition Date, the Debtors shall have commenced the Full Chain Liquidation.	satisfaction of the Required Consenting Creditors that such proposals were not available. • No later than 50 days after the filing of the Plan, Disclosure Statement, and a motion seeking approval of the Disclosure Statement and Solicitation Materials, the Debtors shall have obtained entry of the Disclosure Statement Order approving the Disclosure Statement and Solicitation Materials. • No later than 75 days following the Petition Date (August 25, 2017), the Debtors shall have obtained a written commitment for the Exit ABL Term Loan Replacement Facility that is in form and substance reasonably satisfactory to the Required Consenting Creditors or demonstrated to the reasonable satisfaction of the Required Consenting Creditors that such commitment was not available. • No later than 75 days following the Petition Date (August 25, 2017), the Debtors shall have obtained written commitments for (a) an Exit Term Loan Facility sufficient to refinance the New Money DIP Loan Claims and (b) an Exit Term Loan Facility sufficient to refinance both the Exit Term Loan Facility and the ABL Term Loan Facility Claims, or shall have demonstrated to the reasonable satisfaction of the Required Consenting Creditors that such commitments were not available. • No later than 75 days following the Petition Date (August 25, 2017), either (i) the ABL Lenders shall have agreed to provide the Exit ABL Revolving Facility and to convert all commitments under the DIP ABL Facility into such Exit Revolving Facility on the Plan Effective Date, or (ii) the Debtors shall have obtained a written commitment from another financing source to provide the Exit ABL Revolving Facility (which need not

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	• If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 60 days after the Petition Date, the Debtors shall have filed the Sale Motion. • If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 75 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the bidding procedures. • If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 95 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale. • If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 110 days after the Petition Date, the Debtors shall have consummated the Sale. • On or before June 17, 2017, the Debtors shall have obtained approval from the Bankruptcy Court to retain the Specified Liquidation Agent to assist the Debtors in conducting the Specified Store Closing Sales. • On or before July 18, 2017, the Debtors shall have commenced, and shall thereafter continue, the Permitted Store Closing Sales, pursuant to the terms of the relevant documentation. • On or before September 30, 2017, the Debtors shall have completed the Permitted Store Closing Sales,	be a traditional asset-backed financing arrangement) on the Plan Effective Date, in either case, in form and substance reasonably satisfactory to the Required Consenting Creditors. • No later than 105 days following the Petition Date (September 24, 2017), the Debtors shall have obtained entry of the Confirmation Order. • No later than the earliest of (a) 120 days following the Petition Date (October 9, 2017) and (b) 15 days following the entry of the Confirmation Order, the Plan Effective Date shall have occurred. *See* Restructuring Term Sheet.

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	pursuant to the terms of the relevant documentation. *See* DIP ABL Agreement Schedule 5.19.	
Challenge Period Bankruptcy Rule 4001(c)(l)(B)	Effect of Stipulations on Third Parties. The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 43) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than (a) 60 days from the date of formation of a Committee (if appointed), or (b) 75 days following the entry of the Interim Order in the case that no Committee is appointed (the "Challenge Deadline"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Administrative Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further	Effect of Stipulations on Third Parties. The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 43) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than (a) 60 days from the date of formation of a Committee (if appointed), or (b) 75 days following the entry of the Interim Order in the case that no Committee is appointed (the "Challenge Deadline"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Administrative Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. *See* Interim Order ¶ 43.

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	review or appeal. *See* Interim Order ¶ 43.	
Use of DIP Facilities and Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(ii)	Use of Proceeds. The proceeds of Loans and Letters of Credit will be used by the Borrowers solely on or after the Closing Date, to fund the Chapter 11 Cases in accordance with the Approved Budget and for the financing of the Lead Borrower's and its Subsidiaries' ordinary working capital, letters of credit and other general corporate needs including certain fees and expenses of professionals retained by the Loan Parties, subject to the Carve-Out, and for certain other Pre-Petition and pre-filing expenses that are approved by the Bankruptcy Court and permitted by the Approved Budget and to pay the Pre-Petition Obligations. The Loan Parties shall not be permitted to use the proceeds of the Loans, Letters of Credit or any Cash Collateral in contravention of the provisions of the applicable Order or the applicable Insolvency Laws, including any restrictions or limitations on the use of proceeds contained therein. Nothing in this agreement shall prohibit the Post-Petition payment of Pre-Petition Obligations, including principal, interest, fees, penalties or recoverable costs, due and payable in connection with the Pre-Petition Credit Agreement with the proceeds of the Collateral. No part of the proceeds of any Loan or other Credit Extension will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the FRB, including Regulations U and X. *See* DIP ABL Agreement § 5.17.	Use of Proceeds. The proceeds of the New Money Loans shall be applied in accordance in all material respects with the Budget (subject to permitted variances). No part of the proceeds of the New Money Loans will be used, whether directly or indirectly: • in any manner that causes such Loan or the application of such proceeds to violate the Regulations of the Board, including Regulation T, Regulation U and Regulation X, or any other regulation thereof, or to violate the Securities Exchange Act; • for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court Order; • to investigate, commence, prosecute or finance in any way any action, proceeding or objection with respect to or related to: (i) the claims, liens or security interest of the Administrative Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders or their respective rights and remedies under the DIP Term Loan Agreement, the other Loan Documents, the Bankruptcy Court Order or the Prepetition Loan Documents, as the case may be, including to commence or prosecute or join in any action against any or all of the Administrative Agent, the Lenders the Prepetition Agent or the Prepetition Lenders seeking (x) to avoid, subordinate or recharacterize the Obligations or any of the Administrative Agent's the Prepetition Agent or any Prepetition Lender's Liens, (y) any monetary, injunctive or other affirmative relief against any or all of the Administrative Agent, the Lenders the Prepetition Agent or the Prepetition Lenders or their Collateral or "Collateral" under (and as defined in) the Prepetition Loan Documents) in connection with the

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
		Loan Documents or the Prepetition Loans Documents or (z) to prevent or restrict the exercise by any or all of the Administrative Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders of any of their respective rights or remedies under the Loan Documents or the Prepetition Loan Documents, (ii) any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness or obligations that are subjects of a release under the Approved Plan of Reorganization against the Administrative Agent, the Lenders and the Prepetition Lenders, or (iii) certain stipulations to be made by the Credit Parties and approved by the Bankruptcy Court; provided that, advisors to the Official Committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Credit Agreement at an aggregate expense for such investigation not to exceed $25,000, provided that no portion of such amount may be used to prosecute any such claims; • to finance in any way: (x) any adversary action, suit, arbitration, proceeding, application, motion, contested matter or other litigation of any type materially adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Term Agent or the Prepetition Term Lenders or their respective rights and remedies under the Loan Documents, the Interim Bankruptcy Court Order, the Final Bankruptcy Court Order or the Prepetition Term Loan Documents or (y) any other action which with the giving of notice or passing of time would result in an Event of Default hereunder or under any of the Loan Documents. *See* DIP Term Loan Agreement §7.10.

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) **Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens** Bankruptcy Rule 4001(c)(1)(B)(vii)	Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders' and Prepetition Term Loan Lenders' claims and liens. *See* Interim Order ¶ F.	Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders' and Prepetition Term Loan Lenders' claims and liens. *See* Interim Order ¶ F.
Liens on Avoidance Actions	*See* Interim Order ¶ 5.	*See* Interim Order ¶ 5.
Repayment Features	Mandatory Prepayments. The outstanding Obligations shall be subject to mandatory prepayments as follows: (i) If at any time the sum of (i) the amount of the Tranche A Credit Extensions by the Tranche A Lenders plus (ii) amount of the Pre-Petition Tranche A Credit Extensions exceeds the lesser of the aggregate Tranche A Commitments or the Tranche A Borrowing Base, the Borrowers will, immediately upon notice from the Administrative Agent: (x) prepay, first, the Pre-Petition Tranche A Credit Extensions and, second, the Tranche A Loans (including Swing line Loans) in an amount necessary to eliminate such deficiency; and (y) if, after giving effect to the prepayment in full of all Pre-Petition Tranche A Credit Extensions and outstanding Tranche A Loans such deficiency has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 103% of the Letter of Credit Outstandings. (ii) If at any time the amount of the Revolving Credit Extensions plus amount of the Pre-Petition Revolving Credit Extensions causes Availability to be less than zero or causes Borrowers to not be in	Voluntary Prepayments. The Borrower shall have the right at any time and from time to time to prepay the Term Loans, in whole but not in part, upon at least three Business Days' prior written or fax notice to the Administrative Agent before 12:00 (noon), New York City time subject to payment by the Borrower of a prepayment premium equal to 5.0% of the principal amount of Term Loans being prepaid. Mandatory Prepayments. • If (1) the Borrower or any Subsidiary Disposes of any property or assets pursuant to Section 7.05(a), (f), (i), or (k) of the DIP Term Loan Agreement (other than, so long as the ABL Credit Agreement is in effect, any Disposition of (A) ABL Priority Collateral and (B) assets of the Canadian Subsidiary of the type described in the definition of ABL Priority Collateral in the Bankruptcy Court Order), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or a Subsidiary of Net Proceeds, the Borrower shall on or prior to the date which is ten (10)

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	compliance with Section 6.15, the Borrowers will, immediately upon notice from the Administrative Agent: (x) prepay, first, the Pre-Petition Tranche A Credit Extensions and, then, prepay the Tranche A Loans in an amount necessary to eliminate such deficiency; and (y) if, after giving effect to the prepayment described in clause (x) such deficiency has not been eliminated, prepay the Pre-Petition FILO Credit Extensions and FILO Loans in an amount necessary to eliminate such deficiency, and (z) if, after giving effect to the prepayment as described in clauses (x) and (y) above, such deficiency has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 103% of the Letter of Credit Outstandings. (iii) The Revolving Credit Loans shall be repaid daily in accordance with the provisions of Section 2.18 and Section 2.27. Notwithstanding anything to the contrary herein, during the period between the Closing Date and payment in full of all Pre-Petition Obligations (including all accrued and unpaid interest thereon and fees but excluding all contingent indemnification obligations and other contingent obligations relating to the Pre-Petition Obligations), Cash Receipts and other amounts may be applied to the Pre-Petition Obligations in accordance with the foregoing sentence and in a manner satisfactory to the Administrative Agent. (iv) At the time of the delivery of each Borrowing Base Certificate, Tranche A Loans shall be made by the Tranche A Lenders (without regard to minimum or integral amounts for such Loans) to repay the FILO Credit Extensions to extent the sum of (x) FILO Credit Extensions plus (y) the Pre-Petition FILO Loans exceed the lesser of the FILO Commitments or Incremental Availability as reflected in such Borrowing Base Certificate. (v) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBOR Loans are prepaid. No prepayment of LIBOR Loans shall be permitted pursuant to this Section 2.17 prior to the last day of an Interest Period applicable thereto, unless the Borrowers	Business Days after the date of the realization or receipt by the Borrower or any Subsidiary of such Net Proceeds apply 100% of such Net Proceeds realized or received to repay the Loans at par; provided that Net Proceeds of Dispositions in an aggregate amount of $250,000 for the term of the DIP Term Loan Agreement shall not be required to be applied pursuant to Section 2.13 of the DIP Term Loan Agreement and may be retained by the Borrower for use in accordance with the Budget. • On the date of receipt by the Borrower or any of its Subsidiaries of cash proceeds from a capital contribution to, or the issuance of any Equity Interests of, the Borrower or any of its Subsidiaries (other than issuances of Equity Interests by a Subsidiary to the Borrower and capital contributions by the Borrower to a Subsidiary), the Borrower shall prepay an aggregate principal amount of the Term Loans equal to 100% of such Net Proceeds received therefrom no later than five Business Days following receipt thereof by such Person. • If the Borrower or any Subsidiary incurs or issues any Indebtedness after the Closing Date (other than Indebtedness permitted under Section 7.03 of the DIP Term Loan Agreement, including for the avoidance of doubt, ABL Facility Indebtedness borrowed on or after the Closing Date), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Net Proceeds. *See* DIP Term Loan Agreement §§2.12 and

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	reimburse the Lenders for all Breakage Costs associated therewith within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such Borrowing being less than $5,000,000. A prepayment of the Revolving Credit Loans pursuant to Section 2.16 or Section 2.17 shall not permanently reduce the Total Commitments. (vi) Notwithstanding the forgoing, the Borrowers shall repay the Obligations as required pursuant to Section 2.15(e). *See* DIP ABL Agreement § 2.17.	2.13.
Fees Bankruptcy Rule 4001(c)(1)(B)	DIP Agent Fees. In consideration of DIP ABL Administrative Agent's, DIP ABL Term Agent's, and DIP Term Loan Agent's services under the DIP credit facilities, Borrowers shall pay to DIP ABL Administrative Agent, DIP ABL Term Agent and DIP Term Loan Agent, for each Agent's own account, fees described in separate fee letters, in an aggregate amount of $6,635,750. Unused Fee: Borrowers shall pay Administrative Agent, for the Revolving Credit Lenders, an aggregate fee equal to the Applicable Unused Fee Rate per annum of the average daily balance of the Revolving Credit Lenders' respective Unused Commitment during the month just ended. Letter of Credit Fee: Borrowers shall pay Administrative Agent, for the participating Revolving Credit Lenders, a fee calculated on the basis of a 360 day year, as applicable and actual days elapsed, equal to the following per annum percentages of the average face amount of the following categories of Letters of Credit outstanding during the monthly period then ended: (i) Standby Letters of Credit: in accordance with Lender's Tranche A Commitment Percentage, at a per annum rate equal to the then Applicable Margin	Aggregate DIP Fees. In consideration of DIP ABL Administrative Agent's, DIP ABL Term Agent's, DIP Term Loan Agent's, ABL Lenders' and Term Loan Lenders' services under the DIP credit facilities, Borrowers shall pay to DIP ABL Administrative Agent, DIP ABL Term Agent, DIP Term Loan Agent, ABL Lenders and Term Loan Lenders fees described in the DIP Documents, in an aggregate amount of $6,635,750, which includes the Backstop Fee and the Original Issue Discount referenced below. Backstop Fee. The Borrower shall pay to the Backstop Lenders a non-refundable premium in an amount equal to 3.5% of the aggregate amount of the New Money Loans on the Closing Date. Such premium shall be fully earned, due and payable on the Closing Date and shall not be refundable for any reason whatsoever. Original Issue Discount: The Borrower and each Lender agrees that on the date of the Term Borrowing the Borrower shall receive proceeds from the New Money Loans based on a purchase price of 98% of the principal amount thereof. For the avoidance of doubt, on the Closing Date, each Lender shall advance to the Administrative Agent for application as set forth in Section 2.02(b) an amount equal to 98% of its ratable share of the New Money Loans requested by the

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	for Tranche A Loans that are LIBOR Loans; (ii) Commercial Letters of Credit: in accordance with Lender's Tranche A Commitment Percentage, at a per annum rate equal to fifty percent (50%) of the then Applicable Margin for Tranche A Loans that are LIBOR Loans; (iii) After the occurrence and during the continuance of an Event of Default, at any time Administrative Agent is not holding in the Cash Collateral Account an amount equal to 103% the Letter of Credit Outstandings, plus accrued and unpaid interest on any unreimbursed drawings of such Letter of Credit Outstandings, effective upon written notice from the Administrative Agent (which may be given at Administrative Agent's election or at Required Revolving Lender's direction after the occurrence of any Event of Default), the Letter of Credit Fees set forth in Section 2.19(c) shall be increased by an amount equal to two percent (2%) per annum. Issuance and Fronting Fees: Borrowers shall pay to each Issuing Bank, in addition to all Letter of Credit Fees, (i) the reasonable and customary fees and charges of such Issuing Bank in connection with the negotiation, settlement and amendment of each Letter of Credit issued by such Issuing Bank, and (ii) a fronting fee equal to one-eighth of one percent (0.125%) on the aggregate Stated Amount of all Letters of Credit. In addition, Borrowers shall pay to each Issuing Bank the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, relating to letters of credit as from time to time in effect. *See* DIP ABL Agreement §§ 1.01 and 2.19.	Borrower as of such date in exchange for the Borrower's obligations to repay in full the face amount of the New Money Loans plus interest accrued thereon in accordance with the terms of the DIP Term Loan Agreement. *See* DIP Term Loan Agreement §§ 1.01; 2.05.
Budget Bankruptcy Rule 4001 (c)(1)(B)	Approved Budget. Prior to the Closing Date, the Borrower will furnish to the Administrative Agent the Approved Budget, such Approved Budget was prepared in good faith upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of the	Budget. Prior to the Closing Date, the Borrower will furnish to the Administrative Agent the Budget, such Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made. Budget Compliance and Variance. During

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	then-applicable Approved Budget. Budget Compliance and Variance. During the term of the DIP ABL Agreement, the Borrower shall comply with the Approved Budget; *provided*, that the Borrower may act within certain specified variances with respect thereto in accordance with the terms of, and as set forth in, the DIP ABL Agreement. *See* DIP ABL Agreement §§ 5.18.	the term of the DIP Term Loan Agreement, the Borrower shall comply with the Budget; *provided*, that the Borrower may act within certain specified variances with respect thereto in accordance with the terms of, and as set forth in, the DIP Term Loan Agreement. *See* DIP Term Loan Agreement §§1.01; 4.01; 5.19; 6.01.
Variance Covenant Bankruptcy Rule 4001(c)(l)(B)	Approved Budget Variance Report. A weekly report provided by Lead Borrower to the DIP ABL Administrative Agent and the DIP ABL Term Agent (i) showing by line item the Actual Cash Receipts, the Actual Disbursement Amount and Actual Inventory Levels, Availability (as determined pursuant to clause (x) of the definition thereof), Combined Availability, and total available liquidity for the last day of the Prior Week, the Cumulative Four Week Period, and the Cumulative Period, noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of Lead Borrower. *See* DIP ABL Agreement § 1.01.	Approved Budget Variance Report**.** A weekly variance report provided by the Borrower to the Administrative Agent (x) certified by a Responsible Officer of the Borrower and Holdings, substantially in form attached to the DIP Term Loan Agreement as Exhibit K or otherwise as reasonably acceptable to the Required Lenders in their sole discretion, setting forth (i) the actual cash receipts, expenditures and disbursements for the immediately preceding calendar week on a line-item basis and the aggregate liquidity as of the end of such calendar week, and (ii) the variance in dollar amounts of the actual expenditures and disbursements (including debt service, professional fees and, for each calendar month, capital expenditures) for each weekly period from those reflected for the corresponding period in the Budget and including explanations for all material variances (including whether such variance is permanent in nature or timing related) and (y) an analysis, certified by a Responsible Officer of Holdings, that a Budget Event shall not have occurred for such week (if applicable). *See* DIP Term Loan Agreement §§ 1.01; 6.01.
Liens and Priorities Bankruptcy Rule 4001(c)(l)(B)(i)	Liens. Subject and subordinate to the Carve Out as set forth in the Interim Order, in order to secure the DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Administrative Agent, for the benefit of itself and the DIP ABL Lenders, and the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders, are hereby granted, continuing, valid, binding,	Liens. Subject and subordinate to the Carve Out as set forth in the Interim Order, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Administrative Agent, for the benefit of itself and the DIP ABL Lenders, and the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders, are hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors *See* Interim Order ¶¶ 5, 6.	perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors *See* Interim Order ¶¶ 5, 6.
Events of Default Bankruptcy Rule 4001(c)(l)(B)	Events of Default. Usual and customary for financings of this type, including non-payment of obligations, defaults under covenants, breaches of representations and warranties, cross-defaults to other indebtedness, attachment defaults, judgment defaults, failure to comply with ERISA rules and regulations, invalidity of collateral documents, change of control, invalidity of pre-petition loan documents, invalidity of intercreditor agreement, failure to conduct a material business, failure to comply with specified store closings, loss of collateral in excess of $2,000,000, termination of the Facility Guaranty, indictment of any Loan Party, failure to fund loans under DIP ABL Credit Facility, and the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases . *See* DIP ABL Agreement § 7.01.	Events of Default. Usual and customary for financings of this type, including non-payment of obligations, defaults under covenants, breaches of representations and warranties, defaults related to the budget, cross-defaults to other indebtedness, attachment defaults, judgment defaults, invalidity of loan documents, change of control, failure to comply with ERISA rules and regulations, invalidity of collateral documents, change of control, invalidity of pre-petition loan documents, and the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases. *See* DIP Term Loan Agreement § 8.01.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	Indemnification of Agent Indemnitees and Issuing Bank Indemnitees. EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE AGENTS, LENDERS AND RELATED PERSONS, TO THE EXTENT NOT REIMBURSED BY ANY LOAN PARTY, ON A JOINT AND SEVERAL BASIS, AGAINST ALL INDEMNIFIED LIABILITIES INCURRED BY IT; PROVIDED THAT NO LENDER SHALL HAVE ANY OBLIGATION TO INDEMNIFY OR HOLD HARMLESS ANY AGENT RELATED PERSONS FOR ANY CLAIM THAT IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH	Indemnification by the Debtors. The Debtors shall indemnify and hold harmless each agent, each lender and their respective affiliates, directors, officers, employees, agents, advisors, and other representatives (collectively, the "Indemnitees") and hold them harmless from and against any and all losses, claims, damages and liabilities of any kind or nature that relates to the transactions, including the financing contemplated hereby and any losses that relate to any actual or alleged presence or release or threatened release of hazardous materials on or from any property currently or formerly owned or operated by the borrower or any restricted subsidiary or any other liability arising under environmental law, in each case arising out of the activities. No Indemnitee will be indemnified for acts arising from gross negligence, bad faith or willful misconduct or any claim, litigation,

Bankruptcy Code	DIP ABL Credit Facility	DIP Term Loan Facility
	AGENT INDEMNITEE OR ISSUING BANK INDEMNITEE. Indemnification by the Debtors. Lead Borrower agrees to indemnify and hold harmless each agent, each lender, and their respective affiliates, directors, officers, employees, agents, advisors, and other representatives (collectively, the "indemnitees") and hold them harmless from and against any and all losses, claims, damages and liabilities of any kind or nature and documented or invoiced out-of-pocket fees and expenses of any such indemnitee arising out of or relating to any claim or any litigation or other proceeding (including any inquiry or investigation of the foregoing) (regardless of whether such indemnitee is a party thereto and whether or not such proceedings are brought by the borrower, its equity holders, its affiliates, creditors or any other third person) that relates to the transactions, subject to certain exceptions for gross negligence, willful misconduct or fraud all as set forth more fully in section 9.05 of the ABL DIP Credit Agreement. *See* DIP ABL Agreement § 9.05	investigation or other proceeding solely between or among Indemnities that does not involve any act or omission by the Borrower or any of its Affiliates, all as set forth more fully in section 10.05 of the DIP Term Loan Agreement. *See* DIP Term Loan Agreement § 10.05.

Prepetition Capital Structure[7]

11. As of the Petition Date, the Debtors have approximately $1.14 billion in total funded debt obligations, consisting of approximately $81 million under the senior secured asset-based revolving credit facility (the "ABL Revolver"); $47.5 million outstanding under Gymboree's asset-based term loan (the "ABL Term Loan" and, together with the ABL Revolver, the "ABL Facility"); $788.8 million in aggregate principal amount outstanding under the Debtors' senior secured term loan (the "Term Loan Facility"); and $171.0 million in aggregate principal amount of 9.125% unsecured senior notes due 2018 (the "Unsecured Notes").

[7] The following summary is qualified in its entirety by reference to the operative documents, agreements, schedules, and exhibits. In the event of inconsistency between this summary (including the defined terms therein) and such documents, the source documents shall control and govern.

12. The following table depicts the Debtors' prepetition capital structure:

Funded Debt	Maturity	Outstanding Principal Amount
ABL Revolver	December 2017	$81 million
ABL Term Loan	December 2017	$47.5 million
Term Loan Facility	February 2018	$788.8 million
Unsecured Notes	December 2018	$171 million
Total Funded Debt:	$1,088.3 million	

A. ABL Facility.

13. The Gymboree Corporation, as lead borrower, the other borrowers party thereto, the other Debtors, as guarantors (the "ABL Guarantors"), the revolving lenders party thereto (the "ABL Revolving Lenders"), the term lenders party thereto (the "ABL Term Lenders" and, together with the ABL Revolving Lenders, the "ABL Lenders"), Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the "ABL Administrative Agent"), and Pathlight Capital LLC, as the ABL term loan Agent (in such capacity, the "ABL Term Loan Agent" and, together with the ABL Administrative Agent, the "ABL Agents"), are parties to that certain Amended and Restated Credit Agreement, dated as of March 30, 2012 (as amended, restated, supplemented, or otherwise modified from time to time, the "ABL Credit Agreement"). The ABL Credit Agreement provides for a senior secured revolving credit facility, with a maximum availability of $225 million, and a senior secured term loan of $50 million, subject to a borrowing base. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was not less than $177.8 million, including approximately (i) $81 million in borrowings and $49.3 million of undrawn letters of credit, and (ii) $47.5 million under the ABL Term Loan. Each ABL Guarantor has guaranteed all obligations under the ABL Facility. The obligations under the ABL Facility are secured, subject to certain exceptions, by a first priority lien on certain of the Debtors' assets, including accounts receivable, inventory, cash

and cash equivalents and a second priority lien on the Debtors' capital stock and other personal property, including the Debtors' intellectual property and investment contracts.

B. Term Loan.

14. On February 11, 2011, The Gymboree Corporation, as borrower, entered into that certain Amended and Restated Credit Agreement (as amended from time to time, the "Term Loan Credit Agreement"), with the other Debtor guarantors, Credit Suisse AG, Cayman Islands Branch, as administrative and collateral agent, and the lender parties thereto (the "Term Loan Lenders"). The Term Loan matures in February 2018. Term Loan obligations are secured by a first priority lien on the Debtors' capital stock, intellectual property, and investment contracts and a second priority lien on all of the Debtors' other personal property, including accounts receivable, inventory, cash and cash equivalents. As of the Petition Date, approximately $788.8 million in aggregate principal amount remained outstanding under the Term Loan.

C. Unsecured Notes.

15. In connection with the Acquisition, Gymboree issued $400 million aggregate principal amount of 9.125% Unsecured Notes under the Indenture, dated November 23, 2010, with Gymboree as issuer, Deutsche Bank Trust Company Americas as indenture trustee, and certain of the Debtors as guarantors (the "Indenture"). As of the Petition Date, $171.0 million in aggregate principal amount of Unsecured Notes remains outstanding.

The Debtors' Liquidity Need and Marketing Efforts

I. The Debtors Cannot Prudently Operate Their Business With Cash Collateral Alone

16. The Debtors, in consultation with their proposed restructuring advisor, AlixPartners, LLP ("AlixPartners"), reviewed and analyzed the Debtors' projected cash needs and prepared a projection (as updated from time to time in accordance with the terms of the DIP

Agreements, the "Budget")[8] outlining the Debtors' postpetition cash needs in the initial 13 weeks of the chapter 11 cases. The Debtors believe that the Budget and their projections provide an accurate reflection of their funding requirements over the identified period and are reasonable and appropriate under the circumstances.

17. The Debtors relied on these forecasts to determine the amount of postpetition financing required to administer these chapter 11 cases. Each of the DIP Facilities is critical to the Debtors' ability to operate smoothly postpetition, including by providing sufficient liquidity to fund the administrative costs of these chapter 11 cases and, importantly, payments to the Debtors' vendors and other participants in the Debtors' supply chain to ensure the uninterrupted flow of inventory to the Debtors' stores and distribution centers. The Debtors believe that the DIP Facilities provide the Debtors sufficient liquidity to stabilize their operations and fund the administration of these chapter 11 cases as the Debtors seek to implement the restructuring contemplated by that certain Restructuring Support Agreement, dated as of June 11, 2017, between the Debtors and certain Prepetition Term Loan Lenders holding approximately 66%[9] of the claims under the Term Loan Credit Agreement (the "Restructuring Support Agreement"), and are therefore essential to the preservation of their estates during the pendency of these cases. *See* First Day Declaration, ¶ 81; Mesterharm Declaration, ¶ 11.

18. The Debtors enter chapter 11 with limited available liquidity—less than $13 million—significantly below the level required to preserve and maximize the value of their estates. *See* Mesterharm Declaration ¶ 9; Kurtz Declaration ¶¶ 24–28. The Debtors' liquidity is limited due to several factors, including industry trends, an overextended store footprint, and an unsustainable debt structure. Mesterharm Declaration ¶ 9. The costs associated with

[8] A copy of the Budget is attached to the Interim Order as **Schedule 1**.

[9] Exclusive of the $20 million incremental term loan issued to LF Centennial Pte. Ltd.

administering these chapter 11 cases will also impose demands on the Debtors' liquidity. Mesterharm Declaration ¶ 11. Immediate access to the DIP Facilities and Cash Collateral is essential to provide for an uninterrupted flow of inventory, meet working capital and business operating needs, and fund expenses associated with the Debtors' chapter 11 cases. *See* Mesterharm Declaration ¶ 8; Kurtz Declaration ¶¶ 24–28.

19. Due to minimal cash on hand, the Debtors require interim approval of the DIP Facilities to preserve and maximize the value of their estates and to position their estates to reorganize as a going concern. Absent the immediate relief requested by this Motion, the Debtors face a material risk of substantial, irreparable, and ongoing harm. Without the infusion of new capital to fund the chapter 11 cases, the Debtors will likely be forced to liquidate their business, resulting in all stakeholders receiving lower recoveries than they would in a reorganization, to the detriment of the Debtors, their estates, and their stakeholders, including vendors, landlords, customers, and employees. Mesterharm Declaration, ¶ 14; Kurtz Declaration ¶ 26.

II. The Debtors Negotiated Their Proposed Financing in Good Faith

20. The Debtors' retained investment banker, Lazard Frères & Co. LLC ("Lazard") began exploring balance sheet restructuring alternatives with the Debtors in early 2017. Kurtz Declaration ¶ 3. In March 2017, the Debtors approached the Prepetition Term Loan Lenders to seek additional sources of liquidity and explore restructuring options. Kurtz Declaration ¶ 13. From that time forward, the Debtors and their advisors engaged in numerous meetings with the Prepetition Term Loan Lenders and the advisors to the DIP Term Loan Agent (the "DIP Term Loan Agent Advisors") regarding restructuring alternatives that would strengthen the Debtors' balance sheet and provide for the Debtors' swift exit from chapter 11. Kurtz Declaration ¶ ¶ 13, *et seq.*

21. After a series of significant, arms'-length and good faith negotiations, both the Debtors' Prepetition ABL Lenders and a subset of the Prepetition Term Loan Lenders agreed to provide the postpetition financing required to support the Debtors' estates during the chapter 11 cases. Specifically, the Prepetition ABL Lenders agreed to provide an approximately $273.5 million DIP ABL Credit Facility on terms similar to those provided under the Prepetition ABL Facility. Pursuant to the terms of the DIP ABL Documents, upon entry of the Interim Order, outstanding Prepetition ABL Obligations will be converted into DIP ABL Obligations. Kurtz Declaration ¶ 30. Similarly, a subset of the Prepetition Term Loan Lenders agreed to provide a $105 million DIP Term Loan Facility, including a commitment for $35 million in new money (the "New Money Loans") and, upon entry of the Interim Order, the conversion of $70 million of outstanding Prepetition Term Loans owing to the DIP Term Loan Lenders into DIP Term Loans (the "Roll-Up Loans"). *See* Kurtz Declaration ¶ 17. Importantly, the DIP Term Loan Facility is attached to the Restructuring Support Agreement that contemplates a fully backstopped rights offering, committed exit financing, and the Debtors' emergence from chapter 11 within four months of the Petition Date, with a significantly deleveraged capital structure. Kurtz Declaration ¶ 17.

22. Under the terms of the Restructuring Support Agreement: (a) $70 million of Prepetition Term Loans owing to the DIP Term Loan Lenders will convert into postpetition DIP Term Loans before converting again into common equity of the reorganized Debtors upon the Debtors' emergence from chapter 11 pursuant to a confirmed plan; and (b) the $35 million new money DIP Term Loan shall either be repaid in full in cash or convert into an exit term loan facility. *See* Kurtz Declaration ¶ 34. Further, each of the Prepetition Term Loan Lenders will have 14 days after entry of the Interim Order to perform its own diligence and decide whether to

fund their pro rata share of the $35 million in New Money Loans backstopped by certain Term Loan Lenders, and in connection with such commitment, exchange its respective pro rata share of up to $70 million of the DIP Term Loan Facility. Kurtz Declaration ¶ 17. The roll-up of the Roll-Up Loans and the conversion of the Prepetition ABL Obligations into DIP ABL Obligations was a prerequisite to the the Term Loan Lenders and the Prepetition ABL Lenders agreeing to provide the financing necessary to support a reorganization of the Debtors' estates. Kurtz Declaration ¶¶ 41-42.

III. The Proposed DIP Facilities Represent the Best Available Financing Option for these Chapter 11 Cases

23. In light of the Debtors' liquidity constraints, and contemporaneously with negotiating the DIP Facilities with the Debtors' existing debtholders, the Debtors with the assistance of their advisors, actively solicited proposals for alternative debtor-in-possession financing. Kurtz Declaration ¶¶ 20-21. Lazard reached out to more than a dozen third-party lenders, including many well-known financing institutions, to see if any third-party would be willing to offer postpetition financing on more favorable terms than the DIP Lenders. *See* Kurtz Declaration ¶ 20. From that group, a handful executed confidentiality agreements and received access to non-public information. *See* Kurtz Declaration ¶ 20-21. Ultimately, no third-party offered a workable proposal such that it could serve as a viable alternative to the proposed DIP Facilities. *See* Kurtz Declaration ¶ 21. Therefore, the Debtors were unable to develop an alternative source of financing with terms better than those of the DIP Facilities. Kurtz Declaration ¶ 20-22, 44-45.

24. The Prepetition Secured Parties assert that all of the Debtors' material assets are encumbered under their existing capital structure, which, along with the Debtors' uncertain financial condition and overall weakness in the apparel retail industry, restricts the availability

of, and options for, postpetition financing. *See* Kurtz Declaration ¶ 37. Given the collateral coverage of the prepetition lenders, providing postpetition financing was not economical for many third-party lenders. *See* Kurtz Declaration ¶ 21. At this time, the DIP Facilities are the only viable postpetition financing proposals available to the Debtors. *See* Kurtz Declaration ¶ 44. As a result, the Debtors do not believe that third-party debtor-in-possession financing is reasonably obtainable to fund these cases. Kurtz Declaration ¶ 38.

25. Relatedly, due to the Debtors' high level of existing secured debt obligations, the Debtors could not provide evidence or certainty of a sufficient equity cushion to allow for debtor-in-possession financing that would prime existing lenders' liens over their objections. *See* Kurtz Declaration ¶ 21. For the same reason, it is unlikely that third-party lenders would be willing to provide debtor-in-possession financing junior to the Debtors' existing lenders and, indeed, the Debtors did not receive any viable offers for any such junior financing despite their marketing efforts. *See* Kurtz Declaration ¶ 21.

26. Additionally, with any third-party proposal, the Debtors would incur the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily requiring the payment of additional professional fees. In contrast, the proposed DIP Facilities offered by the DIP Lenders allow the Debtors to: (a) avoid engaging in a costly and time-consuming priming fight at the outset of these chapter 11 cases; (b) avoid incurring additional expenses related to a third-party proposal; and (c) enter into a consensual transaction with their prepetition creditors who, in addition to having adequate protection rights, already know the Debtors and their business plan well, and have already provided value to the Debtors and their restructuring efforts. For all of these reasons, the DIP

Facilities are reasonable, appropriate, and provide the best terms presently available. Kurtz Declaration ¶ 44.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Documents

A. Entry into the DIP Documents is an Exercise of the Debtors' Sound Business Judgment

27. The Bankruptcy Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facilities, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances that are present in these cases, as discussed herein. Courts grant a debtor-in-possession considerable deference when acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g.*, *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest").

28. Specifically, to determine whether the business judgment standard is met, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006), *rev'd on other grounds* 607 F.3d 957 (3d Cir. 2010); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

29. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. of Escanaba (In re Elingsen McLean Oil Co., Inc.*), 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard" bargains to acquire funds for its reorganization). The Bankruptcy Court may also 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 establishing alliances 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) (emphasis added).

30. The decision to move forward with the DIP Facilities following an arms'-length marketing and negotiation process is well within the Debtors' sound business judgment. Specifically, the DIP Facilities will allow the Debtors to: (a) acquire timely the inventory that is essential to the Debtors' continuation as a going concern; (b) provide the liquidity necessary to continue favorable trade terms with vendors and to reassure other stakeholders, including landlords and employees; (c) fund payroll obligations; (d) fund the administrative cost of these chapter 11 cases; and (e) to provide a path to emergence by allowing the Debtors to implement the restructuring contemplated by the Restructuring Support Agreement. Moreover, the Debtors negotiated the DIP Agreements and other DIP Documents with the DIP Lenders in good faith, at arms'-length, and with the assistance of their respective advisors, and the Debtors believe the proposed DIP Facilities represent the best available financing under the current circumstances. Further, entry into the DIP Facilities with the Debtors' prepetition lenders will avoid a costly adequate protection fight at the outset of these chapter 11 cases that would cause significant uncertainty among the Debtors' vendors, employees, landlords and others. Accordingly, the Bankruptcy Court should authorize the Debtors' entry into the DIP Documents, as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims

31. The Debtors propose to obtain financing under the DIP Facilities by providing security interests, liens, and superpriority claims as set forth in the DIP Documents pursuant to sections 364(c) and 364(d) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lenders continuing, valid, binding, enforceable, non-avoidable, and automatically and

properly perfected postpetition security interests in and liens on the DIP Collateral, which includes substantially all of the Debtors' assets. The Prepetition Secured Parties will have similar "criss-cross" first and second priority liens on the DIP Collateral as they do on the Prepetition Collateral.

32. Pursuant to sections 364(c) and 364(d) of the Bankruptcy Code, the DIP Lenders will receive the following security interests:[10]

a. The DIP Liens securing the ABL DIP Obligations (the "DIP ABL Liens") will be senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP ABL Liens shall be subject to the Carve Out in all respects and shall otherwise be junior only to: (i) as to the DIP ABL Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP Term Priority Collateral, (A) Permitted Prior Liens; (B) the DIP Term Loan Liens (as defined herein); (C) the Prepetition Term Loan Liens; and (D) the Prepetition Term Loan Adequate Protection Liens.

b. The DIP Liens securing the Term Loan DIP Obligations (the "DIP Term Loan Liens") will be senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Term Loan Liens shall be subject to the Carve Out in all respects and shall otherwise be junior only to: (i) as to the DIP Term Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP ABL Priority Collateral, (A) Permitted Prior Liens; (B) the DIP ABL Liens; (C) the Prepetition ABL Liens; and (D) the Prepetition ABL Adequate Protection Liens.

33. The above-described liens on encumbered and unencumbered assets are common features of postpetition financing facilities, and as set forth in greater detail in the Kurtz Declaration, were a necessary feature here to provide security for the proposed financings. Especially important to the DIP Lenders were the liens on the proceeds of the Debtors' leased real property. Indeed, postpetition financing facilities approved in this Circuit and elsewhere

[10] *See* Interim Order ¶ 6.

routinely are secured by the proceeds of a debtor's unencumbered assets such as leaseholds that are subject to leases that prohibit the impositions of liens thereon. *See, e.g., In re Penn Va. Corp.*, No. 16-32395 (KLP) (Bankr. E.D. Va. June 8, 2016) (approving DIP liens on collateral including any leasehold interests or the proceeds thereof as permitted by applicable law); *In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015) (same); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015) (same); *In re Am. Apparel, LLC*, No. 16-12551 (Bankr. D. Del. Dec. 12, 2016) (same); *In re Quicksilver, Inc.*, No. 15-11880 (Bankr. D. Del. Oct. 28, 2015) (same); *In re Am. Apparel Inc.*, No. 15-12055 (Bankr. D. Del. Nov. 2, 2015) (same); *In re Vestis Retail Grp., LLC*, No. 16-10971 (Bankr. D. Del. Jun. 1, 2016) (same); *In re Haggen Holdings, LLC*, No. 15-11874 (Bankr. D. Del. Oct. 15, 2015) (same); *In re Great Atl. & Pac. Tea Co. Inc.*, No. 15-23007 (Bankr. S.D.N.Y. Aug. 12, 2015) (same); *In re Great Atl. & Pac. Tea Co., Inc.*, No. 10-24549 (Bankr. S.D.N.Y. Jan. 11, 2011) (same); *In re Pac. Sunwear of Cal., Inc.*, No. 16-10882 (Bankr. D. Del. May 24, 2016) (approving DIP liens on the debtors' assets, including, among other things, all accounts, goods, letters of credit, owned real property and "proceeds of leases of real property"); *In re Hancock Fabrics Inc.*, No. 16-10296 (Bankr. D. Del. Mar. 2, 2016) (same); *In re Furniture Brands Int'l, Inc.*, No. 13-12329 (Bankr. D. Del. Oct. 11, 2013) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 28, 2017) (same); *In re Sports Authority, Inc.*, No. 16-10527 (Bankr. D. Del. May 3, 2016) (approving DIP liens on assets, including "[l]ease proceeds, but not the [l]eases themselves, whether or not so perfected prior to the [p]etition [d]ate"); *In re Aéropostale Inc.*, No. 16-11275 (Bankr. S.D.N.Y. Jun. 13, 2016) (same).

34. Additionally, pursuant to section 364(d) of the Bankruptcy Code, the DIP Lenders' claims shall prime the existing Prepetition ABL Liens, in the case of the DIP ABL Credit Facility, and the Prepetition Term Loan Liens, in the case of the DIP Term Loan Facility.

35. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to 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) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative 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 proposed lenders.

See, e.g., *In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re Ames Dep't Stores*, 115 B.R. at 37-40; *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

36. As described above and as set forth in the Kurtz Declaration, the Debtors' high level of existing secured debt obligations makes it unlikely that any third-party lenders would be willing to provide postpetition financing on an unsecured or junior priority basis, as reflected by the marketing process. *See* Kurtz Declaration ¶ 38. Therefore, any workable financing likely would require the support of, or be provided by, the Debtors' existing lenders. Absent the DIP Facilities, which will provide certainty that the Debtors will have sufficient liquidity to

administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facilities, as set forth in the DIP Agreements, are fair, reasonable, and adequate, all as more fully set forth below. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

37. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court "may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien." As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving superpriority claims in favor of the DIP Lenders is also reasonable and appropriate.

38. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Consent by secured creditors to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected"). Accordingly, the Debtors may incur "priming" liens

under the DIP Facilities if either (a) the Prepetition Secured Parties have consented or (b) Prepetition Secured Parties' interests in collateral are adequately protected.

39. Here, the Prepetition Secured Parties have consented to the DIP Facilities and, as described herein and in the Kurtz Declaration, the interest of the Prepetition Secured Parties are adequately protected. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the DIP Facilities Is Reasonably Available

40. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "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 Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

41. As noted above and as borne out by the marketing process, the Debtors do not believe that any alternative sources of financing exist or are reasonably available given the

realities imposed by the Debtors' existing capital structure and the Debtors' unsuccessful solicitation of alternative financing proposals. Substantially all of the Debtors' existing assets, including Cash Collateral, are encumbered. Thus, the Debtors have determined that the DIP Facilities provide the best opportunity available to the Debtors under the circumstances to fund these chapter 11 cases. *See* Kurtz Declaration ¶¶ 44-45. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

II. The Debtors Should Be Authorized to Use Cash Collateral

42. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) permits a debtor in possession to use cash collateral with the consent of the secured party. Here, the Prepetition Secured Parties consent to the Debtors' use of the Cash Collateral (as well as the other Prepetition Collateral), subject to the terms and limitations set forth in the Interim Order.

43. Section 363(e) provides for adequate protection against diminution in value of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Rocco*, 319 B.R. 411 (Bankr. W.D. Pa. 2005); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms

and "must be determined based upon equitable considerations arising from the particular facts of each proceeding")). It was the intent of Congress in Section 361 to give courts flexibility to fashion relief in light of each case in general equitable principals. *In re Wilson*, 30 B.R. 371 (Bankr. E.D. Pa. 1983).

44. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Secured Parties with a variety of forms of adequate protection to protect against the postpetition diminution in value of the Cash Collateral (as well as the Prepetition Collateral) resulting from the use of the Cash Collateral (and other Prepetition Collateral) by the Debtors and the imposition of the automatic stay collectively, the "Adequate Protection Obligations"), including:

a. continuing, valid, binding, enforceable, non-avoidable, and perfected postpetition security interests in and liens on the DIP Collateral;

b. superpriority administrative claims under section 507(b) of the Bankruptcy Code;

c. the professional fees and expenses incurred by the DIP Agents; and

d. with respect to the Prepetition ABL Lenders, payment of interest, fees, and principal due under the Prepetition ABL Facility.

45. The Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Parties from any diminution in value of the Cash Collateral and the other Prepetition Collateral. In light of the foregoing, the Debtors further submit that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are adequate and appropriate. The Debtors' provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

III. The Debtors Should Be Authorized to Pay the Fees and Payments Required by the DIP Agents and the DIP Lenders Under the DIP Documents

46. Under the DIP Documents, the Debtors have agreed, subject to Bankruptcy Court approval, to pay certain fees and payments to the DIP Agents and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay:

a. to the DIP ABL Agents and DIP ABL Lenders (in accordance with the terms of the DIP ABL Credit Facility): (a) closing fees; (b) an unused commitment fee equal to 0.375% per annum of the undrawn commitments; and (c) additional fees payable to the DIP ABL Agents, for their own accounts, in consideration of the DIP ABL Agents' service as DIP ABL Agent;

b. the DIP Term Loan Lenders (in accordance with the terms of the DIP Term Loan Facility) a commitment fee in the amount equal to 2.00% of the aggregate amount of the New Money Commitments (as defined in the DIP Term Loan Agreement); and additional fees and expenses payable to the DIP Term Loan Agent, for its own account;

c. to the Backstop Lenders, an amount equal to 3.5% of the aggregate New Money Commitments (as defined in the DIP Term Loan Agreement); and

d. no fees payable on account of the DIP Roll-Up Loans.

47. It is understood and agreed by all parties, that these fees are an integral component of the overall terms of the DIP Facilities, and were required by the applicable DIP Agents and the DIP Lenders as consideration for the extension of postpetition financing after arms'-length and good faith negotiations. *See* Kurtz Declaration ¶ 42. Accordingly, the Bankruptcy Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

IV. The Proposed Repayment of Prepetition ABL Obligations, and Roll-Up of Certain Prepetition Term Loan Obligations is Necessary and Appropriate

48. As set forth above, the DIP Facilities include a repayment of the Prepetition ABL Facility and roll-up of $70 million of the DIP Term Loan Lenders' Prepetition Term Loans.

Under the terms of the DIP ABL Agreement, upon entry of the Interim Order, all amounts outstanding under the Prepetition ABL Facility will roll-up into amounts outstanding under the DIP ABL Credit Facility, including the prepetition ABL Term Loans. The conversion of the Prepetition ABL Obligations into DIP ABL Obligations will create availability under the DIP ABL Credit Facility, allowing the Debtors to continue purchasing critical inventory. In addition the conversion merely accelerates the satisfaction of the Prepetition ABL Obligations without affecting recovery to other creditors because the Debtors believe that the Prepetition ABL Obligations are fully secured by perfected, first priority liens with respect to, among other things, inventory and receivables, with a value in excess of outstanding borrowings. Finally, the ABL Revolving Lenders would not provide the proposed debtor-in-possession financing without the participation of the ABL Term Lenders. *See* Kurtz Declaration ¶ 19. Therefore, the roll-up of the prepetition ABL Term Loans was a necessary prerequisite for the ABL Lenders before agreeing to provide any postpetition financing. *See* Kurtz Declaration ¶ 19.

49. Additionally, the DIP Term Loan Agreement and the Restructuring Support Agreement contemplate that in exchange for the $35 million in new money in the DIP Term Loan Facility, $70 million of the DIP Term Loan Lenders' Prepetition Term Loans will be converted into postpetition amounts under the DIP Term Loan Facility upon entry of the Interim Order, and subsequently be converted into common equity of the reorganized Debtors upon their emergence from chapter 11. This 2:1 roll-up was a prerequisite to the Term Loan Lenders agreeing to provide the financing necessary to support a reorganization of the Debtors' estates and the basis upon which the loan was syndicated. *See* Kurtz Declaration ¶ 41. The Debtors were provided with no alternative financing proposals that provided the liquidity necessary to maximize the value of the Debtors estates on a junior basis or that either refinanced the

Prepetition Term Loan Credit Agreement on more favorable terms or provided adequate protection for the lenders thereunder. Indeed, the Debtors were not provided with any workable alternative financing proposal at all. *See* Kurtz Declaration ¶¶ 20-22, 44-45.

50. Without continued access to an asset-based lending facility to fund the flow of inventory to the Debtors' customers and other working capital needs, and the $35 million in incremental liquidity under the DIP Term Loan Facility necessary to fund the administration of these chapter 11 cases, the Debtors' would be unable to continue business operations and they would be forced to liquidate. Maintaining the ability to continue as a going concern is of immense benefit to the Debtors' estates and will maximize value for the benefit of all of their stakeholders. Mesterharm Declaration, ¶ 17.

51. The Prepetition ABL Lenders will not continue to lend postpetition without the conversion of the Prepetition ABL Obligations into DIP ABL Obligations. Likewise, the conversion of the applicable portion of the DIP Term Loan Lenders' prepetition claims into postpetition claims was an absolute prerequisite to the DIP Term Loan Lenders' provision of the DIP Term Loan Facility, which is critical to the Debtors' reorganization, and Prepetition Term Loans will be rolled up only if the holder thereof actually funds a pro rata share of the DIP Term Loan Facility. Due to the senior priority of the Prepetition ABL Lenders' loans, they are likely to receive a full recovery on their prepetition claims in any event. The only claimants being primed by the conversion of the DIP Term Loan Lenders' Prepetition Term Loans are other Prepetition Term Loan Lenders, all of whom have the opportunity to participate in the DIP Term Loan Facility. Moreover, it is anticipated that all rolled-up Prepetition Term Loans will convert into equity at the close of these cases.

52. Thus, after careful consideration of all available alternatives, the Debtors have determined that conversion of the Prepetition ABL Obligations into DIP ABL Obligations, and conversion of the DIP Term Loan Lenders' Prepetition Term Loans into postpetition claims is necessary to obtain access to the liquidity necessary to preserve the value of their business for the benefit of all stakeholders.

53. Conversions of prepetition claims into postpetition claims, or "roll-ups," as well as similar refinancings of prepetition claims with postpetition credit, may be authorized under section 363(b) of the Bankruptcy Code. *See in re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 510-11 (Bankr. D. Del. 2010) ("Post-petition refinancing of uneconomical *secured* debt through a DIP loan may be authorized by section 363(b) of the Bankruptcy Code as a use of estate property outside the ordinary course of business . . . similarly, prepetition secured claims can be paid off through a roll-up."); *In re Energy Future Holding Corp.*, 527 B.R. 157, 167 (D. Del. 2015). As the United States District Court for the District of Delaware recently observed:

> [P]repetition secured claims can be paid off through a "roll-up." Most simply, a [roll-up] is the payment of a pre-petition debt with the proceeds of a post-petition loan. Roll-ups most commonly arise where a pre-petition secured creditor is also providing a post-petition DIP loan under section 364(c) and/or (d) of the Bankruptcy Code. The proceeds of the DIP loan are used to pay off or replace the pre-petition debt, resulting in a post-petition debt equal to the pre-petition debt plus any new money being lent to the debtor. As a result, the entirety of the prepetition and post-petition debt enjoys the post-petition protection of section 364(c) and/or (d) as well as the terms of the DIP order. In both a refinancing and a rollup, the pre-petition secured claim is paid through the issuance of new debt rather than from unencumbered cash.

Del. Trust Co. v. Energy Future Intermediate Holdings, LLC (In re Energy Future Holding Corp.), 2015 U.S. Dist. LEXIS 19684, 20-21 (D. Del. Feb. 9, 2015) (*quoting In re Capmark Fin. Grp., Inc.*, 438 B.R. 471, 511 (Bankr. D. Del. 2010)).

54. Courts consider a number of factors when determining whether to authorize roll-ups of prepetition debt into postpetition financing facilities, including whether: (a) the proposed financing is an exercise of sound and reasonable business judgment; (b) no alternative financing is available on any other basis; (c) the financing is in the best interests of the estate and its creditors; (d) no better offers, bids, or timely proposals are before the court; (e) the credit transaction is necessary to preserve the assets of the estate; (f) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender(s); (g) the financing is necessary, essential, and appropriate for the continued operating of the Debtors' business and the preservation of their estates; and (h) the financing agreement was negotiated in good faith and at arms'-length between the Debtors and the proposed lenders. *See In re Farmland Indus., Inc.*, 294 B.R. at 879–80 (surveying opinions authorizing roll-ups and listing relevant factors considered by courts in those cases).

55. Recognizing exigent circumstances like those described above, courts in this circuit have approved repayments funded by debtor-in-possession financing proceeds in recent chapter 11 cases. *See, e.g.*, *In re Alpha Natural Resources, Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015) (approving use of debtor-in-possession financing proceeds to pay down or "roll-up" prepetition debt); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015) (same); *In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. Apr. 9, 2014) (same); *In re Bear Island Paper Co., L.L.C.*, No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010) (same); *In re S & K Famous Brands, Inc.*, No. 09-30805 (KRH) (Bankr. E.D. Va. Feb. 10, 2009) (same); *In re On-Site Sourcing, Inc.*, No. 09-10816 (RGM) (Bankr. E.D. Va. Mar. 4, 2009) (same); *In re Circuit City Stores, Inc.*, No. 08-35653(KRH) (Bankr. E.D. Va. Nov. 10, 2008) (same); *In re Movie Gallery, Inc.*, No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 16, 2007)

(same); *In re the Rowe Companies*, No. 06-11142 (SSM) (Bankr. E.D. Va. Sept. 21, 2006) (same); *In re Nuverra Env't Sol. Inc.*, No. 17-10949 (Bankr. D. Del. May 2, 2017) (same); *In re United Road Towing, Inc.*, No. 17-10249 (Bankr. D. Del. Mar. 8, 2017) (same); *In re Modular Space Holdings, Inc.*, No. 16-12825 (Bankr. D. Del. Jan. 18, 2017) (same); *In re BPS US Holdings Inc.*, No. 16-12373 (Bankr. D. Del. Nov. 30, 2016) (same); *In re Pac. Sunwear of Cal., Inc.*, No. 16-10882 (Bankr. D. Del. May 24, 2016) (same); *In re Vestis Retail Group, LLC* No. 16-10971 (Bankr. D. Del. June 1, 2016) (same); *In re the Sports Authority, Inc.*, No. 16-10527 (Bankr. D. Del. Mar. 3, 2016) (same); *In re Verso Corp.*, No. 16-10163 (Bankr. D. Del. Mar. 2, 2016) (same); *In re Wire Co. Holdings, Inc.*, No. 15-12097 (Bankr. D. Del. Oct. 28, 2015) (same); *In re Am. Apparel, Inc.*, No. 15-12055 (Bankr. D. Del. Nov. 2, 2015) (same); *In re Haggen Holdings, LLC*, No. 15-11874 (Bankr. D. Del. Oct. 15, 2015) (same); *In re RadioShack Corp.*, No. 15-10197 (Bankr. D. Del. Mar. 12, 2015) (same); *In re UniTek Glob. Servs., Inc.*, No. 14-12471 (Bankr. D. Del. Dec. 3, 2014) (same); *In re Coldwater Creek Inc.*, No. 14-10867 (Bankr. D. Del. June 12, 2014) (same); *In re Quantum Foods, LLC*, No. 14-10318 (Bankr. D. Del. Mar. 20, 2014) (same); *In re MACH Gen, LLC*, No. 14-10461 (Bankr. D. Del. Mar. 27, 2014) (same); *In re Tuscany Int'l Holdings (U.S.A.) Ltd.*, No. 14-10193 (Bankr. D. Del. Mar. 21, 2014) (same); *In re Constar Int'l Holdings LLC*, No. 13-13281 (Bankr. D. Del. Jan. 16, 2014) (same); *In re Real Mex Rests., Inc.*, No. 11-13122 (Bankr. D. Del. Nov. 9, 2011) (same); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (Bankr. D. Del. Feb. 23, 2011) (same); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. Mar. 18, 2009) (same); *In re SquareTwo Fin. Serv. Corp.*, No. 17-10659 (JLG) (Bankr. S.D.N.Y. Apr. 27, 2017) (same); *In re BCBG Max Azria Glob. Holdings*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 28, 2017) (same); *In re Payless Holdings LLC*, No. 17-42267 (Bankr. E.D. Mo. May 17, 2017) (same); *In*

re Revel AC, Inc., No. 13-16253 (JHW) (Bankr. D.N.J. Mar. 25, 2013) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same).[11]

56. Further, courts authorizing first day, interim relief under postpetition financing facilities have permitted such interim borrowings to be applied towards the roll-up of prepetition obligations. *See, e.g., In re Alpha Nat. Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 4, 2015); *In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. Apr. 9, 2014); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Nov. 14, 2012); *In re Bear Island Paper Co.*, No. 10-31202 (DOT) (Bankr. E.D. Va. Feb. 26, 2010); *In re On-Site Sourcing, Inc.*, No. 09-10816 (RGM) (Bankr. E.D. Va. Mar. 4, 2009); *In re S&K Famous Brands*, No. 09-30805 (KRH) (Bankr. E.D. Va. Feb. 10, 2009); *In re Circuit City Stores, Inc.*, No. 08-35653 (KRH) (Bankr. E.D. Va. Nov. 10, 2008); *In re Movie Gallery, Inc.*, No. 07-33849 (DOT) (Bankr. E.D. Va. Oct. 16, 2007); *In re The Rowe Cos.*, No. 06-11142 (SSM) (Bankr. E.D. Va. Sept. 21, 2006).

57. Moreover, the magnitude of the roll-up is not outside the range of market norms. *See, e.g., In re On-Site Sourcing, Inc.*, No. 09-10816 (RGM) (Bankr. E.D. Va. Mar. 4, 2009) (approving $40 million financing with $37 million roll-up or 12:1 ratio); *In re Circuit City Stores, Inc.*, No. 08-35653 (KRH) (Bankr. E.D. Va. Nov. 10, 2008) (approving $1.1 billion financing with $900 million roll-up or 4.5:1 ratio); *In re Cal Dive Int'l, Inc.*, No. 15-10458 (Bankr. D. Del. Apr. 20, 2015) (approving $120 million financing with $99.8 million roll-up or 4.9:1 ratio); *In re RadioShack Corp.*, No. 15-10197 (Bankr. D. Del. Mar. 6, 2015) (approving $285 million financing with $250 million roll-up or a 7.1:1 ratio); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (approving $275 million financing with $225

[11] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

million roll-up or 4.5:1 ratio); *In re Revel AC, Inc.*, No. 13-16253 (JHW) (Bankr. D.N.J. Mar. 25, 2013) (approving $25 million financing with $212 roll-up or a 6.6:1 ratio).

58. Consistent with this authority, the Debtors respectfully submit that the Bankruptcy Court should approve the Debtors' decision to enter into the DIP Facilities, including the conversion of the Prepetition ABL Obligations into DIP ABL Obligations and conversion of the DIP Term Loan Lenders' prepetition claims into postpetition claims as a sound exercise of the Debtors' business judgment.

V. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e)

59. 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.

60. As explained herein, and in the Kurtz Declaration, the DIP Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, (b) no other third-party lender offering alternative financing on any other basis, and (c) arms'-length, good-faith negotiations between the Debtors and the DIP Agents and DIP Lenders. Kurtz Declaration, ¶¶ 17, 20-22, 44. The terms and conditions of the DIP Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facilities will be used only for

purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Bankruptcy Court should find that the DIP Lenders 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.

VI. The Automatic Stay Should Be Modified on a Limited Basis

61. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant the DIP Liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that, following the occurrence of an Event of Default, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agents to exercise all rights and remedies in accordance with the DIP Documents, or applicable law.

62. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g.*, *In re Penn Va. Corp.*, No. 16-32395 (KLP) (Bankr. E.D. Va. June 8, 2016) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Alpha Natural Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015); *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating

automatic stay after occurrence of termination event); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012).

VII. Failure to Obtain Immediate Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm

63. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Bankruptcy Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

64. For the reasons noted above, the Debtors have an immediate postpetition need to use Cash Collateral, and access the liquidity provided by the DIP Facilities. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash, among other things, to fund the operation of their business, including to ensure that vendors continue to manufacture and ship inventory, and to fund the administration of these chapter 11 cases. Substantially all of the Debtors' available cash constitutes the Prepetition Secured Parties' Cash Collateral. The Debtors will therefore be unable to operate their business or otherwise fund these chapter 11 cases without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to administer these chapter 11 cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.

65. The Debtors request that the Bankruptcy Court conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order

until the Final Hearing, to receive initial funding under the DIP Facilities on the terms and conditions set forth in the Interim Order. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing. *See* Kurtz Declaration ¶ 24.

Request for Final Hearing

66. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Bankruptcy Court set a date for the Final Hearing that is as soon as practicable, and in no event after 35 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

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

67. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Waiver of Memorandum of Points and Authorities

68. The Debtors respectfully request that this Court treat this motion as a written memorandum of points and authorities or waive any requirement that this motion be accompanied by a written memorandum of points and authorities as described in Local Rule 9013-1(G).

Reservation of Rights

69. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim, (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or

defined in this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

Notice

70. The Debtors will provide notice of this Motion via first class mail and email (where available) to: (a) the Debtors, The Gymboree Corporation, 71 Stevenson Street, Suite 2200, San Francisco, California 94105, Attn: Kimberly H. MacMillan; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Anup Sathy, P.C. and Steven N. Serajeddini and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Matthew C. Fagen; (c) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn: Michael A. Condyles, Peter J. Barrett and Jeremy S. Williams; (d) the Office of the United States Trustee for the Eastern District of Virginia, 701 East Broad Street, Suite 4304, Richmond, Virginia 23219, Attn.: Robert B. Van Arsdale, Esq., and 101 West Lombard Street, Suite 2625, Baltimore, Maryland 21201, Attn: Hugh M. Bernstein; (e) counsel to the official committee of unsecured creditors (if any) appointed in these chapter 11 cases; (f) counsel to the Prepetition Term Loan Agent and the DIP Term Loan Agent, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, New York 10005-1413, Attn: Dennis F. Dunne and Evan R. Fleck, and McGuireWoods LLP, 800 E. Canal Street, Richmond, Virginia 23219, Attn: Dion W. Hayes and Sarah B. Boehm; (g) counsel to the DIP

ABL Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal St., Boston, Massachusetts 02110, Attn: Julia Frost-Davies and Amelia C. Joiner and Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown; (h) counsel to the DIP ABL Term Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110, Attn: Kevin J. Simard and Jennifer C. Fenn and Whiteford Taylor Preston, LLP, 3190 Fairview Park Drive, Suite 800, Falls Church, Virginia 22042-4510, Attn: Christopher A. Jones; (i) the indenture trustee for the Debtors' senior unsecured notes, Deutsche Bank Trust Company Americas, Trust and Securities Services, 100 Plaza One, 6th Floor, MS: JCY03-0699, Jersey City, New Jersey 07311, Attn: Rodney Gaughan; (j) counsel to the ad hoc group of senior unsecured noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, New York 10036-6745, Attn: Daniel H. Golden and Jason P. Rubin, and Robert S. Strauss Building, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, Attn: James Savin; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

71. No prior request for the relief sought in this Motion has been made to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter the DIP Orders, granting the relief requested herein and such other relief as the Bankruptcy Court deems appropriate under the circumstances.

Dated: June 12, 2017
Richmond, Virginia

/s/ *Michael A. Condyles*

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	Chapter 11
THE GYMBOREE CORPORATION., *et al.*, [1]	)	Case No. 17-32986 (___)
Debtors.	)	(Joint Administration Requested)

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion, dated June 11, 2017 (the "DIP Motion") of The Gymboree Corporation (the "Company"), Gymboree Manufacturing, Inc., Gymboree Operations, Inc., Gymboree Retail Stores, Inc., Gym-Mark, Inc., S.C.C. Wholesale, Inc., and Gym-Card, LLC (collectively, the "Loan Parties") and Giraffe Intermediate B, Inc. (the "Holdings"), each as a debtor and debtor in possession (collectively, the "Debtors") in the above-captioned Chapter 11 cases (collectively, the "Cases"), seeking entry of an order (this "Interim Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: The Gymboree Corporation (5258); Giraffe Intermediate B, Inc. (0659); Gym-Card, LLC (5720); Gym-Mark, Inc. (6459); Gymboree Manufacturing, Inc. (6464); Gymboree Retail Stores, Inc. (6461); Gymboree Operations, Inc. (6463); and S.C.C. Wholesale, Inc. (6588). The location of the Debtors' service address is 71 Stevenson Street, Suite 2200, San Francisco, California 94105.

superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of up to $273,450,000 (the "DIP ABL Credit Facility"), which shall include (a) an $88,000,000 sublimit for the issuance of letters of credit and (b) a $30,000,000 sublimit for swingline loans, consisting of (x) $219,000,000 in revolving "tranche A" commitments (the "DIP ABL Tranche A Commitments," and the loans extended thereunder, the "DIP ABL Tranche A Loans"); (y) $6,000,000 in revolving FILO commitments (the "DIP ABL FILO Commitments," and the loans extended thereunder, the "DIP ABL FILO Loans," and the DIP ABL FILO Loans together with the DIP ABL Tranche A Loans, the "DIP Revolving Loans"); and (z) $48,450,000 in ABL term loan commitments (the "DIP ABL Term Loan Commitments," and the loans made thereunder, the "DIP ABL Term Loans," and the DIP ABL Term Loans and the DIP Revolving Loans, together, the "DIP ABL Loans"), pursuant to the terms and conditions of that certain *Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP ABL Agreement"), by and among the Company and the Loan Parties, as borrowers, Holdings, as guarantor, Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the "DIP ABL Administrative Agent") and Pathlight Capital LLC, as ABL term loan agent (in such capacity, the "DIP ABL Term Agent" and together with the DIP ABL Administrative Agent, the "DIP ABL Agents") for and on behalf of themselves and the other lenders party thereto (collectively, including the DIP ABL Agents, the "DIP ABL Lenders"), substantially in the form of **Exhibit B**, attached to the DIP Motion[2];

(ii) authorizing the Debtors to execute and deliver the DIP ABL Agreement and

[2] Upon entry of this Interim Order, all Prepetition ABL Obligations (as defined below) and all accrued and unpaid interest thereon and fees and expenses shall be fully-rolled into the DIP ABL Credit Facility and shall constitute DIP ABL Obligations hereunder.

any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP ABL Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL Agreement, the "DIP ABL Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Documents;

(iii) granting the DIP ABL Credit Facility and all obligations owing thereunder and under, or secured by, the DIP ABL Documents to the DIP ABL Agents and DIP ABL Lenders (collectively, and including all "Obligations" as described in the DIP ABL Agreement, the "DIP ABL Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);

(iv) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of $105,000,000 (the "DIP Term Loan Facility," and all amounts extended under the DIP Term Loan Facility, the "DIP Term Loans," and the DIP Term Loan Facility together with the DIP ABL Credit Facility, the "DIP Facilities"), consisting of (a) a $35,000,000 new money multiple draw term loan facility ("New Money DIP Term Loans") and (b) $70,000,000 of term loans resulting from the "roll-up" of amounts outstanding under the Prepetition Term Loan Agreement (as defined herein), pursuant to the terms and conditions of that certain *Debtor-in-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP Term Loan Agreement," and together with the DIP ABL Agreement, the "DIP Agreements"), by and among the Company, as borrower, Holdings and the Loan Parties, as guarantors, and Credit

Suisse AG, Cayman Islands Branch as administrative agent (the "DIP Term Loan Agent," and, together with the DIP ABL Agents, the "DIP Agents") for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Term Loan Agent, the "DIP Term Loan Lenders," and, together with the DIP ABL Lenders, the "DIP Lenders"), substantially in the form of **Exhibit C**, attached to the DIP Motion;

(v) authorizing the Debtors to execute and deliver the DIP Term Loan Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements, and other Loan Documents (as defined in the DIP Term Loan Agreement) and documents related thereto (as amended, restated, supplemented, wavied, and/or modified from time to time, collectively, with the DIP Term Loan Agreement, the "DIP Term Loan Documents," and together with the DIP ABL Documents, the "DIP Documents"), and to perform such other acts as may be necessary or desirable in connection with the DIP Term Loan Documents;

(vi) granting the DIP Term Loan Facility and all obligations owing thereunder and under, or secured by, the DIP Term Loan Documents to the DIP Term Loan Agent and DIP Term Loan Lenders (collectively, and including all "Obligations" as described in the DIP Term Loan Agreement, the "DIP Term Loan Obligations," and together with the DIP ABL Obligations, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases;

(vii) granting to each of (a) the DIP ABL Administrative Agent, for the benefit of itself and the DIP ABL Lenders and the other Secured Parties (as defined in the DIP ABL Agreement) under the applicable DIP Documents and (b) the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders and the other Secured Parties (as defined in the DIP Term Loan Agreement) under the applicable DIP Documents, automatically perfected

security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(viii) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agents' attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

(ix) authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein), and providing adequate protection to the Prepetition ABL Parties and Prepetition Term Loan Parties for any diminution in value resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of their respective interests in the Prepetition Collateral (including by the Carve Out) ("Diminution in Value") of their respective interests in the Prepetition Collateral, including the Cash Collateral;

(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 Documents and this Interim Order; and

(xi) scheduling a final hearing (the "Final Hearing") within 35 days of the Petition

Date to consider the relief requested in the DIP Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of David Kurtz in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (ii) Authorizing the Debtors to Use Cash Collateral, (iii) Granting Liens and Providing Superpriority Administrative Expense Status, (iv) Granting Adequate Protection to the Prepetition Lenders, (v) Modifying the Automatic Stay, (vi) Scheduling a Final Hearing, and (vii) Granting Related Relief, the Declaration of James A. Mesterharm, Chief Restructuring Officer of the Gymboree Corporation, in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (ii) Authorizing the Debtors to Use Cash Collateral, (iii) Granting Liens and Providing Superpriority Administrative Expense Status, (iv) Granting Adequate Protection to the Prepetition Lenders, (v) Modifying the Automatic Stay, (vi) Scheduling a Final Hearing, and (vii) Granting Related Relief, and the Declaration of James A. Mesterharm, Chief Restructuring Officer of The Gymboree Corporation, in Support of Chapter 11 Petitions and First Day Motions*, the DIP Documents, and the evidence submitted and argument made at the interim hearing held on June ___, 2017 (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable local rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Rules"); and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the DIP Motion 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 all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Agreements is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. **Petition Date**. On June 11, 2017 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Virginia (the "Court").

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation**. As of the date hereof, the United States Trustee

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

for the Eastern District of Virginia (the "U.S. Trustee") has not yet appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

E. **Notice**. Proper, timely, adequate, and sufficient notice of the DIP Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 43 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(xi) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition ABL Facility*. Pursuant to that certain Credit Agreement dated as of March 30, 2012 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Agreement," and collectively with the Loan Documents (as defined in the Prepetition ABL Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL Documents"), among (a) the borrowers party thereto (the "Prepetition ABL Borrowers"), (b) the guarantors party thereto (the "Prepetition ABL Guarantors"), (c) Bank of America, N.A., as administrative agent and collateral agent (in such capacity, the "Prepetition ABL Administrative Agent"), (d) Pathlight Capital LLC, as ABL term loan agent (in such capacity, the "Prepetition ABL Term Agent" and together with the Prepetition ABL Administrative Agent, the "Prepetition

ABL Agents"), and (e) the lenders party thereto (including the Prepetition ABL Agents, the "Prepetition ABL Lenders," and collectively with the Prepetition ABL Administrative Agent and the Prepetition ABL Term Agent, the "Prepetition ABL Parties"), the Prepetition ABL Lenders provided revolving credit, term loans and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Borrowers pursuant to the Prepetition ABL Documents (the "Prepetition ABL Facility"). The Prepetition ABL Agreement is subject to that certain Waiver to Amended and Restated Credit Agreement dated as of May 22, 2017.

(ii) *Prepetition ABL Obligations*. The Prepetition ABL Facility provided the Prepetition ABL Borrowers with, among other things, (a) up to $225,000,000 aggregate principal amount of Revolving Credit Loans (as defined in the Prepetition ABL Agreement), and (b) $50,000,000 in ABL Term Loans (as defined in the Prepetition ABL Agreement). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was not less than $177,868,169.67 (collectively, together with accrued and unpaid interest, outstanding letters of credit and bankers' acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL Borrowers' or the Prepetition ABL Guarantors' obligations pursuant to, or secured by, the Prepetition ABL Documents, including all "Obligations" as defined in the Prepetition ABL Agreement, and all interest, fees, prepayment premiums, costs and other

charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Obligations"), including $75,848,342 in outstanding principal of Tranche A Loans (as defined in the Prepetition ABL Agreement), $5,151,658 in outstanding principal of FILO Loans (as defined in the Prepetition ABL Agreement), and $47,500,000 in outstanding principal of ABL Term Loans.

(iii) *Prepetition ABL Liens and Prepetition ABL Priority Collateral*. As more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Lenders, a security interest in and continuing lien on (the "Prepetition ABL Liens") substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL Documents) including (a) a first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) (which, for the avoidance of doubt, includes Cash Collateral *other than* (x) Term Loan Priority Accounts (as defined in that certain Intercreditor Agreement referred to below), (y) Cash Collateral (in the case of each of (x) and (y), that is proceeds of Term Priority Collateral (as defined in the Intercreditor Agreement)), and (z) the DIP Term Funding Account (as defined herein)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "Prepetition ABL Priority Collateral"), and (b) a second priority security interest in and continuing lien on the Term Priority Collateral and proceeds, products, and rents of any of the foregoing (collectively, the "Prepetition Term Priority Collateral," and together with the Prepetition ABL Priority Collateral, the "Prepetition Collateral"), subject only to the liens of the Prepetition Term Loan Agent on the Prepetition Term Priority Collateral and

Prepetition ABL Permitted Prior Liens (as defined herein).

(iv) *Prepetition Term Loan Facility*. Pursuant to that certain Credit Agreement dated as of February 11, 2011 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Term Loan Agreement," and collectively with the Loan Documents (as defined in the Prepetition Term Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Term Loan Documents," and together with the Prepetition ABL Documents, the "Prepetition Documents"), among (a) the Company (the "Prepetition Term Loan Borrower" and together with the Prepetition ABL Borrowers, the "Prepetition Borrowers"), (b) Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent (in such capacity, the "Prepetition Term Loan Agent," and together with the Prepetition ABL Agents, the "Prepetition Agents"), (c) the guarantors thereunder (the "Prepetition Term Loan Guarantors" and, together with the Prepetition ABL Guarantors, the "Prepetition Guarantors"), and (d) the lenders party thereto (the "Prepetition Term Loan Lenders," and collectively with the Prepetition Term Loan Agent, the "Prepetition Term Loan Parties," and together with the Prepetition ABL Parties, the "Prepetition Secured Parties"), the Prepetition Term Loan Lenders provided term loans to the Prepetition Term Loan Borrower (the "Prepetition Term Loan Facility," and together with the Prepetition ABL Facility, the "Prepetition Secured Facilities").

(v) *Prepetition Term Loan Obligations*. The Prepetition Term Loan Facility provided the Prepetition Term Loan Borrower with term loans in the aggregate principal amount of $820,000,000. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Term Loan Facility was $768,750,000 (collectively, together with accrued

and unpaid interest, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Term Loan Borrower's and the Prepetition Term Loan Guarantors' obligations pursuant to the Prepetition Term Loan Documents, including all "Obligations" as defined 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," and together with the Prepetition ABL Obligations, the "Prepetition Secured Obligations").

(vi) *Prepetition Term Loan Liens and Prepetition Term Priority Collateral*. As more fully set forth in the Prepetition Term Loan Documents, prior to the Petition Date, the Prepetition Term Loan Borrower and the Prepetition Term Loan Guarantors granted to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Lenders, a security interest in and continuing lien on (the "Prepetition Term Loan Liens," and together with the Prepetition ABL Liens, the "Prepetition Liens") substantially all of their assets and property (with certain exceptions set out in the Prepetition Term Loan Documents), including (a) a first priority security interest in and continuing lien on the Prepetition Term Priority Collateral, and (b) a second priority security interest in and continuing lien on the Prepetition ABL Priority Collateral, subject only to the liens of the Prepetition ABL Administrative Agent on the Prepetition ABL Priority Collateral and Prepetition Term Loan Permitted Prior Liens (as defined herein).

(vii) *Priority of Prepetition Liens; Intercreditor Agreement.* The

Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent entered into that certain Intercreditor Agreement dated as of November 23, 2010 (as supplemented and modified by that certain Acknowledgment and Agreement dated as of June __, 2017, and as may be further amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Prepetition Borrowers and Prepetition Guarantors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement.

(viii) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Loan Liens on the Prepetition Term Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition ABL Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date, the "Prepetition ABL Permitted Prior Liens"); (c) the Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL Obligations exist, and no portion of the Prepetition ABL Liens or Prepetition ABL Obligations is

subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL Obligations; and (g) the Prepetition ABL Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(ix) *Validity, Perfection, and Priority of Prepetition Term Loan Liens and Prepetition Term Loan Obligations.* The Debtors further acknowledge and agree that, as of the Petition Date, (a) the Prepetition Term Loan Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Term Loan Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Term Loan Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition ABL Liens on the Prepetition ABL Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Term Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Term Loan Liens as of the Petition Date, the "Prepetition Term Loan Permitted Prior Liens" and, together with the Prepetition ABL Permitted

Prior Liens, the "Permitted Prior Liens");[4] (c) the Prepetition Term Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Term Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Obligations exist, and no portion of the Prepetition Term Loan Liens or Prepetition Term Loan Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Term Loan Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Term Loan Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Term Loan Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Term Loan Obligations; and (g) the Prepetition Term Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(x) *Release*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge and acquit the DIP Agents, the Prepetition Secured Parties, all former, current and future DIP Lenders, and each of their respective successors, assigns,

[4] For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition ABL Permitted Prior Liens, the Prepetition Term Loan Permitted Prior Liens, or the Permitted Prior Liens shall refer to or include the Prepetition ABL Liens or the Prepetition Term Loan Liens.

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 reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever relating to, as applicable, the DIP Facilities, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents and/or the transactions contemplated hereunder or thereunder including (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Agents, the Prepetition Secured Parties, the DIP Agents and the DIP Lenders. 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 which the Debtors may 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 this Court entering this Interim Order.

(xi) *Default by the Debtors.* The Debtors acknowledge and stipulate that they have been and are in default of their obligations under the Prepetition Documents and that, as a result of the Cases, an Event of Default has occurred under the Prepetition Documents. As of the Petition Date, therefore, interest was accruing on the Prepetition Secured Obligations at the default rate.

G. **Permitted Prior Liens**. Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected,

or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the Prepetition Liens and DIP Liens.

H. **Cash Collateral**. All of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Secured Parties.

I. **Intercreditor Agreement**. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Interim Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order or the DIP Documents, unless expressly set forth herein or therein. The DIP ABL Credit Facility is deemed a "refinancing" of the Prepetition ABL Facility as such term is used in the Intercreditor Agreement, and any repayment of the Prepetition ABL Obligations pursuant to this Interim Order shall not be deemed to constitute a "Discharge of ABL Obligations" (as defined in the Intercreditor Agreement). The DIP Term

Loan Facility is deemed a "refinancing" in part of the Prepetition Term Loan Facility as such term is used in the Intercreditor Agreement, and any repayment of the Prepetition Term Loan Obligations pursuant to this Interim Order shall not be deemed to constitute a "Discharge of Term Obligations" (as defined in the Intercreditor Agreement). The Prepetition ABL Administrative Agent, the Prepetition Term Loan Agent, the DIP ABL Administrative Agent, and the DIP Term Loan Agent are also party to that certain Acknowledgment and Agreement dated as of June __, 2017, which is acknowledged and agreed to by the Debtors.

J. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority to (a) enter into the DIP Facilities on the terms described herein and in the DIP Documents, and (b) 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 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 ABL Administrative Agent and the DIP Term Loan Agent. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facilities and as further described below, will enable the Debtors to obtain the DIP Facilities and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Secured Parties are each entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value of each of their respective interests in the Prepetition Collateral

(including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have a need to use Cash Collateral on an interim basis and to obtain credit on an interim basis pursuant to the DIP Facilities in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facilities and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business in the Interim Period without the DIP Facilities 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 have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facilities. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit 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) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not otherwise available without granting the DIP ABL Administrative Agent and the DIP Term Loan Agent,

for the benefit of themselves and the DIP Lenders: (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 in paragraph 6 hereof; (2) superpriority claims and liens; and (3) the other protections set forth in this Interim Order.

(v) *Use of proceeds of the DIP Facilities.* As a condition to entry into the DIP Agreements, the extension of credit under the DIP Facilities and the authorization to use Cash Collateral, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facilities shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Agreements, and as set forth in paragraph 21 hereof, the "Budget"),[5] solely for: (a) working capital and letters of credit, (b) other general corporate purposes of the Debtors; (c) permitted payment of costs of administration of the Cases; (d) payment of such other prepetition obligations as permitted under the DIP Documents and as consented to by the DIP Agents, each in its sole discretion, and as approved by the Court; (e) payment of interest, fees, expenses and other amounts (including legal and other professionals' fees and expenses of the DIP Agents) owed under the DIP Documents; (f) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 16-17 hereof; (g) the conversion of the Prepetition ABL Obligations into DIP ABL Obligations, subject to the rights preserved in paragraph 43 of this Interim Order; (h) payment of obligations arising from or related to the Carve Out, and making disbursements therefrom, including by funding the Carve Out Reserves;

[5] A copy of the initial Budget is attached hereto as **Schedule 1**.

and (i) such other uses set forth in the Budget.

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP Agreements, the extension of credit under the DIP Facilities and authorization to use Cash Collateral, the Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order.

(vii) *Roll-up Loans.* Upon entry of this Interim Order, without any further action by the Debtors or any other party, (x) all of the Prepetition ABL Obligations shall be converted into DIP ABL Obligations (the "DIP ABL Roll-Up Loans") and (y) $70,000,000 of Prepetition Term Loan Obligations shall be converted into DIP Term Loan Obligations (the "DIP Term Roll-Up Loans" and, together with the DIP ABL Roll-Up Loans, the "DIP Roll-Up Loans"). The conversion (or "roll-up") shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition ABL Lenders and certain Prepetition Term Loan Lenders to fund amounts under the respective DIP Facilities and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. Notwithstanding any other provision of this Interim Order, the DIP Agreements or the Intercreditor Agreement, all rights of the Prepetition Secured Parties shall be fully preserved. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Agents and the DIP Lenders would not be willing to provide the respective DIP Facilities or extend credit to the Debtors thereunder without the inclusion of the DIP Roll-Up Loans in the DIP Obligations. Moreover, the conversion and "roll-up" of all outstanding Prepetition ABL Obligations into DIP ABL Obligations will create availability under the DIP ABL Credit Facility and will result in interest

savings to the Debtors and their estates and the conversion and "roll-up" of $70,000,000 of Prepetition Term Loan Obligations into DIP Term Roll-Up Loans will enable the Debtors to obtain urgently needed financing that will allow them to fund a reorganization process and emerge from these Cases as a going concern. Because the DIP Roll-Up Loans are subject to the reservation of rights in paragraph 43 below, they will not prejudice the right of any party in interest.

(viii) *DIP Election Procedures.* The procedures (the "DIP Election Procedures") to govern the Prepetition Term Loan Lenders' participation in the DIP Term Loan Facility that are described in the DIP Motion are fair and reasonable. On the Petition Date, or as soon as reasonably practicable thereafter, all Prepetition Term Loan Lenders were provided, via the Prepetition Term Loan Lender data site maintained by the Term Loan Agent, extensive financial information, along with the DIP Term Loan Agreement and the DIP Election Procedures. Each Prepetition Term Loan Lender (other than the holder of the 2017 Incremental Term Loan (as defined in the Prepetition Term Loan Credit Agreement) that elects to (each an "Electing DIP Term Lender") may participate in providing the DIP Term Loans in an amount equal to such Electing DIP Term Lender's pro rata share (determined on the basis of the principal amount of Prepetition Term Loans held by such Lender as compared to the principal amount of Prepetition Term Loans held by all Prepetition Term Loan Lenders (in each case, excluding the 2017 Incremental Term Loans) by executing an Election Joinder attached to the DIP Term Loan Agreement as Exhibit J (an "Election Joinder") and executing a joinder to the Restructuring Support Agreement no later than 5:00 p.m. eastern standard time on June [__],[6] 2017 (the "Election Deadline") and (i) each such Electing DIP Term Lender shall become a DIP

[6] **NTD**: To be dated fourteen (14) days from entry of the Interim Order.

Term Loan Lender on the day after the Election Deadline and (ii) the commitments (prior to any reduction, the "Initial DIP Commitments") of each of the DIP Term Loan Lenders prior to the Election Date (the "Initial DIP Term Loan Lenders") shall be reduced proportionally on such date.

K. **Adequate Protection**. The Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, and the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, are each entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection: (i) the Prepetition ABL Parties will receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12 and 14 herein, and (b) current payment of interest, reasonable and documented fees and out-of-pocket expenses (including legal and other professionals' fees and expenses of the Prepetition ABL Agents whether arising before or after the Petition Date), as more fully set forth in paragraph 16 herein; and (ii) the Prepetition Term Loan Parties will receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12 and 14 herein, and (b) current payment of expenses (including legal and other professionals' reasonable and documented fees and out-of-pocket expenses of the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders whether arising before or after the Petition Date), as more fully set forth in paragraph 17 herein.

L. **Sections 506(c) and 552(b).** In light of: (i) the DIP ABL Administrative Agent's, the DIP Term Loan Agent's and DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve Out; (ii) the Prepetition ABL Administrative Agent's and the Prepetition ABL Lenders' agreement that their liens shall be subject to the Carve

Out and subordinate to the DIP ABL Liens and, in the case of the Prepetition Term Priority Collateral, subordinate to the DIP Term Loan Liens and the Prepetition Term Loan Adequate Protection Liens (in addition to the Prepetition Term Loan Liens); (iii) the Prepetition Term Loan Parties' agreement that their liens shall be subject to the Carve Out and subordinate to the DIP Term Loan Liens and, in the case of the Prepetition ABL Priority Collateral, subordinate to the DIP ABL Liens and the Prepetition ABL Adequate Protection Liens (in addition to the Prepetition ABL Liens); and (iv) the payment of expenses as set forth in the Budget, including certain critical trade claims in accordance with and subject to the terms and conditions of this Order and the DIP Documents, (a) subject to entry of a Final Order, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) subject to entry of a Final Order, the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent, and the Prepetition Term Loan Lenders are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

M. **Good Faith of the DIP Agents and DIP Lenders**.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facilities and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facilities are essential to the Debtors' estates, that the DIP Agents and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in

good faith, and that the DIP Agents' and DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facilities and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facilities and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facilities shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

N. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

O. **Interim Hearing**. Notice of the Interim Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) those entities or individuals included on the Debtors' list of 50 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Administrative Agent; (iv) counsel to the Prepetition ABL Term Agent; (v) counsel to the Prepetition Term Loan Agent; (vi) counsel

to the Deutsche Bank Trust Company Americas, as trustee (in such capacity, the "Indenture Trustee") under that certain Indenture dated as of November 23, 2010 (as amended, restated, supplemented, or otherwise modified from time to time); and (vii) all other parties entitled to notice under the Local Rules. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Interim Order.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The DIP Motion is granted, the Interim Financing (as defined herein) is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

DIP Facilities Authorization

2. Authorization of the DIP Facilities. The DIP Facilities, including the Roll-Up Loans, are hereby approved. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facilities and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by this

Interim Order and the DIP Documents, including each of Holdings and the Loan Parties providing its joint and several guarantee of all of the DIP Obligations and such acts as shall be necessary or desirable in order to effect the roll-up and conversion of (x) $70,000,000 of Prepetition Term Loans into DIP Term Roll-Up Loans, and (y) all of the Prepetition ABL Obligations into DIP ABL Roll-Up Loans. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become earned, due and payable and without need to obtain further Court approval, including closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, prepayment premiums, continuing commitment fees, backstop fees, servicing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agents' attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Upon the Closing Date, the DIP Term Loan backstop premium, equal to 3.5% of the New Money DIP Term Loans shall be fully earned, non-refundable, and payable ratably to the Initial DIP Term Loan Lenders based on their Initial Commitments (prior

to giving effect to the DIP Election Procedures) in accordance with the provisions of the DIP Term Loan Documents.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order or (ii) the Termination Declaration (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to request extensions of credit (in the form of loans and letters of credit) up to an aggregate outstanding principal amount of not greater than $273,450,000 at any one time outstanding under the DIP ABL Credit Facility, and $20,000,000 in two separate draws under the DIP Term Loan Credit Facility (together, the "Interim Financing").

4. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto, including any trustee appointed in the Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Interim Order, the DIP Obligations will include all loans, letter of credit reimbursement obligations, 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 the DIP Agents or any of the DIP Lenders, in each case, under, or secured by, the DIP Documents or this Interim Order, including all principal, accrued interest, costs, fees, expenses and other amounts under the DIP Documents. Without limiting the foregoing, the DIP ABL Obligations shall also include cash management and bank product

exposure and derivative and swap exposure and obligations to the extent described in, or secured by, the Prepetition ABL Documents and DIP ABL Documents, including all Other Liabilities (as defined in the DIP ABL Agreement). Upon entry of this Interim Order, all letters of credit issued for the account of the Debtors under the Prepetition ABL Agreement shall continue in place and all obligations under or in connection with such letters of credit shall be subject to the DIP ABL Agreement and shall constitute DIP ABL Obligations. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date (as defined herein), except as provided in paragraph 31 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below), and including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Liens. Subject and subordinate to the Carve Out as set forth in this Interim Order, in order to secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Administrative Agent, for the benefit of itself and the DIP ABL Lenders,

and the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders, are hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the "DIP Liens") all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the "DIP Collateral"), including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all owned real property interests and all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; (d) subject to entry of a Final Order, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents (other than actions brought pursuant to section 549 of the Bankruptcy Code); (e) subject to entry of a Final Order, the Debtors' rights under section 506(c) and 550 of the Bankruptcy Code and the proceeds thereof; and (f) all DIP

Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include (i) the Debtors' real property leases (but shall include all proceeds of such leases), and (ii) Excluded Property or Excluded Subsidiaries (as defined in the applicable DIP Agreement or other DIP Documents). DIP Collateral that is (i) of a type that would be ABL Priority Collateral; (ii) of a type that would be ABL Priority Collateral, but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; (iii) the proceeds of the Debtors' real property leases; and (iv) the proceeds of avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents, shall, in each case, constitute "DIP ABL Priority Collateral"; *provided, however*, that the DIP ABL Agent and DIP ABL Lenders shall first seek recourse against the DIP ABL Priority Collateral comprising the Debtors' Inventory and Accounts (each as defined in the Prepetition ABL Agreement) prior to exercising any remedies against lease proceeds or proceeds of avoidance actions. DIP Collateral that is (i) of a type that would be Term Priority Collateral (including the Segregated Operating Account (as such term is defined in the DIP Term Loan Agreement)) and (ii) of a type that would be Term Priority Collateral but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date, shall, in each case, constitute "DIP Term Loan Priority Collateral." The DIP Term Funding Account (which is an account of the DIP Term Loan Agent) shall not be subject to any lien in favor of the Prepetition ABL Parties or the DIP ABL Lenders.

6. DIP Lien Priority. The DIP Liens securing the DIP ABL Obligations (the "DIP ABL Liens") are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP ABL Liens shall be subject to the Carve Out as set forth in this Interim Order

and shall otherwise be junior only to: (i) as to the DIP ABL Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP Term Priority Collateral, (A) Permitted Prior Liens; (B) the DIP Term Loan Liens (as defined herein); (C) the Prepetition Term Loan Liens; and (D) the Prepetition Term Loan Adequate Protection Liens (as defined herein). The DIP Liens securing the DIP Term Loan Obligations (the "DIP Term Loan Liens") are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Term Loan Liens shall be subject to the Carve Out as set forth in this Interim Order and shall otherwise be junior only to: (i) as to the DIP Term Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP ABL Priority Collateral, (A) Permitted Prior Liens; (B) the DIP ABL Liens; (C) the Prepetition ABL Liens; and (D) the Prepetition ABL Adequate Protection Liens (as defined herein). Other than as set forth herein (including the Carve Out) or in the DIP Documents, 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, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to section 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.

7. Superpriority Claims. Subject and subordinate to the Carve Out as set forth in this Interim Order, upon entry of this Interim Order, (i) the DIP ABL Administrative Agent, on behalf of itself and the DIP ABL Lenders and (ii) the DIP Term Loan Agent, on behalf

of itself and the DIP Term Loan Lenders, are each hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law; *provided, however*, that the DIP Superpriority Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and shall be subject to the Carve Out and senior to the Adequate Protection Superpriority Claims (as defined herein).

8. No Obligation to Extend Credit. Except as required to fund the Carve Out as set forth in paragraph as set forth in this Interim Order (and subject to the occurrence of the Closing Date), the DIP Agents and DIP Lenders shall have no obligation to make any loan or advance, or to issue, amend, renew or extend any letters of credit or bankers' acceptance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the DIP Documents and this Interim Order have been satisfied in full or waived by the DIP ABL Administrative Agent or the DIP Term Loan Agent, as applicable, and in accordance with the terms of the DIP ABL Agreement and the DIP Term Loan Agreement, as

applicable.

9. Use of Proceeds of DIP Facilities. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facilities, in accordance with the Budget (subject to such variances as permitted in the DIP Agreements), only for the purposes specifically set forth in this Interim Order and the DIP Documents, and in compliance with the terms and conditions in this Interim Order and the DIP Documents.

10. Roll-Up of Loans. Upon entry of this Interim Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under each of the respective DIP Facilities, the DIP Roll-Up Loans shall be included in the DIP Obligations, and (i) $70,000,000 of Prepetition Term Loan Obligations shall be converted and "rolled-up" into DIP Term Roll-Up Loans and such Prepetition Term Loan Obligations shall be reduced on a dollar-for-dollar basis and (ii) all Prepetition ABL Obligations shall be converted and "rolled-up" into DIP ABL Roll-Up Loans, and such Prepetition ABL Obligations shall constitute DIP ABL Obligations. The authorization of the DIP Roll-Up Loans shall be subject to the reservation of rights set forth in paragraph 43 of this Interim Order.

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the DIP Facilities, and the DIP Documents and in accordance with the Budget (subject to such variances as permitted in the DIP Agreements), the Debtors are authorized to use Cash Collateral until the DIP Termination Date (as defined herein); *provided, however*, that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Budget (subject to such variances

as permitted in the DIP Agreements), and as otherwise agreed by the DIP ABL Administrative Agent and the DIP Term Loan Agent, each in their sole discretion. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order (including the Carve Out), the DIP Facilities, the DIP Documents, and in accordance with the Budget (subject to such variances as permitted in the DIP Agreements).

12. Adequate Protection Liens.

(a) *Prepetition ABL Adequate Protection Liens*. Subject and subordinate to the Carve Out as set forth in this Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the "Prepetition ABL Adequate Protection Liens").

(b) *Prepetition Term Loan Adequate Protection Liens.* Subject and subordinate to the Carve Out as set forth in this Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the

"Prepetition Term Loan Adequate Protection Liens," and together with the Prepetition ABL Adequate Protection Liens, the "Adequate Protection Liens").

13. Priority of Adequate Protection Liens.

(a) The Prepetition ABL Adequate Protection Liens shall be subject to the Carve Out as set forth in this Interim Order and shall otherwise be junior only to: (i) with respect to the DIP ABL Priority Collateral, (1) Permitted Prior Liens; (2) the DIP ABL Liens; and (3) the Prepetition ABL Liens; and (ii) with respect to the DIP Term Priority Collateral, (1) Permitted Prior Liens; (2) the DIP Term Loan Liens; (3) the Prepetition Term Loan Liens; (4) the Prepetition Term Loan Adequate Protection Liens; (5) the DIP ABL Liens; and (6) the Prepetition ABL Liens. The Prepetition ABL Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) The Prepetition Term Loan Adequate Protection Liens shall be subject to the Carve Out as set forth in this Interim Order and shall otherwise be junior only to: (i) with respect to the DIP ABL Priority Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; (3) the Prepetition ABL Liens; (4) the Prepetition ABL Adequate Protection Liens; (5) the DIP Term Loan Liens; and (6) the Prepetition Term Loan Liens; and (ii) with respect to the DIP Term Priority Collateral (1) Permitted Prior Liens; (2) the DIP Term Loan Liens; and (3) the Prepetition Term Loan Liens. The Prepetition Term Loan Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(c) Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor

Cases. The Adequate Protection Liens shall not be subject to 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 Prepetition Liens or the Adequate Protection Liens.

14. Adequate Protection Superpriority Claims.

(a) *Prepetition ABL Superpriority Claim*. Subject and subordinate to the Carve Out as set forth in this Interim Order, as further adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Administrative Agent, on behalf of itself and the Prepetition ABL Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the "Prepetition ABL Superpriority Claim").

(b) *Prepetition Term Loan Superpriority Claim*. Subject and subordinate to the Carve Out as set forth in this Interim Order, as further adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the "Prepetition Term Loan Superpriority Claim," and together with the Prepetition ABL Superpriority Claim, the "Adequate Protection Superpriority Claims").

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all

administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c) (subject to entry of the Final Order), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code; *provided, however*, that the Adequate Protection Superpriority Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and subject to the Carve Out as set forth in this Interim Order and junior to the DIP Superpriority Claims.

16. Adequate Protection Payments and Protections for Prepetition ABL Parties. Subject to the Carve Out as set forth in this Interim Order, as further adequate protection (the "Prepetition ABL Adequate Protection Payments"), the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) solely to the extent that any Prepetition ABL Obligations remain outstanding after entry of this Interim Order, interest (at the default rate) and principal due under the Prepetition ABL Documents, subject to the rights preserved in paragraph 43 below, (ii) immediately upon entry of this Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agents arising prior to the Petition Date, and (iii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agents

arising subsequent to the Petition Date; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition ABL Agents shall be made solely from DIP ABL Priority Collateral. Immediately upon entry of this Interim Order, the Debtors are further authorized and directed to pay to the Prepetition ABL Administrative Agent, for the benefit of the Prepetition ABL Parties, $500,000 into a non-interest bearing account maintained at Bank of America, N.A. (the "Prepetition ABL Indemnity Reserve") to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition ABL Documents (the "Prepetition ABL Indemnity Obligations"). (A) The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) incurred by the Prepetition ABL Agents 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 paragraph 43 hereof, or (2) any Challenge (as defined herein) against the Prepetition ABL Agents or Prepetition ABL Lenders related to the Prepetition ABL Documents, the Prepetition ABL Obligations, or the Prepetition ABL Liens granted to the Prepetition ABL Administrative 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 36 below, the Prepetition ABL Administrative Agent may apply amounts in the Prepetition ABL Indemnity Reserve against the Prepetition ABL Indemnity Obligations as and when they arise, without further notice to or consent from the Debtors, a Committee (if appointed), or any other parties in interest and without further order of this Court;

and (D) until the Challenge Deadline (as defined herein), the Prepetition ABL Administrative Agent (for itself and on behalf of the Prepetition ABL Parties) shall retain and maintain the Prepetition ABL Liens granted to the Prepetition ABL Administrative 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 (i) any such indemnification claims shall be subject to (a) the terms of the Prepetition ABL Documents (including with respect to application of proceeds) 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 paragraph 43 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 24 of this Interim Order upon the indefeasible payment in full in cash of the Prepetition ABL Indemnity Obligations and the receipt by the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders of releases from the Debtors and their estates (including any applicable liquidator), with respect to any claims arising out of or related to the Prepetition ABL Agreement and the Prepetition ABL Documents, acceptable to the Prepetition ABL Administrative Agent and each other Prepetition ABL Lender in their sole discretion.

17. Adequate Protection Payments and Protections for Prepetition Term Loan Parties. Subject to the Carve Out as set forth in this Interim Order, as further adequate protection (the "Prepetition Term Loan Adequate Protection Payments," and together with the Prepetition ABL Adequate Protection Payments, the "Adequate Protection Payments"), the Debtors are

authorized and directed to provide adequate protection to the Prepetition Term Loan Parties in the form of payment in cash, without the need for the filing of formal fee applications: (i) immediately upon entry of this Interim Order, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Term Loan Parties arising prior to the Petition Date; and (ii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Term Loan Parties arising subsequent to the Petition Date; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition Term Loan Parties shall be made solely from the DIP Term Priority Collateral. Immediately upon entry of this Interim Order, the Debtors are further authorized and directed to pay to the Prepetition Term Loan Agent, for the benefit of the Prepetition Term Loan Lenders, $500,000 into a non-interest bearing account maintained at [_____][7] (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"). (A) The Prepetition Term Loan Indemnity Reserve shall 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

[7] To be determined.

contemplated in paragraph 43 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 Term Loan 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 36 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 Indemnity Obligations as and when they arise, without further notice to or consent from the Debtors, a Committee (if appointed), or any other parties in interest and without further order of this Court; and (D) until the Challenge Deadline, the Prepetition Term Loan Agent (for itself and on behalf of the Prepetition Term Loan Lenders) shall retain and maintain the Prepetition Term Loan Liens granted to the 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 (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 paragraph 43 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 24

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 (including any applicable liquidator), 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.

18. Adequate Protection Reservation. Subject to the Carve Out as set forth in this Interim Order, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection.

Provisions Common to DIP Financing and use of Cash Collateral

19. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) non-material and (b) in accordance with the DIP Documents. In the case of a material amendment, modification, or supplement to the DIP Documents, the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to counsel to a Committee (if appointed), the U.S. Trustee, and the DIP Agent not party to such amendment, modification, or supplement (collectively, the "Notice Parties")

promptly upon the effectiveness of such amendment, modification, or supplement; *provided, however*, that approval of the Court will be necessary to effectuate any such amendment, modification or supplement; and *provided further* that such amendment, modification, or supplement shall be without prejudice to the right of any party in interest to be heard.

20. Budget Maintenance. The use of borrowings and letters of credit under the DIP Facilities and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances set forth in the DIP Agreements. The Budget shall depict, on a weekly and line item basis, (a) (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Debtors' professionals and advisors), asset sales and any other fees and expenses relating to the DIP Agreements, (iii) net cash flow, (iv) projected inventory receipts and levels, (v) projected Tranche A Borrowing Base (as defined in the DIP ABL Agreement) , FILO Borrowing Base (as defined in the DIP ABL Agreement), ABL Term Borrowing Base (as defined in the DIP ABL Agreement), Availability (as defined in the DIP ABL Agreement) and Combined Availability (as defined in the DIP ABL Agreement), (vi) total available liquidity, and (vii) professional fees and disbursements with respect to the Debtors' professionals; (b) a report listing the stores subject to Specified Store Closing Sales (as defined in the DIP Agreements) and the other remaining stores to be produced at a time reasonably satisfactory to the DIP Agents, but in any event on or before June 30, 2017; and (c) the other items set forth in the Budget and other information requested by the DIP Agents (which shall include a breakdown of stores being closed or proposed to be closed, which information with respect to such stores shall be limited to pro rata collections of such stores collected from the point of sale systems during the relevant period which correspond to cash collections described in, and determined in a manner consistent

with, the Budget), for the first thirteen (13) week period from the Closing Date (as defined in the DIP Agreements). The Budget, and any modification to, or amendment or update thereof, shall be subject to the approval of, and in form and substance satisfactory to the DIP Agents and the Required Lenders (as defined in the DIP ABL Agreement) in their sole discretion. The Budget shall be updated, modified, or supplemented by the Debtors with the written consent of the DIP ABL Agents and the Required Lenders, and upon the joint request of the DIP ABL Administrative Agent and the DIP Term Loan Agent from time to time (which request may be made in connection with any Transaction (as defined in the DIP ABL Agreement) or the commencement, or during the continuation, of the Specified Store Closing Sales), but in any event the Budget shall be updated by the Debtors (subject the approval of the DIP Agents and Required Lenders) not less than one time in each four (4) consecutive week period. Each such updated, modified, or supplemented budget shall be approved in writing by, and shall be in form and substance reasonably satisfactory to, the DIP Agents and the Required Lenders, in each of their sole discretion. No such updated, modified, or supplemented budget shall be effective until so approved and once so approved shall be deemed the "Budget"; *provided, however*, that in the event the DIP Agents and the Required Lenders, on the one hand, and the Debtors, on the other hand, cannot agree as to an updated, modified, or supplemented budget, such disagreement shall give rise to an Event of Default under the DIP Agreements once the period covered by the prior Budget has terminated. Each Budget delivered to the DIP Agents shall be accompanied by such supporting documentation as reasonably requested by the DIP ABL Administrative Agent and the DIP Term Loan Agent and shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable. A copy of any Budget (or updated Budget) shall be delivered to counsel for a Committee (if appointed) and the U.S. Trustee after (or if) it has been approved

by the DIP Agents.

21. Budget Compliance. The Debtors shall at all times comply with the Budget, subject to the variances set forth in the DIP Agreements. The Debtors shall provide all reports and other information as required in the DIP Agreements (subject to the grace periods provided therein). The Debtors' failure to comply with the Budget (including the variances set forth in the DIP Agreements) or to provide the reports and other information required in the DIP Agreements shall constitute an Event of Default (as defined herein), following the expiration of any applicable grace period set forth in the DIP Agreements.

22. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and this Interim Order; (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order; and (e) permit any Prepetition Term Loan Party to that certain Restructuring Support Agreement dated as of June 11, 2017 (as amended, the "Restructuring Support Agreement") to take any actions authorized under the Restructuring Support Agreement, including to take steps necessary (including sending any notice

contemplated thereunder) to effectuate its termination, in each case, without the need to seek or obtain further relief from the Court.

23. Perfection of DIP Liens and Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, 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) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens, the Adequate Protection Liens, or to entitle the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP ABL Administrative Agent, DIP Term Loan Agent, Prepetition ABL Administrative Agent and Prepetition Term Loan Agent is authorized to file, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, 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 or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent all such financing statements, mortgages, notices, and other documents as the DIP ABL Administrative

Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent may reasonably request. Each of the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent, in its discretion, 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. To the extent that the Prepetition ABL Administrative Agent or the Prepetition Term Loan Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP ABL Administrative Agent and the DIP Term Loan Agent (as applicable) shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent shall serve as agents for the DIP ABL Administrative Agent and the DIP Term Loan Agent for purposes of perfecting the DIP ABL Administrative Agent's and the DIP Term Loan Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

24. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facilities and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all Net Proceeds (as defined in the DIP Agreements), Cash

Receipts (as defined in the DIP Agreements) and other payments received by the DIP Agents, and all proceeds of Collateral (as defined in the DIP Agreements), including whether sold in the ordinary course, liquidated pursuant to the Specified Store Closing Sales, or otherwise, subject to applicable reinvestment rights (if any) and thresholds in the DIP Agreements and subject to the applicable prepayment provisions therein, as follows: (a) with respect to DIP ABL Priority Collateral, ***first***, as provided in the DIP ABL Agreement, and ***second***, after the indefeasible repayment in full in cash of the Prepetition ABL Obligations and the DIP ABL Obligations (including, in each case, provision for contingent obligations) and the termination of the DIP ABL Credit Facility, as provided in the DIP Term Loan Agreement; and (b) with respect to DIP Term Priority Collateral, ***first***, as provided in the DIP Term Loan Credit Agreement, and ***second***, after the indefeasible repayment in full in cash of the Prepetition Term Loan Obligations and the DIP Term Loan Obligations (including, in each case, provision for contingent obligations) and the termination of the DIP Term Loan Facility, as provided in the DIP ABL Agreement.

25. Protections of Rights of DIP Agents, DIP Lenders and Prepetition Secured Parties.

(a) Unless the DIP Agents and the Prepetition Agents shall have provided their prior written consent, or all DIP Obligations and all Prepetition Secured Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash and the lending commitments under the DIP Facilities have terminated, there shall not be entered in any of these Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the

DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Interim Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; *provided*, *however*, that the consent of the DIP ABL Term Agent and the Prepetition ABL Term Agent shall only be required to the extent that such use of Cash Collateral would not result in a "Conforming DIP" as defined in Section 7.06 of the Prepetition ABL Agreement; (iii) the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff or recoupment against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise; or (iv) any modification of any of the DIP Agents', DIP Lenders', or the Prepetition Secured Parties' rights under this Interim Order, the DIP Documents or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations.

(b) The Debtors will, whether or not the DIP Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been indefeasibly paid in full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents (and subject to the applicable grace periods set forth therein); (ii) reasonably cooperate with, consult with, and provide to the DIP Agents all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Agents) to provide under the DIP Documents or the provisions of this Interim Order; (iii) upon reasonable advance notice, permit the DIP Agents, the DIP Lenders and the Agent

Advisors (as defined in the DIP Agreements) of each of the DIP Agents and Prepetition Agents to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition Documents; (iv) permit the DIP Agents and Prepetition Agents, and the Agent Advisors to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (v) upon reasonable advance notice, permit the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral in accordance with the DIP Documents and the Prepetition Documents.

(c) No Debtor shall object to any DIP Lenders or any Prepetition Secured Parties credit bidding up to the full amount of the applicable outstanding DIP Obligations, Prepetition ABL Obligations (as applicable), and Prepetition Term Loan Obligations (as applicable), in each case including any accrued interest and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

26. Credit Bidding. In connection with any sale process authorized by the

Court, the DIP Agents, DIP Lenders, and Prepetition Secured Parties may credit bid some or all of their claims for their respective priority collateral (each a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code, subject in each case to the rights and duties of the parties under the Intercreditor Agreement and Prepetition Documents (including the "Specified Release Paragraph" in section 9.01 of the Prepetition ABL Agreement) and to the provision of consideration sufficient to pay in full in cash any senior liens on the collateral that is subject to the credit bid. Each of the DIP Agents, DIP Lenders, and Prepetition Secured Parties shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the assets by Credit Bid.

27. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations and Prepetition Secured Obligations, and the termination of the DIP Agents' and DIP Lenders' obligation to extend credit under the DIP Facilities, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP ABL Administrative Agent and the DIP Term loan Agent, as applicable, to be applied in accordance with this Interim Order and the DIP Documents.

28. Cash Collection.

(a) From and after the date of the entry of this Interim Order, all collections and proceeds of any DIP ABL Priority Collateral or Prepetition ABL Priority

Collateral or services provided by any Debtor and all Cash Collateral (except as otherwise set forth in the DIP ABL Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition ABL Priority Collateral were deposited under the Prepetition Documents (or in such other accounts as are designated by the DIP ABL Administrative Agent from time to time) (collectively, the "Cash Collection Accounts"), which accounts (except as otherwise set forth in the DIP ABL Agreement) shall be subject to the sole dominion and control of the DIP ABL Administrative Agent. All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP ABL Administrative Agent for application in accordance with the DIP ABL Documents and this Interim Order. Unless otherwise agreed to in writing by the DIP ABL Administrative Agent, the DIP Term Loan Agent, the Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent, or otherwise provided for herein, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a "Cash Management Order"). The Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP ABL Administrative Agent.

(b) Notwithstanding anything in this Interim Order or any of the DIP Documents, (i) upon any draw under the DIP Term Loan Facility, the DIP Term Lenders shall deposit the proceeds of the DIP Term Loan Facility into a segregated deposit account furnished by a depository bank acceptable to the DIP Term Loan Agent and such account shall be in the

name of the DIP Term Loan Agent subject to the sole dominion and control of the DIP Term Loan Agent (such account, the "DIP Term Funding Account"); the DIP Term Funding Account shall not be subject to a security interest or a lien of the DIP Term Loan Agent in favor of the Prepetition ABL Parties or the DIP ABL Lenders; and (ii) the Debtors' use of the proceeds in the DIP Term Funding Account shall be subject to this Interim Order and the DIP Term Loan Documents. The Debtors may make weekly withdrawals from the DIP Term Funding Account subject to the conditions set forth in the DIP Term Loan Agreement and this Interim Order, which proceeds shall be deposited into the Segregated Operating Account.

(c) From and after the date of the entry of this Interim Order, all collections and proceeds of any DIP Term Priority Collateral or Prepetition Term Priority Collateral or services provided by any Debtor and any Cash Collateral that is DIP Term Priority Collateral or Prepetition Term Priority Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall promptly be deposited in the Segregated Operating Account (as such term is defined in the DIP Term Loan Agreement), which shall be subject to the sole dominion and control of the DIP Term Loan Agent and which shall constitute DIP Term Priority Collateral, subject to the priorities set forth in this Interim Order; the Debtors' use of the proceeds in the Segregated Operating Account shall be subject to this Interim Order and the DIP Term Loan Documents.

29. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agents' and the DIP Lenders' obligation to extend credit under the DIP Facilities, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facilities or the Prepetition Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as

modified by any Cash Management Order that has first been agreed to by the DIP Agents or as otherwise required by the DIP Documents or this Interim Order.

30. Disposition of DIP Collateral.

(i) The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP ABL Priority Collateral or Prepetition ABL Priority Collateral other than in the ordinary course of business without the prior written consent of the DIP ABL Administrative Agent and Prepetition ABL Administrative Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP ABL Administrative Agent, DIP ABL Lenders, the Prepetition ABL Administrative Agent, or the Prepetition ABL Parties, or from any order of this Court), except as otherwise provided for in the DIP ABL Documents or otherwise ordered by the Court, and subject to the Intercreditor Agreement.

(ii) The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Term Priority Collateral or Prepetition Term Priority Collateral other than in the ordinary course of business without the prior written consent of the DIP Term Loan Agent and Prepetition Term Loan Agent (and no such consent shall be implied, from any other action, inaction, or acquiescence by the DIP Term Loan Agent, DIP Term Loan Lenders, the Prepetition Term Loan Agent, or Prepetition Term Loan Parties, or from any order of this Court), except as otherwise provided for in the DIP Term Loan Documents or otherwise ordered by the Court, and subject to the Intercreditor Agreement.

31. DIP Termination Date. On the applicable DIP Termination Date: (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Facilities will terminate, other than as required in paragraph 40 with respect to the Carve Out, all treasury and cash management, hedging obligations and bank

product obligations constituting Obligations (as defined in the DIP ABL Agreement) shall be cash collateralized, and all letters of credit and bankers' acceptances outstanding shall be cash collateralized in an amount equal to 103% of the face amount thereof, and such cash collateral shall not be subject to or subordinate to the Carve Out; (b) 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 to pay payroll and other expenses that the DIP ABL Administrative Agent and the DIP Term Loan Agent approve as critical to the administration of the Debtors' estates in accordance with the Budget as determined by each DIP Agent in its sole discretion; and (c) otherwise exercise rights and remedies under the DIP Documents in accordance with this Interim Order (including paragraph 34). For the purposes of this Interim Order, the "DIP Termination Date" shall mean the "Termination Date" as defined in the DIP ABL Agreement and the "Maturity Date" as defined in the DIP Term Loan Agreement, as applicable.

32. Events of Default. The occurrence of any of the following events, unless waived by the DIP ABL Administrative Agent and the DIP Term Loan Agent in writing and in accordance with the terms of the DIP Agreements, shall constitute an event of default (collectively, the "Events of Default"): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; or (b) the occurrence of an "Event of Default" under either of the DIP Agreements.

33. Milestones. As a condition to the DIP Facilities and the use of Cash Collateral, the Debtors shall comply with the Required Milestones (as defined on Schedule 5.19 to the DIP ABL Agreement attached as Exhibit B to the DIP Motion), which is set forth on Schedule 2 hereto (the "Case Milestones"). For the avoidance of doubt, the failure of the

Debtors to comply with any of the Case Milestones shall (a) constitute an Event of Default under (i) each of the DIP Agreements and (ii) this Interim Order; and (b) subject to the expiration of the Remedies Notice Period (as defined below), result in the automatic termination of the Debtors' authority to use Cash Collateral under this Interim Order; and (c) permit the DIP ABL Administrative Agent and the DIP Term Loan Agent, subject to paragraph 34, to exercise the rights and remedies provided for in this Interim Order and the DIP Documents.

34. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default under any of the DIP Documents, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order (and the Remedies Notice Period) (a) each of the DIP ABL Administrative Agent and the DIP Term Loan Agent may declare (any such declaration shall be referred to herein as a "Termination Declaration") (i) all DIP Obligations owing under the respective DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the respective DIP Facilities, (iii) termination of the respective DIP Credit Facilities and the respective DIP Documents as to any future liability or obligation of the applicable DIP Agents and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve Out has occurred through the delivery of the Carve Out Trigger Notice (as defined herein) to the Company and the Loan Parties (as applicable); and (b) either the DIP ABL Administrative Agent (in the case of Cash Collateral of proceeds of the DIP ABL Priority Collateral) or the DIP Term Loan Agent (in the case of Cash Collateral of proceeds of the DIP Term Priority Collateral and proceeds in the DIP Term Funding Account and the

Segregated Operating Account) may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a Termination Declaration is delivered and the DIP Termination Date shall be referred to herein as the "Termination Date"). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the DIP ABL Agents (if delivered by the DIP Term Loan Agent), counsel to the DIP Term Loan Agent (if delivered by the DIP ABL Administrative Agent), counsel to a Committee (if appointed), counsel to the Indenture Trustee, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP ABL Administrative, the DIP Term Loan Agent, the DIP Lenders, and the Prepetition Secured Parties is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (the "Remedies Notice Period"): (a) the DIP ABL Administrative Agent or the DIP Term Loan Agent (as applicable) and the applicable DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the respective DIP Documents and this Interim Order to satisfy the relevant DIP Obligations, DIP Superpriority Claim, and DIP Liens, subject to the Carve Out; (b) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies in accordance with the applicable Prepetition Documents and this Interim Order to satisfy the relevant Prepetition Secured Obligations, Adequate Prepetition Superpriority Claims, and Prepetition Adequate Protection Liens, subject to the Carve Out. During the Remedies Notice Period, the Debtors and/or a Committee (if appointed) shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing, and the Debtors hereby waive their right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights

and remedies of the DIP ABL Administrative Agent, the DIP Term Loan, the DIP Lenders, or the Prepetition Secured Parties. Unless the Court orders otherwise, the automatic stay, as to DIP ABL Administrative Agent, DIP Term Loan Agent, DIP Lenders, and Prepetition Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, the Prepetition Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the Intercreditor Agreement and paragraph 30 of this Interim Order. In addition, if a Specified Sale Process Default (as defined in the DIP ABL Agreement) occurs and is continuing, the DIP ABL Administrative Agent may direct the Debtors to commence a process for a sale of all of the Debtors' assets (the "Sales Process"), at which time: (a) within one (1) business day after the Remedies Notice Period expires, the Debtors must obtain entry of an order from the Court, in form and substance approved by the DIP ABL Administrative Agent, either (x) designating a liquidating stalking horse bidder consented to by the DIP ABL Administrative Agent and approving bidding and sales procedures with respect to the Sales Process or (y) determining that a Specified Sale Process Default has not occurred and/or is not continuing; (b) within three (3) business days after the Remedies Notice Period expires, complete an auction for the Sales Process and declare a "successful bidder" for the Sales Process on terms and conditions consented to by the DIP ABL Administrative Agent; (c) within five (5) business days after the Remedies Notice Period expires, obtain entry of a final order from the Court, in form and substance acceptable to the DIP ABL Administrative Agent, approving the Sales Process; and (d) within seven (7) business days after the Remedies Notice

Period expires, execute an agency agreement approved by the DIP ABL Administrative Agent in connection with the Sales Process and commence the Sales Process pursuant to the approved agency agreement and the applicable Court order. Until such time as the Sales Process is complete and the proceeds of DIP ABL Priority Collateral have been remitted to the DIP ABL Administrative Agent for the benefit of the DIP ABL Lenders and the proceeds of DIP Term Priority Collateral have been remitted to the DIP Term Loan Agent and the DIP Term Loan Lenders, any exercise of remedies by the DIP Term Agent and the DIP Term Lenders shall be in accordance with the Intercreditor Agreement and paragraph 30 of this Interim Order. Upon the occurrence and during the continuation of an Event of Default, the DIP ABL Administrative Agent and any liquidator or other professional will have the right to access and utilize, at no cost or expense, any trade names, trademarks, copyrights or other intellectual property and any warehouse, distribution centers, store or other locations to the extent necessary or appropriate in order to sell, lease or otherwise dispose of any of the DIP ABL Priority Collateral, including pursuant to any Court approved sale process.

35. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Agents, DIP Lenders, and Prepetition Secured Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. 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) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Agents, the DIP Lenders, and Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any

such 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.

36. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the DIP Agents and DIP Lenders in connection with the DIP Facilities, as provided in the DIP Documents, whether or not the transactions contemplated hereby are consummated, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Agents, DIP Lenders, and Prepetition Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtors. Any objections raised by the Debtors, the U.S. Trustee or a Committee (if appointed) with respect to such invoices within ten (10) days of the receipt thereof will be subject to resolution by the Court. 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 and documented fees, costs, and out-of-pocket expenses of the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties incurred on or prior to such date without the need for any professional engaged by the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the DIP Agents, DIP Lenders or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agents or DIP Lenders in connection with or with respect to the DIP Facilities; and (ii) Prepetition Secured Parties in connection or with respect to these matters, are hereby approved in full.

37. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agents and the DIP Lenders in accordance with the terms and conditions of the DIP Agreements. Upon the earlier of (A) payment in full in cash of the DIP ABL 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 ABL Indemnity Account") subject to first priority liens of the DIP ABL Administrative Agent, for the benefit of the DIP ABL Lenders. The DIP ABL Indemnity Account shall be released and the funds applied in accordance with paragraph 24 of this Interim Order upon the indefeasible payment in full in cash of the DIP ABL Obligations and the receipt by the DIP ABL Administrative Agent and each of the DIP ABL Lenders of releases from the Debtors and their estates, with respect to any claims arising out of or related to the DIP ABL Documents, acceptable to the DIP ABL Administrative Agent and the DIP ABL Lenders, each in their sole discretion. Upon the earlier of (A) payment in full in cash of the DIP Term

Loan 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 Term Loan Indemnity Account") subject to first priority liens of the DIP Term Loan Agent, for the benefit of the DIP Term Loan Lenders. The DIP Term Loan Indemnity Account shall be released and the funds applied in accordance with paragraph 24 of this Interim Order upon the indefeasible payment in full in cash of the DIP Term Loan Obligations and the receipt by the DIP Term Loan Agent and each of the DIP Term Loan Lenders of releases from the Debtors and their estates, with respect to any claims arising out of or related to the DIP Term Loan Documents, acceptable to the DIP Term Loan Agent and the DIP Term Loan Lenders, each in their sole discretion.

38. Proofs of Claim. The DIP ABL Administrative Agent, the DIP Term Loan Agent, the DIP Lenders, and Prepetition Secured Parties will not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, each of (a) the Prepetition ABL Administrative Agent on behalf of itself and the Prepetition ABL Parties and (b) the Prepetition Term Loan Agent on behalf of itself and the Prepetition Term Loan Parties is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the Prepetition ABL Administrative Agent or Prepetition Term Loan Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition ABL Parties or Prepetition Term Loan Parties, respectively. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases shall not apply to any claim of the DIP Agents, the DIP Lenders,

and the Prepetition Secured Parties.

39. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Agents and DIP Lenders under the DIP Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agents (and so long as an Event of Default has occurred and is continuing, each DIP Lender), and the Prepetition Agents reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and Prepetition Documents, as applicable, 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, including Alix Partners LLC and Lazard Frères & Co. LLC to cooperate, consult with, and provide to the DIP Agents (and so long as an Event of Default has occurred and is continuing, each DIP Lender) and the Prepetition Agents all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Company, Holdings or the Loan Parties.

40. Carve Out.

(a) *Carve Out.* As used in this Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (the "Chapter 7 Trustee Carve-Out"); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise (and, in the case of the Committee Professionals (as defined below), subject to the Budget), all unpaid fees and

expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and (subject to the Budget) any official committee appointed pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP ABL Administrative Agent or DIP Term Loan Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (solely with respect to the DIP ABL Collateral, in an aggregate amount not to exceed the ABL Professional Fee Carve Out Cap (defined below)); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $2,000,000 incurred after the first business day following delivery by the DIP ABL Administrative Agent or the DIP Term Loan Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap").[8] For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP ABL Administrative Agent or DIP Term Loan Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, the DIP ABL Administrative Agent or DIP Term Loan Agent (as applicable) and counsel to a Committee (if appointed), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP ABL Obligations or the DIP Term Loan Obligations under the DIP ABL Facility or DIP Term Loan Facility, respectively, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

[8] Notwithstanding the foregoing, at the election of the Debtors up to $500,000 of the Post-Carve Out Trigger Notice Cap may be used to pay Allowed Professional Fees of Professional Persons incurred prior to the delivery of a Carve Out Trigger Notice to the extent such Allowed Professional Fees exceed the ABL Professional Fee Carve Out Cap (as defined below).

(b) *Delivery of Weekly Fee Statements*. Not later than 5:00 p.m. New York time on Wednesday of each week starting with the second week following the Petition Date, each Professional Person shall deliver to the Debtors, the DIP Agents and the Prepetition ABL Agents a statement setting forth the amount and a description of the fees and expenses (collectively, "Professional Fees") incurred during the preceding week by such Professional Person through Saturday of such week, the "Calculation Date"), along with a cumulative total and a statement of the amount of such fees and expenses which have been paid to date by the Debtors (each such statement, a "Weekly Statement"), provided that, within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver an additional Weekly Statement (the "Final Statement") setting forth the amount and a description of the fees and expenses incurred during the period commencing on the calendar day after the prior Calculation Date and concluding on the Termination Declaration Date. Solely as it relates to the DIP ABL Administrative Agent, the DIP ABL Lenders, the Prepetition ABL Administrative Agent and the Prepetition ABL Lenders, the Carve Out under paragraph (a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Allowed Professional Fees included in such Weekly Statements timely received by the DIP ABL Administrative Agent and Prepetition ABL Administrative Agent prior to the Termination Declaration Date (as defined below), plus (II) the lesser of (1) the aggregate unpaid amount of Allowed Professional Fees included in the Final Statement timely received by the DIP ABL Agent, the DIP Term Loan Agent, and the Prepetition ABL Agent pertaining to the period through and including the Termination Declaration Date (as defined below) and (2) the Budgeted Cushion Amount (as defined below) and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Budget for the period prior to the Termination Declaration Date

(such amount, the "ABL Professional Fee Carve Out Cap"). For the avoidance of doubt, the DIP ABL Administrative Agent shall be entitled to at all times maintain, as part of the Availability Reserve (as defined in the DIP ABL Agreement), a reserve in an amount not less than the sum of (i) the then outstanding amount of the ABL Professional Fee Carve Out Cap, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph (a)(i) and (a)(ii) above. In addition, the DIP ABL Administrative Agent shall at all times be entitled to maintain, as part of the Reserves (as defined in the DIP ABL Agreement), a reserve in an amount equal to the amount of Professional Fees set forth in the Approved Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount (regardless of whether such reserve is maintained), the "Budgeted Cushion Amount").

(c) *Carve Out Reserves.* On the day on which a Carve Out Trigger Notice is given by either the DIP ABL Administrative Agent or the DIP Term Loan Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, the DIP ABL Administrative Agent or DIP Term Loan Agent (as applicable) with a copy to counsel to a Committee (if appointed) (the "Termination Declaration Date"), the Carve Out Trigger Notice shall be deemed (i) a draw request and notice of borrowing by the Debtors for DIP Revolving Loans under the DIP ABL Agreement in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i) and (a)(ii), above, and (y) the then unpaid amounts of the Allowed Professional Fees up to the ABL Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP Revolving Loans) and (ii) a draw request and notice of borrowing by the Debtors for DIP Term Loans under the DIP Term Loan Facility in an amount equal to the unpaid amounts of the Allowed Professional Fees in excess of the ABL Professional Fee Carve Out Cap (any such

amounts actually advanced shall constitute DIP Term Loans). To the extent amounts under preceding clause (i) are not funded as of the end of the second business day after the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand constituting proceeds of ABL Priority Collateral as of such date and any available cash constituting proceeds of ABL Priority Collateral thereafter held by any Debtor to fund a reserve in an amount equal to the amount required to be funded pursuant to such clause (i) (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP ABL Loans pursuant to clause (i) of this paragraph (c)). To the extent amounts under preceding clause (ii) are not funded as of end of the second business day after the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand constituting proceeds of DIP Term Loan Priority Collateral as of such date and any available cash constituting proceeds of DIP Term Loan Priority Collateral thereafter held by any Debtor to fund a reserve in an amount equal to the amount required to be funded pursuant to such clause (ii) (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP Term Loans pursuant to clause (ii) of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Administrative Agent in trust exclusively to pay such unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve"). On the Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for (x) DIP Revolving Loans under the DIP ABL Agreement in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Revolving Loans) and (y) to the extent not funded by the DIP ABL Lenders, for DIP Term Loans in an amount equal to any unfunded portion of the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall

constitute DIP Term Loans). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Administrative Agent in trust exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves"). On the next business day following the Termination Declaration Date and the deemed requests for the making of DIP Revolving Loans and DIP Term Loans as provided in this paragraph (c), notwithstanding anything in the DIP ABL Agreement or the DIP Term Loan Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL Agreement or the DIP Term Loan Agreement) or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP Revolving Loan under the DIP ABL Agreement or DIP Term Loans under the DIP Term Loan, respectively, (3) any termination of the Commitments (as defined in the DIP ABL Agreement) or Commitments (as defined in the DIP Term Loan Agreement) following an Event of Default, or (4) the occurrence of the Maturity Date, each DIP ABL Lender with a Commitment (as defined in the DIP ABL Agreement) and DIP Term Loan Lender with an outstanding Commitment (as defined in the DIP Term Loan Agreement) shall make available to the DIP ABL Administrative Agent or DIP Term Loan Agent, as applicable, such DIP ABL Lender's or such DIP Term Loan Lender's pro rata share of such DIP Revolving Loans or DIP Term Loans, as applicable.

(d) *Application of Carve Out Reserves.*

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in subparagraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of

doubt, the Post-Carve Out Trigger Notice Cap, until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds shall be distributed *first* to the prepetition Revolving Credit Lenders (as defined in the Prepetition ABL Agreement) in accordance with their rights and priorities as of the Petition Date, and *thereafter* to the DIP ABL Administrative Agent on account of the Revolving Obligations (as defined in the DIP ABL Agreement) until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable Issuing Bank (as defined in the DIP ABL Agreement)).

(ii) All funds in the Post-Carve Out Trigger Notice Reserve (other than up to $500,000, which may be used to pay Pre-Carve Out Amounts to the extent they exceed the ABL Professional Fee Carve Out Cap) shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"). If the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, , subject to clause (iii) below, all remaining funds shall be distributed *first,* to the prepetition Revolving Credit Lenders in accordance with their rights and priorities as of the Petition Date, and *thereafter* to the DIP ABL Administrative Agent on account of the Revolving Obligations until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable Issuing Bank).

(iii) Notwithstanding anything to the contrary in the DIP ABL Documents, the DIP Term Loan Documents, or this Interim Order, (x) if either of the Carve Out Reserves required to be funded by the DIP ABL Lenders is not funded in full in the amounts set

forth in this paragraph (d), then, any excess funds in one of the Carve Out Reserves held in any account funded by the DIP ABL Lenders following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the limits contained in the ABL Professional Fee Carve Out Cap and the Post-Carve Out Trigger Notice Cap, respectively), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the DIP ABL Lenders prior to making any payments to the DIP ABL Agent or the Prepetition ABL Lenders, as applicable, and (y) if either of the Carve Out Reserves required to be funded by the DIP Term Loan Lenders is not funded in full in the amounts set forth in this paragraph (d), then, any excess funds in one of the Carve Out Reserves held in any account funded by the DIP Term Loan Lenders following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to DIP Term Commitment Cap and the Post-Carve Out Trigger Notice Cap, respectively), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the DIP Term Loan Lenders prior to making any payments to the DIP Term Loan Agent or the Prepetition Term Loan Lenders, as applicable.

(iv) (A) Notwithstanding anything to the contrary in the DIP ABL Documents or this Interim Order, following two (2) business days after delivery of a Carve Out Trigger Notice, neither the DIP ABL Administrative Agent nor the Prepetition ABL Administrative Agent shall sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been funded in an amount equal to the sum of (x) the Post-Carve Out Trigger Notice Cap, plus (y) the amount of the ABL Professional Fee Carve Out Cap *plus* (z) the amounts contemplated under paragraph (a)(i) and (a)(ii) above, with any excess paid as provided in paragraphs (i) and (ii) above. (B) Notwithstanding anything to the contrary in the DIP Term Loan Documents or this

Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Term Loan Agent and the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the DIP Term Loan Agent shall have satisfied its obligation to fully fund the Carve Out Reserves in accordance with this Interim Order.

(v) Notwithstanding anything to the contrary in this Interim Order, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below) (*provided* that, in all cases the Carve Out priority with regard to the DIP ABL Collateral will always be subject to the limitations set forth in the definition of Carve Out), and (ii) subject to the limitations with respect to the DIP ABL Administrative Agent, Revolving Credit Lenders (as defined in the DIP ABL Agreement), Prepetition ABL Administrative Agent and prepetition Revolving Credit Lenders set forth in paragraph (b), above, in no way shall the Budget, any Approved Budget (as defined in the DIP ABL Agreement), Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Facilities, or in any Prepetition Secured Facilities, to the extent of any shortfall in the Carve Out Reserves, the Carve Out shall be senior to all liens and claims securing the DIP Facilities, the Adequate Protection Liens, and the Diminution in Value claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations; *provided, however*, that that in all cases, the Carve Out priority with regard to the DIP ABL Collateral will always be subject to the limitations set forth in the definition of Carve Out.

(e) *No Direct Obligation To Pay Allowed Professional Fees*. The DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, the Issuing Banks, or the Prepetition Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) *Payment of Allowed Professional Fees Prior to the Termination Declaration Date*. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(g) *Payment of Carve Out On or After the Termination Declaration Date*. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

41. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out. The DIP Facilities, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP ABL Administrative Agent's, the DIP

Term Loan Agent's, the DIP Lenders', or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral except as provided for in this Interim Order and the DIP Documents; (c) selling or otherwise disposing of DIP Collateral without the consent of the DIP ABL Administrative Agent or the DIP Term Loan Agent (as applicable); (d) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided for in this Interim Order and the DIP Documents without the consent of the DIP ABL Administrative Agent and the DIP Term Loan Agent; (e) incurring Indebtedness (as defined in the DIP ABL Agreement or the DIP Term Loan Agreement) without the prior consent of the DIP ABL Administrative Agent and the DIP Term Loan Agent, except to the extent permitted under the DIP Agreements; (f) seeking to amend or modify any of the rights granted to the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order, the DIP Documents, or the Prepetition Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (g) objecting to or challenging in any way the DIP Liens, DIP Obligations, Prepetition Liens, Prepetition Secured Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP ABL Administrative Agent, the DIP Term Loan Agent, the DIP Lenders, or the Prepetition Secured Parties, respectively; (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (i) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount,

perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties; or (j) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Prepetition Secured Obligations; *provided, however*, that the Carve Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed, subject to the Final Order, $50,000 in the aggregate (the "Investigation Budget Amount"), incurred solely by a Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority or extent of the Prepetition Liens within sixty (60) calendar days following the selection of counsel to a Committee (if appointed). Notwithstanding anything to the contrary, any fees, expenses or costs incurred by a Committee (if appointed) or its professionals in excess of the Investigation Budget Amount or in excess of the amount budgeted for Committee Professionals set forth in the DIP Budget shall not constitute an allowable administrative expense claim, including for purposes of section 1129(a)(9)(A) of the Bankruptcy Code.

42. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, as reflected in the most recent Budget provided by the Debtors to the DIP Agents.

43. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in this Interim Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 43) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than (a) 60 days from the date of formation of a Committee (if appointed), or (b) 75 days following the entry of the Interim Order in the case that no Committee is appointed (the "Challenge Deadline"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Administrative Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Interim Order, become binding, conclusive, and final on any person, entity, or party in interest in the Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this paragraph 43, the Court may fashion any appropriate remedy.

44. 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.

45. Section 506(c) Claims. Subject to entry of a 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 ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

46. No Marshaling/Applications of Proceeds. Subject to entry of a Final Order, the DIP ABL Administrative Agent, the DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Interim Order and the DIP Documents notwithstanding any other agreement or provision to the contrary.

47. Section 552(b). Subject to entry of a Final Order, the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall each be entitled to all of the rights and benefits of section

552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Administrative Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

48. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary (but subject to the last sentence of this paragraph 48) and without limiting any other rights or remedies of the DIP ABL Administrative Agent or the DIP Term Loan Agent exercisable on behalf of the DIP ABL Lenders and DIP Term Loan Lenders, respectively, contained in this Interim Order, the DIP ABL Documents, the DIP Term Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP ABL Documents and DIP Term Loan Documents, upon written notice to the landlord of any leased premises that an Event of Default or the Termination Date has occurred and is continuing, the DIP ABL Administrative Agent or DIP Term Loan Agent, as applicable, may, subject to the applicable notice provisions, if any, in this Interim Order and any separate applicable agreement by and between such landlord and the DIP ABL Administrative Agent or DIP Term Loan Agent, enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, *provided* that the DIP ABL Administrative Agent and/or DIP Term Loan Agent, as applicable, shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP ABL Administrative Agent and/or DIP Term Loan Agent, as applicable, calculated on a daily per diem basis. Nothing

herein shall require the DIP ABL Administrative Agent or DIP Term Loan Agent to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of the DIP ABL Administrative Agent, the DIP Term Loan Agent and/or DIP Lenders under applicable nonbankruptcy law, the DIP ABL Administrative Agent, DIP Term Loan Agent and/or DIP Lenders can only enter upon a leased premises after an Event of Default in accordance with (i) a separate agreement with the landlord at the applicable leased premises, or (ii) upon entry of an order of this Court obtained by motion of the DIP ABL Administrative Agent, the DIP Term Loan Agent and/or DIP Lenders on such notice to the landlord as shall be required by this Court.

49. Limits on Lender Liability. Subject to entry of a Final Order, nothing in this Interim Order, any of the DIP Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facilities be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders, or any of the Prepetition Secured Parties of any liability for any claims arising from the

prepetition or postpetition activities of any of the Debtors.

50. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP ABL Administrative Agent (on behalf of the DIP ABL Lenders), the DIP Term Loan Agent (on behalf of the DIP Term Loan Lenders), the Prepetition ABL Administrative Agent (on behalf of the Prepetition ABL Lenders), and the Prepetition Term Loan Agent (on behalf of the Prepetition Term Loan Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

51. 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 Company, Holdings and the Loan Parties shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facilities and the DIP Documents.

52. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP Facilities and the Prepetition 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.

53. 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, subject to the Prepetition Documents and the Intercreditor Agreement: (a) the DIP Agents', DIP Lenders' and Prepetition Secured Parties' right to seek any other or supplemental

relief in respect of the Debtors; (b) any of the rights of any of the DIP Agents, DIP Lenders, and/or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including 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; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Agents, DIP Lenders, or Prepetition Secured Parties. 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, the Debtors', a Committee's (if appointed), or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order. Entry of this Interim Order is without prejudice to any and all rights of any party in interest with respect to the terms and approval of the Final Order and any other position which any party in interest deems appropriate to raise in the Debtors' Chapter 11 cases.

54. No Waiver by Failure to Seek Relief. The failure of the DIP Agents, DIP Lenders, or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition 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 Agents, the DIP Lenders, the Prepetition Secured Parties, a Committee (if appointed), or any party in interest.

55. Binding Effect of Interim Order. Immediately upon execution by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and

inure to the benefit of the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, 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.

56. No Modification of Interim Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations (other than contingent obligations with respect to then unasserted claims) have been indefeasibly paid in full in cash, and all letters of credit under the DIP Facilities shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP Facilities which survive such discharge by their terms), and all commitments to extend credit under the DIP Facilities 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 Agents (or the Prepetition Agents), (i) any 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 any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve Out; (b) without the prior written consent of the DIP Agents (or the Prepetition Agents) for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; *provided, however*, that the consent of the DIP ABL Term Agent and the Prepetition ABL Term Agent shall only be required

to the extent that such use of Cash Collateral would not result in a "Conforming DIP" as defined in Section 7.06 of the Prepetition ABL Agreement; (c) without the prior written consent of the DIP Agents, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents; or (d) without the prior written consent of the Prepetition Agents, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection 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 Agents (or the Prepetition Agents), and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agents or the Prepetition Agents. Notwithstanding anything to the contrary in this Interim Order, the consent of the Prepetition ABL Term Agent and DIP ABL Term Agent shall not be required for any amendment or modification to the DIP Documents or this Interim Order if such amendment or modification would result in a "Conforming DIP" under Section 7.06 of the Prepetition ABL Agreement.

57. Continuing Effect of Intercreditor Agreement. The Debtors, DIP Agents, DIP Lenders, and Prepetition Secured Parties each shall be bound by, and in all respects of the DIP Facilities shall be governed by, and be subject to all the terms, provisions and restrictions of the Intercreditor Agreement.

58. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

59. Discharge. The DIP ABL Obligations, the DIP Term Loan Obligations, and the obligations of the Debtors with respect to the adequate protection provided herein shall

not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), on or before the effective date of such confirmed plan of reorganization, or each of the DIP ABL Administrative Agent, DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent and Prepetition Term Loan Agent, as applicable, has otherwise agreed in writing; *provided* that (a) the DIP Term Roll Up Loans may be converted into Roll-Up Conversion Shares and (b) a portion of the New Money DIP Term Loans may be converted into DIP Surplus Conversion Shares, in each case, in accordance with a Plan, and as defined in the Restructuring Support Agreement. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full in cash of the DIP ABL Obligations (in the case of the sale of DIP ABL Priority Collateral) and DIP Term Loan Obligations (in the case of the sale of DIP Term Priority Collateral) (other than contingent indemnification obligations for which no claim has been asserted), and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Prohibited Plan or Sale") without the written consent of each of the DIP ABL Administrative Agent, DIP Term Loan Agent, DIP Lenders, the Prepetition ABL Administrative Agent and Prepetition Term Loan Agent, as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP ABL Documents and DIP Term Loan Documents.

60. 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 Agents, DIP Lenders, and Prepetition Secured Parties granted pursuant to this Interim Order and/or the DIP Documents, notwithstanding the entry of any such orders described in (a)-(d), above, 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) in respect of the DIP ABL Credit Facility, all the DIP ABL Obligations, pursuant to the DIP ABL Documents and this Interim Order, have been indefeasibly paid in full in cash (other than contingent obligations with respect to then unasserted claims) and all letters of credit under the DIP ABL Credit Facility shall have been cancelled or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP ABL Credit Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP ABL Credit Facility are terminated; (ii) in respect of the Prepetition ABL Facility, all of the Prepetition ABL Obligations pursuant to the Prepetition ABL Documents and this Interim Order, have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted); (iii) in respect of the DIP Term Loan Credit Facility, all the DIP Term Loan Obligations, pursuant to the DIP Term Loan Documents and this Interim Order, have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no

claim has been asserted); and (iv) in respect of the Prepetition Term Loan Agreement, all of the Prepetition Term Loan Obligations pursuant to the Prepetition Term Loan Documents and this Interim Order have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted). The terms and provisions concerning the indemnification of the DIP Agents and DIP Lenders shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order shall continue in full force and effect for the benefit of the Prepetition Term Loan Parties notwithstanding the repayment in full of or termination of the DIP ABL Obligations or the Prepetition ABL Obligations.

61. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facilities is scheduled for **[_____], 2017, at __:00 _.m. (EST)** before the Honorable [_____], United States Bankruptcy Judge at the United States Bankruptcy Court for the Eastern District of Virginia. On or before [_____], 2017, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for a Committee (if appointed); (d) the Securities and Exchange Commission; and (e) the Internal Revenue Service. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on **[_____], 2017, at __:00 p.m. (EST)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Kirkland & Ellis LLP, 601

Lexington Avenue, New York, New York 10022 Attn: Joshua A. Sussberg, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Steven N. Serajeddini, and co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn: Michael A. Condyles, Peter J. Barrett and Jeremy S. Williams; (ii) counsel to the DIP ABL Administrative Agent and the Prepetition ABL Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Julia Frost-Davies and Amelia C. Joiner, and Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown; (iii) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Kevin J. Simard and Whiteford Taylor Preston, LLP, 3190 Fairview Park Drive, Suite 800, Falls Church, VA 22042-4510, Attn: Christopher A. Jones; (iv) counsel to the DIP Term Loan Agent and Prepetition Term Loan Agent, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, New York 1005-1413, Attn: Evan R. Fleck and McGuireWoods LLP, 800 E. Canal Street, Richmond, Virginia 23219, Attn: Dion W. Hayes and Sarah B. Boehm; and (v) counsel to the Committee (if appointed).

62. *Nunc Pro Tunc* 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 and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

63. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Facilities, and/or this Interim Order.

64. DIP Election Procedures. The DIP Election Procedures are hereby

approved and shall be final binding. Upon expiration of Election Deadline any Prepetition Term Loan Lender (other than the holder of the 2017 Incremental Term Loans) that timely completed its Election Joinder in accordance with the Election Procedures will be a DIP Term Loan Lender, and the DIP Term Roll Up Loans shall be deemed allocated to account for the addition of such DIP Term Loan Lenders as provided in the DIP Term Loan Agreement. The DIP Term Loan Agent may, in connection with allocations of the commitments under the DIP Term Loan Facility and the DIP Term Roll-Up Loans and any other allocations contemplated to be made pursuant to the DIP Term Loan Agreement, conclusively rely on, and shall have no liability whatsoever with respect, to ownership information with respect to Prepetition Term Loan Obligations as set forth on the Register (as defined in the Prepetition Term Loan Agreement) as of the Election Deadline.

SO ORDERED by the Court this ___ day of _____, 2017.

_____
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1 to EXHIBIT A

Budget

Weekly Cash Flow Forecast (Page 1 of 2)

(USD '000) 45 Day Terms, 7.5% Sales Decline w/25% Winter CIA	1 06/17 *Fcst*	2 06/24 *Fcst*	3 07/01 *Fcst*	4 07/08 *Fcst*	5 07/15 *Fcst*	6 07/22 *Fcst*	7 07/29 *Fcst*	8 08/05 *Fcst*	9 08/12 *Fcst*	10 08/19 *Fcst*	11 08/26 *Fcst*	12 09/02 *Fcst*	13 09/09 *Fcst*	13 WK Total 06/17 to 09/09	WK 14 - 26 09/16 to 12/09	Grand Total 06/17 to 12/09
13 Week Cash Flow - Summary																
Collections & Disbursements:																
COLLECTIONS:																
Stores and E-Commerce	$ 3,937	$ 26,542	$ 16,567	$ 19,296	$ 16,070	$ 16,417	$ 19,419	$ 22,272	$ 24,208	$ 25,283	$ 23,906	$ 21,654	$ 24,185	$ 259,755	$ 263,433	$ 523,188
Other	452	2,418	2,095	441	1,569	869	807	329	2,880	939	697	579	3,591	17,665	20,154	37,819
	4,389	28,960	18,663	19,736	17,640	17,285	20,226	22,600	27,088	26,221	24,603	22,232	27,776	277,420	283,587	561,007
OPERATING DISBURSEMENTS:																
Merchandise	12,317	2,537	9,908	11,236	6,254	15,183	14,029	15,060	13,928	7,042	9,970	10,826	10,322	138,612	121,866	260,478
Payroll & Related	8,583	762	8,583	1,248	8,956	723	9,245	723	9,106	723	10,006	723	9,106	68,486	51,438	119,924
Other Accounts Payable	-	1,699	5,579	3,821	5,482	3,330	3,245	3,754	3,753	3,722	4,920	3,461	3,234	46,000	51,565	97,565
Rent - Inc. Stores, HQ, & DC	-	-	12,410	800	-	-	11,588	800	-	-	11,588	800	-	37,986	29,254	67,240
Sales Taxes	-	3,082	411	558	-	2,792	372	636	-	-	3,179	424	760	12,215	13,572	25,787
Other Taxes	84	252	-	-	93	279	-	-	93	279	-	-	93	1,174	1,024	2,198
	20,984	8,333	36,891	17,663	20,785	22,307	38,480	20,973	26,880	11,766	39,663	16,234	23,515	304,473	268,720	573,192
NON-OPERATING DISBURSEMENTS:																
Principal, Interest, Bank Fees	6,200	-	561	-	-	-	-	1,547	-	-	-	1,315	-	9,623	4,679	14,302
Restructuring Professional Fees	-	560	-	-	-	4,577	-	320	-	4,534	-	-	-	9,992	17,450	27,442
	6,200	560	561	-	-	4,577	-	1,867	-	4,534	-	1,315	-	19,615	22,129	41,744
NET CASH FLOW	**$ (22,795)**	**$ 20,067**	**$ (18,790)**	**$ 2,073**	**$ (3,146)**	**$ (9,599)**	**$ (18,254)**	**$ (240)**	**$ 208**	**$ 9,921**	**$ (15,059)**	**$ 4,683**	**$ 4,261**	**$ (46,668)**	**$ (7,262)**	**$ (53,930)**
Ending Cash Balances:																
Unrestricted Book Cash	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Outstanding Checks	-	1,360	5,550	7,497	10,384	10,971	11,373	12,101	12,683	13,124	14,435	14,317	14,041	14,041	14,707	14,707
Unrestricted BANK Cash	-	1,360	5,550	7,497	10,384	10,971	11,373	12,101	12,683	13,124	14,435	14,317	14,041	14,041	14,707	14,707
Restricted Cash & 2nd Lien DIP TL Cash	17,579	8,687	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Total BANK Cash	**$ 17,579**	**$ 10,046**	**$ 6,550**	**$ 8,497**	**$ 11,384**	**$ 11,971**	**$ 12,373**	**$ 13,101**	**$ 13,683**	**$ 14,124**	**$ 15,435**	**$ 15,317**	**$ 15,041**	**$ 15,041**	**$ 15,707**	**$ 15,707**
Borrowing Base, ABL, & Availability:																
Effective BB Cert.	$ 172,207	$ 179,109	$ 186,952	$ 190,328	$ 187,333	$ 189,155	$ 192,232	$ 192,930	$ 188,522	$ 187,067	$ 186,189	$ 209,168	$ 215,777	$ 215,777	$ 202,357	$ 202,357
Less: Outstanding ABL	(79,836)	(50,876)	(55,263)	(53,190)	(56,336)	(65,935)	(84,188)	(84,428)	(84,220)	(74,299)	(89,358)	(84,675)	(80,414)	(80,414)	(72,675)	(72,675)
Less: Letters of Credit	(50,037)	(51,984)	(51,209)	(50,648)	(50,883)	(50,922)	(51,157)	(50,768)	(50,768)	(50,963)	(51,157)	(51,190)	(51,138)	(51,138)	(51,157)	(51,157)
Less: Min Avail Cash	(22,066)	(22,756)	(23,540)	(23,878)	(23,578)	(23,761)	(24,068)	(24,138)	(23,697)	(23,552)	(23,464)	(25,762)	(26,423)	(26,423)	(25,081)	(25,081)
Less: Prof. Fee Carve Out	(5,657)	(6,496)	(7,815)	(9,084)	(10,352)	(7,319)	(8,587)	(9,536)	(10,678)	(7,403)	(8,546)	(9,688)	(10,847)	(10,847)	(12,900)	(12,900)
ABL Availability - Ending	**14,611**	**46,997**	**49,125**	**53,528**	**46,183**	**41,219**	**24,230**	**24,060**	**19,159**	**30,850**	**13,664**	**37,853**	**46,956**	**46,956**	**40,544**	**40,544**
2nd Lien DIP TL – Ending Availability	21,716	21,716	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	-	-
Ending Post-Petition Availability	**$ 36,327**	**$ 68,713**	**$ 64,125**	**$ 68,528**	**$ 61,183**	**$ 56,219**	**$ 39,230**	**$ 39,060**	**$ 34,159**	**$ 45,850**	**$ 28,664**	**$ 52,853**	**$ 61,956**	**$ 61,956**	**$ 40,544**	**$ 40,544**
Memo: Ending DIP - TL Balance	*$ 13,284*	*$ 13,284*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 35,000*	*$ 35,000*
Weekly Covenant Tests																
Collections*	$ 4,389	$ 28,960	$ 18,663	$ 19,736	$ 17,640	$ 17,285	$ 20,226	$ 22,600	$ 27,088	$ 26,221	$ 24,603	$ 22,232	$ 27,776	$ 277,420	$ 283,587	$ 561,007
Operating Disbursements	20,984	8,333	36,891	17,663	20,785	22,307	38,480	20,973	26,880	11,766	39,663	16,234	23,515	304,473	268,720	573,192
Ending Inventory**	189,430	197,342	197,543	194,699	196,634	199,810	200,646	196,432	195,153	194,457	194,889	201,028	206,108	206,108	186,386	186,386
Credit Extensions	$ 178,323	$ 151,310	$ 154,922	$ 152,288	$ 155,669	$ 165,307	$ 183,796	$ 183,646	$ 183,438	$ 173,712	$ 188,966	$ 184,315	$ 180,001	$ 180,001	$ 172,282	$ 172,282

*Currently there are no Stores subject to Specified Store Closing Sales. This list will be finalized and provided before 06/30/17

**Represents Gross On-Hand Inventory per the forecasted Borrowing Base

Weekly Cash Flow Forecast (Page 2 of 2)

(USD '000)	14	15	16	17	18	19	20	21	22	23	24	25	26	13 WK Total	WK 14 - 26	Grand Total
45 Day Terms, 7.5% Sales Decline w/25% Winter	09/16	09/23	09/30	10/07	10/14	10/21	10/28	11/04	11/11	11/18	11/25	12/02	12/09	06/17 to 09/09	09/16 to 12/09	06/17 to 12/09
CIA	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*			
13 Week Cash Flow - Summary																
Collections & Disbursements:																
COLLECTIONS:																
Stores and E-Commerce	$ 17,826	$ 13,112	$ 16,249	$ 17,145	$ 16,864	$ 17,151	$ 18,599	$ 17,924	$ 21,103	$ 24,626	$ 29,839	$ 33,958	$ 19,039	$ 259,755	$ 263,433	$ 523,188
Other	2,231	413	1,005	3,162	763	790	1,280	273	3,994	637	647	576	4,384	17,665	20,154	37,819
	20,057	13,525	17,255	20,306	17,626	17,941	19,878	18,197	25,097	25,263	30,486	34,534	23,423	277,420	283,587	561,007
OPERATING DISBURSEMENTS:																
Merchandise	6,994	9,373	10,969	10,669	16,145	17,586	7,723	4,947	6,593	5,164	6,779	11,790	7,133	138,612	121,866	260,478
Payroll & Related	723	9,106	1,560	7,480	723	7,238	723	7,238	723	7,238	723	7,238	723	68,486	51,438	119,924
Other Accounts Payable	3,544	3,325	3,515	3,882	3,791	4,113	4,347	5,273	3,891	4,154	4,323	3,895	3,513	46,000	51,565	97,565
Rent - Inc. Stores, HQ, & DC	-	8,951	800	-	-	8,951	800	-	-	-	9,751	-	-	37,986	29,254	67,240
Sales Taxes	-	3,798	506	617	-	3,085	411	616	-	-	3,080	584	876	12,215	13,572	25,787
Other Taxes	279	-	-	-	93	279	-	-	-	93	279	-	-	1,174	1,024	2,198
	11,540	34,553	17,351	22,647	20,752	41,252	14,004	18,074	11,208	16,650	24,937	23,507	12,245	304,473	268,720	573,192
NON-OPERATING DISBURSEMENTS:																
Principal, Interest, Bank Fees	-	-	1,447	-	-	-	-	1,694	-	-	-	1,537	-	9,623	4,679	14,302
Restructuring Professional Fees	4,032	-	20	-	4,120	-	1,001	-	4,181	-	-	-	4,096	9,992	17,450	27,442
	4,032	-	1,467	-	4,120	-	1,001	1,694	4,181	-	-	1,537	4,096	19,615	22,129	41,744
NET CASH FLOW	**$ 4,484**	**$ (21,029)**	**$ (1,563)**	**$ (2,341)**	**$ (7,245)**	**$ (23,312)**	**$ 4,873**	**$ (1,571)**	**$ 9,707**	**$ 8,613**	**$ 5,550**	**$ 9,490**	**$ 7,082**	**$ (46,668)**	**$ (7,262)**	**$ (53,930)**
Ending Cash Balances:																
Unrestricted Book Cash	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Outstanding Checks	14,068	13,914	13,943	14,260	14,440	14,842	15,351	14,437	12,830	11,889	21,100	17,496	14,707	14,041	14,707	14,707
Unrestricted BANK Cash	14,068	13,914	13,943	14,260	14,440	14,842	15,351	14,437	12,830	11,889	21,100	17,496	14,707	14,041	14,707	14,707
Restricted Cash & 2nd Lien DIP TL Cash	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Total BANK Cash	**$ 15,068**	**$ 14,914**	**$ 14,943**	**$ 15,260**	**$ 15,440**	**$ 15,842**	**$ 16,351**	**$ 15,437**	**$ 13,830**	**$ 12,889**	**$ 22,100**	**$ 18,496**	**$ 15,707**	**$ 15,041**	**$ 15,707**	**$ 15,707**
Borrowing Base, ABL, & Availability:																
Effective BB Cert.	$ 221,176	$ 218,416	$ 217,356	$ 216,575	$ 213,546	$ 212,296	$ 216,634	$ 213,658	$ 214,265	$ 224,961	$ 219,367	$ 210,520	$ 202,357	$ 215,777	$ 202,357	$ 202,357
Less: Outstanding ABL	(75,929)	(96,958)	(98,521)	(100,862)	(108,108)	(116,419)	(111,546)	(113,117)	(103,410)	(94,797)	(89,247)	(79,757)	(72,675)	(80,414)	(72,675)	(72,675)
Less: Letters of Credit	(51,092)	(51,125)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,157)	(51,138)	(51,157)	(51,157)
Less: Min Avail Cash	(26,963)	(26,687)	(26,581)	(26,502)	(26,200)	(26,075)	(26,508)	(26,211)	(26,272)	(27,341)	(26,782)	(25,897)	(25,081)	(26,423)	(25,081)	(25,081)
Less: Prof. Fee Carve Out	(8,090)	(9,249)	(10,407)	(11,566)	(8,745)	(9,904)	(11,062)	(12,221)	(10,279)	(11,438)	(13,598)	(14,756)	(12,900)	(10,847)	(12,900)	(12,900)
ABL Availability - Ending	**59,102**	**34,398**	**30,689**	**26,486**	**19,336**	**8,741**	**16,360**	**10,951**	**23,147**	**40,227**	**38,583**	**38,952**	**40,544**	**46,956**	**40,544**	**40,544**
2nd Lien DIP TL – Ending Availability	15,000	15,000	15,000	15,000	15,000	-	-	-	-	-	-	-	-	15,000	-	-
Ending Post-Petition Availability	**$ 74,102**	**$ 49,398**	**$ 45,689**	**$ 41,486**	**$ 34,336**	**$ 8,741**	**$ 16,360**	**$ 10,951**	**$ 23,147**	**$ 40,227**	**$ 38,583**	**$ 38,952**	**$ 40,544**	**$ 61,956**	**$ 40,544**	**$ 40,544**
Memo: Ending DIP - TL Balance	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 20,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 35,000*	*$ 20,000*	*$ 35,000*	*$ 35,000*
Weekly Covenant Tests																
Collections*	$ 20,057	$ 13,525	$ 17,255	$ 20,306	$ 17,626	$ 17,941	$ 19,878	$ 18,197	$ 25,097	$ 25,263	$ 30,486	$ 34,534	$ 23,423	$ 277,420	$ 283,587	$ 561,007
Operating Disbursements	11,540	34,553	17,351	22,647	20,752	41,252	14,004	18,074	11,208	16,650	24,937	23,507	12,245	304,473	268,720	573,192
Ending Inventory**	203,758	202,885	202,285	199,658	198,642	202,690	200,138	200,821	210,665	205,775	197,968	190,830	186,386	206,108	186,386	186,386
Credit Extensions	$ 175,472	$ 196,533	$ 198,129	$ 200,470	$ 207,715	$ 216,027	$ 211,153	$ 212,725	$ 203,017	$ 194,405	$ 188,855	$ 179,365	$ 172,282	$ 180,001	$ 172,282	$ 172,282

*Currently there are no Stores subject to Specified Store Closing Sales. This list will be finalized and provided before 06/30/17

**Represents Gross On-Hand Inventory per the forecasted Borrowing Base

Summary of Covenant Compliance for Cash Flow Related Items

The Gymboree Corporation
Covenant Testing
Week Ending xx/xx/xxxx
($'s in Millions)

Test Details			Variance: Actuals vs. Test Thresholds					Budget w/Version				Total/	Actuals				Total/
#	Title	Period Tested	%	Budget	Test Level	Actual	Cushion vs. Test	06/17	06/24	07/01	07/08	Test	06/17	06/24	07/01	07/08	Test
							Better/ (Worse)	I	I	I	I						
							$ %										
Cash Flow Tests																	
1)	Collections	Cumulative 4-week	-10%														
2)	Operating Disbursements	Cumulative 4-week	+10%														
3)	Ending Inventory	Balance	-15%														
4)	Credit Extensions (i) ABL RC drawn (ii) LC outstandings (iii) ABL TL drawn	Balance	+10%														
5)	Capital Expenditures*	Cumulative Fiscal Month	0%														

Supporting Details

Page & Section References of Tests in Credit Agreements

	ABL	Term Loan	Test
1)	5.18b(ii) - Pg 116	Budget Event def. - Pg 4	Collections
2)	5.18b(iii) - Pg 116	Budget Event def. - Pg 4	Operating Disbursements
3)	5.18b(i) - Pg 116	N/A	Ending Inventory
4)	4.02b - Pg 103	4.02h - Pg 43	Credit Extensions
5)	N/A	7.15 - Pg 67	Capital Expenditures*

*Tested on an accounting basis following monthly accounting close

Budget Definitions

I	Initial Approved Budget Delivered on 06/09/17
II	[Future Budget]
III	[Future Budget]
IV	[Future Budget]
V	[Future Budget]

Capital Expenditures Budget

The Gymboree Corporation
Monthly Capital Expenditure Budget

US$000's	P5-17 Jun	P6-17 Jul	P7-17 Aug	P8-17 Sep	P9-17 Oct	P10-17 Nov	P11-17 Dec	Total 7 months
	07/01	07/29	08/26	09/30	10/28	11/25	12/30	
Total Capital Expenditures	**$ 3,214**	**$ 1,245**	**$ 2,143**	**$ 1,160**	**$ 1,383**	**$ 2,129**	**$ 1,735**	**$13,008**
Cumulative Test Threshold	**$ 3,214**	**$ 4,458**	**$ 6,602**	**$ 7,762**	**$ 9,144**	**$11,273**	**$13,008**	

Term Loan Credit Agreement Reference: 7.15 - Pg 67

SCHEDULE 2 to EXHIBIT A

Case Milestones

SCHEDULE 5.19

Required Milestones

Each of the following DIP Milestones, Plan Milestones, Sale Milestones, and Other Milestones, a "Required Milestone" and collectively, the "Required Milestones":

(a) Achieve each of the following milestones (as any such milestone may be extended with the consent of the Administrative Agent and the ABL Term Loan Agent (in their sole and absolute discretion) for a period of not more than 10 days or for such longer period with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders (in their sole and absolute discretion), collectively, the "DIP Milestones"), in each case on terms and conditions, and subject to documentation (including, in all cases, forms of all applicable orders) in form and substance, reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent in all respects.

(i) On the Petition Date, the Debtors shall file a motion seeking approval of the credit facilities evidenced by the Agreement and the DIP Term Loan Agreement.

(ii) On or before 3 Business Days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court.

(iii) On or before 10 days after the Petition Date, the Debtors shall have filed a motion requesting, and within 35 days after the Petition Date shall have obtained, an order of the Bankruptcy Court extending the lease assumption/rejection period such that the lease assumption/rejection period shall be 210 days.

(iv) On or before 35 days after the Petition Date, the Final Order authorizing and approving the facilities evidenced by the Agreement and the DIP Term Loan Agreement on a final basis shall have been entered by the Bankruptcy Court.

(b) Achieve each of the following milestones (as any such milestone may be extended with the consent of the Administrative Agent and the ABL Term Loan Agent (in their sole and absolute discretion) for a period of not more than 10 days or for such longer period with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders (in their sole and absolute discretion), collectively, the "Plan Milestones"), in each case on terms and conditions, and subject to documentation (including, in all cases, forms of all applicable orders) in form and substance, reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent in all respects.

(i) On or before 5 days after the Petition Date, the Debtors shall have filed a Chapter 11 plan of reorganization and a disclosure statement relating to such plan of reorganization, which plan of reorganization shall be supported by committed financing and the Restructuring Support Agreement and shall provide, among other things, for payment in full in cash of the Obligations and the Pre-Petition Obligations on the effective date, and the Administrative Agent and the ABL Term Loan Agent shall be reasonably satisfied that such plan of reorganization is reasonably anticipated to become effective on or prior to the 110th day after the Petition Date (any such Chapter 11 plan of reorganization, an "Acceptable Plan").

(ii) On or before 55 days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court approving the disclosure statement and voting and solicitation procedures for an Acceptable Plan, or if such disclosure statement and voting and solicitation procedures are not approved by such date, the Debtors shall file on or before 60 days after the

Petition Date, a motion to approve a sale of substantially all of the Debtors' assets (the "Sale") pursuant to Section 363 of the Bankruptcy Code (the "Sale Motion"), and the terms of such Sale Motion and related bidding procedures shall be in form and substance reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent.

(iii) On or before 95 days after the Petition Date, either (A) the Debtors shall have obtained an order from the Bankruptcy Court confirming an Acceptable Plan or (B) the Debtors shall have obtained a stalking horse bid approved by the Administrative Agent and the ABL Term Loan Agent for a liquidation on an equity basis of the entire chain of Stores of the Debtors and all of the assets relating thereto under Section 363 of the Bankruptcy Code (the "Full Chain Liquidation"), which Full Chain Liquidation shall generate sufficient proceeds to repay in full in cash all of the Obligations and Pre-Petition Obligations.

(iv) In the event that the Debtors have not met Milestone (b)(iii)(A) above, on or before 100 days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court approving bidding procedures for the Full Chain Liquidation, which bidding procedures shall be in form and substance reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent.

(v) In the event that the Debtors have not met Milestone (b)(iii)(A), on or before 105 days after the Petition Date, either (A) the Debtors shall have obtained an order from the Bankruptcy Court confirming an Acceptable Plan, which order shall be of immediate effect and include a waiver of the 14-day stay provision or (B) the Debtors shall have conducted an auction for the Full Chain Liquidation.

(vi) On or before 110 days after the Petition Date, either (A) the Debtors shall have obtained an order of the Bankruptcy Court approving the Full Chain Liquidation or (B) the effective date of the Acceptable Plan shall have occurred in accordance with its terms, and the Debtors shall have emerged from the Chapter 11 Cases.

(vii) In the event that Milestone (b)(vi)(B) shall not have been met, on or before 111 days after the Petition Date, the Debtors shall have commenced the Full Chain Liquidation.

(c) Achieve each of the following milestones (as any such milestone may be extended with the consent of the Administrative Agent and the ABL Term Loan Agent (in their sole and absolute discretion) for a period of not more than 10 days or for such longer period with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders (in their sole and absolute discretion), collectively, the "Sale Milestones"), in each case on terms and conditions, and subject to documentation (including, in all cases, forms of all applicable orders) in form and substance, reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent in all respects.

(i) If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 60 days after the Petition Date, the Debtors shall have filed the Sale Motion.

(ii) If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 75 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the bidding procedures.

(iii) If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 95 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale.

(iv) If the disclosure statement and voting and solicitation procedures for an Acceptable Plan are not approved by the date specified in paragraph (b)(ii) above, on or before 110 days after the Petition Date, the Debtors shall have consummated the Sale.

(v) On or before July 17, 2017, the Debtors shall have obtained approval from the Bankruptcy Court to retain the Specified Liquidation Agent to assist the Debtors in conducting the Specified Store Closing Sales.

(vi) On or before July 18, 2017, the Debtors shall have commenced, and shall thereafter continue, the Permitted Store Closing Sales, pursuant to the terms of the Specified Liquidation Agreement and any other relevant documentation referred to in the definition of Specified Store Closing Sales.

(vii) On or before September 30, 2017, the Debtors shall have completed the Permitted Store Closing Sales, pursuant to the terms of the Specified Liquidation Agreement and any other relevant documentation referred to in the definition of Specified Store Closing Sales.

The Loan Parties shall provide the Administrative Agent and the ABL Term Loan Agent with any information or materials reasonably requested by the Administrative Agent and the ABL Term Loan Agent in connection with the Loan Parties' progress on achieving any Required Milestone.

Exhibit B

DIP ABL Agreement

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

dated as of June [__], 2017,

among

THE GYMBOREE CORPORATION,
as the Lead Borrower,

THE OTHER BORROWERS PARTY HERETO,

GIRAFFE INTERMEDIATE B, INC.,

THE OTHER FACILITY GUARANTORS PARTY HERETO,

THE LENDERS PARTY HERETO

and

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral Agent,

and

PATHLIGHT CAPITAL LLC,
as ABL Term Loan Agent

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Arranger

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

This **SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** dated as of June [__], 2017, is among **THE GYMBOREE CORPORATION**, a Delaware corporation (the "Lead Borrower"), the other Borrowers party hereto from time to time, **GIRAFFE INTERMEDIATE B, INC.**, a Delaware corporation ("Holdings"), and the other Facility Guarantors party hereto from time to time, the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article I) and **BANK OF AMERICA, N.A.**, as administrative agent (in such capacity, including any successor thereto, the "Administrative Agent") and as collateral agent (in such capacity, including any successor thereto, the "Collateral Agent") for the Lenders and **PATHLIGHT CAPITAL LLC**, a Delaware limited liability company, as the ABL Term Loan Agent (in such capacity including any successor thereto, the "ABL Term Loan Agent").

W I T N E S S E T H:

WHEREAS, on June [11], 2017 (the "Petition Date"), (i) the Lead Borrower, (ii) Holdings, (iii) Gymboree Manufacturing, Inc., a California corporation, (iv) Gymboree Operations, Inc., a California corporation, (v) Gymboree Retail Stores, Inc., a California corporation, (vi) Gym-Mark, Inc., a California corporation, (vii) S.C.C. Wholesale, Inc., a California corporation and (viii) Gym-Card, LLC, a Virginia limited liability company, collectively, the "Debtors" and each individually, a "Debtor"), commenced Chapter 11 Case Nos. [17-_____ through 17-_____], as administratively consolidated at Chapter 11 Case No. [17-_____] (collectively, the "Chapter 11 Cases" and each individually, a "Chapter 11 Case") with the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"). The Debtors 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.

WHEREAS, prior to the Petition Date, the Lenders provided financing to the Borrowers pursuant to that certain Amended and Restated Credit Agreement, dated as of March 30, 2012, by among the Lead Borrower, the other credit parties party thereto, Bank of America, as Pre-Petition Agent, the Pre-Petition Lenders, and the other parties thereto (as amended, restated, modified, waived or supplemented through the date hereof, the "Pre-Petition Credit Agreement");

WHEREAS, as of the close of business on June 9, 2017, the Pre-Petition Lenders under the Pre-Petition Credit Agreement were owed: (i) $75,848,342.00 in outstanding principal of Tranche A Loans (as such term is defined in the Pre-Petition Credit Agreement); (ii) $5,151,658.00 in outstanding principal of FILO Loans (as such term is defined in the Pre-Petition Credit Agreement); (iii) $47,500,000 in outstanding principal of ABL Term Loans (as such term is defined in the Pre-Petition Credit Agreement) and (iv) $49,368,169.67 in maximum aggregate amounts available to be drawn under outstanding Letters of Credit (as such term is defined in the Pre-Petition Credit Agreement), plus interest, fees, costs and expenses and all other Pre-Petition Obligations under the Pre-Petition Credit Agreement.

WHEREAS, the Obligations, under and as defined in the Pre-Petition Credit Agreement, are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrowers and the Guarantors as more fully set forth in the Pre-Petition Loan Documents and such security interest is perfected and, with certain exceptions, as described in the Pre-Petition Loan Documents, has priority over other security interests;

WHEREAS, the Borrowers have requested, and, upon the terms and conditions set forth in this Agreement, the Lenders have agreed to make available to the Borrowers, a senior secured, super-priority

credit facility of up to $273,450,000 in the aggregate to fund the working capital requirements of the Borrowers during the pendency of the Chapter 11 Cases;

WHEREAS, each Borrower and each Guarantor have agreed to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired personal and real property (subject to the limitations contained in the Loan Documents and the Orders);

WHEREAS, each Borrower's and each Guarantor's business is a mutual and collective enterprise and the Borrowers and the Guarantors believe that the loans and other financial accommodations to the Borrowers under this Agreement will enhance the aggregate borrowing powers of the Borrowers and facilitate the administration of the Chapter 11 Cases and their loan relationship with the Administrative Agent, the ABL Term Loan Agent and the Lenders, all to the mutual advantage of the Borrowers and Guarantors;

WHEREAS, each Borrower and each Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrowers as provided in the Agreement;

WHEREAS, the Administrative Agent's and the Lenders' willingness to extend financial accommodations to the Borrowers as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrowers and the Guarantors and at the Borrowers' and the Guarantors' request and in furtherance of the Borrowers' and the Guarantors' mutual and collective enterprise; and

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged (these recitals being an integral part of this Agreement), the parties hereto hereby agree as follows:

ARTICLE I

Definitions and Accounting Terms.

SECTION 1.01 Definitions.

As used in this Agreement, the following terms have the meanings specified below:

"ABL Default Rate" has the meaning provided in SECTION 2.12(b).

"ABL Priority Collateral" has the meaning set forth in the Intercreditor Agreement.

"ABL Term Borrowing Base" means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables of the Loan Parties multiplied by the Credit Card Advance Rate for the ABL Term Borrowing Base;

plus

(b) the face amount Eligible Trade Receivables of the Loan Parties multiplied by the Trade Receivables Advance Rate for the ABL Term Borrowing Base;

plus

(c) the Cost of Eligible Inventory of the Loan Parties (other than Eligible In-Transit Inventory), net of Inventory Reserves, multiplied by the Inventory Advance Rate for the ABL Term Borrowing Base, multiplied by the Appraised Value of Eligible Inventory of the Loan Parties;

plus

(d) the Cost of the Eligible In-Transit Inventory of the Loan Parties, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the ABL Term Borrowing Base, multiplied by the Appraised Value of such Eligible In-Transit Inventory;

plus

(e) with respect to any Eligible Letter of Credit Inventory, the lesser of (x) the Cost of Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the ABL Term Borrowing Base for such Inventory when completed, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory and (y) the Stated Amount of the Letter of Credit relating to such Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the ABL Term Borrowing Base, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory;

plus

(f) the lesser of (x) the aggregate amount in Dollars of Qualified Cash, multiplied by the Qualified Cash Advance Rate and (y) $10,000,000;

minus

(g) the then amount of all Availability Reserves and any other Reserves taken in accordance with SECTION 2.03 hereof.

"ABL Term Credit Party" means the ABL Term Loan Agent and the ABL Term Lenders and their respective successors and permitted assigns.

"ABL Term Lender" means, at any time, each Person party hereto as an ABL Term Loan Lender as reflected on Schedule 1.01, and each Person as may be subsequently set forth in the Register from time to time.

"ABL Term Loan" means the ABL term loan to be made, or deemed made, to refinance the sum of (x) the principal amount of the Pre-Petition ABL Term Loans outstanding on the Closing Date *plus* (y) the outstanding amount of the Pre-Petition ABL Term Loan Prepayment Fee on the Closing Date, by each of the ABL Term Lenders to the Borrowers on the Closing Date pursuant to SECTION 2.01(c) of this Agreement.

"ABL Term Loan Agent" has the meaning provided in the preamble to this Agreement.

"ABL Term Loan Commitment" means, as to each ABL Term Lender, the obligation of such ABL Term Loan Lender to make its portion of the ABL Term Loan to be made, or deemed made, on the Closing Date in the amount set forth opposite such ABL Term Lender's name on Schedule 1.01. The aggregate amount of the ABL Term Loan Commitments on the Closing Date is $48,450,000.

"ABL Term Loan Event of Default" means (i) an Event of Default under SECTION 7.01(a) with respect to the ABL Term Loan, (ii) an Event of Default under SECTION 7.01(a) with respect to the Obligations (other than the ABL Term Obligations) as a result of failure of the Borrowers to pay all such Obligations then due and owing due on the Maturity Date or the Termination Date or (iii) an Event of Default under SECTION 7.01(b), but only to the extent such Event of Default arises from the Loan Parties' failure to comply with the provisions of SECTION 5.01(a), (b), (c) or (e), or SECTION 6.15.

"ABL Term Loan Fee Letter" means the Fee Letter dated June [__], 2017 by and among the Lead Borrower, the ABL Term Loan Agent and the other parties thereto, as amended, amended and restated, restated, supplemented or replaced, and in effect from time to time.

"ABL Term Loan Percentage" means, with respect to each ABL Term Lender, that percentage of the ABL Term Loans (or, prior to the Closing Date, ABL Term Loan Commitments) of all the ABL Term Lenders hereunder held by such ABL Term Lender, in the amount set forth opposite such Lender's name on Schedule 1.01 hereto or as may be subsequently set forth in the Register from time to time.

"ABL Term Loan Rate" means, the rate per annum (rounded upwards, if necessary, to the nearest 1/100th), determined on the first day of each calendar month, appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service as determined by the ABL Term Loan Agent) as the London interbank offered rate for deposits in Dollars for an interest period of three (3) months as of such date (but if more than one rate is specified on such page, the rate will be an arithmetic average of all such rates), provided that if the ABL Term Loan Rate shall be less than one percent (1.00%), such rate shall be deemed one percent (1.00%) for purposes of this Agreement.

"ABL Term Loan Standstill Period" means, with respect to an ABL Term Loan Event of Default, the period commencing on the date of the Administrative Agent's and the Lead Borrower's receipt of written notice from the ABL Term Loan Agent that an ABL Term Event of Default has occurred and is continuing and that the ABL Term Loan Agent is requesting the Agents to commence the enforcement of remedies, and ending on the earliest to occur of the date which is (i) thirty (30) days after receipt of such notice with respect to an ABL Term Loan Event of Default arising under SECTION 7.01(a) and (ii) forty-five (45) days after receipt of such notice with respect to any other ABL Term Loan Event of Default.

"ABL Term Notes" means the promissory notes of the Borrowers substantially in the form of Exhibit D-2, each payable to an ABL Term Lender, evidencing ABL Term Loans made to the Borrowers.

"ABL Term Obligations" means advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries with respect to the ABL Term Loans, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under the Bankruptcy Code or any other federal, state, or provincial bankruptcy, insolvency, receivership or similar law, naming such Person as the debtor in such proceeding, regardless of whether such charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts are allowed claims in such proceeding. Without limiting the generality of the foregoing, the ABL Term Obligations of the Loan Parties under the Loan Documents (and of their Subsidiaries to the extent they have obligations to the ABL Term Lenders under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, charges, expenses, fees, attorneys' fees, indemnities and other amounts payable by any Loan Party or its Subsidiaries to the ABL Term Lenders under any Loan Document, including charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under the

Bankruptcy Code or any other federal, state, or provincial bankruptcy, insolvency, receivership or similar law, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"ABL Term Secured Party" means (a) each ABL Term Credit Party and (b) the successors and, subject to any limitations contained in this Agreement, assigns of each of the foregoing.

"ACH" means automated clearing house transfers.

"Acceptable Plan" has the meaning set forth on Schedule 5.19.

"Accommodation Payment" has the meaning provided in SECTION 9.24.

"Account(s)" means "accounts" as defined in the UCC, all "payment intangibles" (as defined in the UCC) consisting of amounts owing from credit card and debit card issuers and processors (and all rights under contracts relating to the creation or collection thereof) 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, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card. The term "Account" does not include (a) rights to payment evidenced by chattel paper or an instrument, (b) commercial tort claims, (c) deposit accounts, (d) investment property, or (e) letter-of-credit rights or letters of credit.

"Account Debtor" means the customer of a Loan Party who is obligated on or under an Account.

"Acquisition" means, with respect to a specified Person, (a) an Investment in or a purchase of a fifty percent (50%) or greater interest in the Capital Stock of any other Person, (b) a purchase or acquisition of all or substantially all of the assets of any other Person, (c) a purchase or acquisition of a Real Estate portfolio or Stores from any other Person or assets constituting a business unit, line of business or division of any other Person, or (d) any merger, amalgamation 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 fifty percent (50%) or greater interest in the Capital Stock of, any Person, in each case in any transaction or group of transactions which are part of a common plan.

"Actual Cash Receipts" means the sum of all collections received by the Loan Parties (excluding any borrowings) during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

"Actual Disbursement Amount" means the sum of all operating disbursements, expenses and payments made by the Loan Parties during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

"Actual Inventory Levels" means the actual aggregate inventory levels of the Loan Parties as of the relevant date of determination which correspond to the budgeted aggregate inventory levels of the Loan Parties contained in borrowing base appendix portion of the Approved Budget opposite the heading "Ending Inventory", as determined in a manner consistent with the Approved Budget.

"Adequate Protection Liens" has the meaning assigned to the term "Adequate Protection Liens" in Paragraph 12 (*Adequate Protection Liens*) of the Interim Order (or the Final Order, when applicable).

"Adequate Protection Superpriority Claims" has the meaning assigned to the term "Adequate Protection Superpriority Claims" in Paragraph 14 (*Adequate Protection Superpriority Claims*) of the Interim Order (or the Final Order, when applicable).

"Adjusted LIBOR Rate" means, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum equal to (a) the LIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate. The Adjusted LIBOR Rate will be adjusted automatically as to all LIBOR Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

"Administrative Agent" has the meaning provided in the preamble to this Agreement.

"Affiliate" means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

"Agent's Advisors" means any financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Administrative Agent, the Collateral Agent or the attorney's or other advisors of the Administrative Agent and the Collateral Agent, including, for the avoidance of doubt, Berkeley Research Group, LLC ("BRG").

"Agent Fee Letter" means, collectively, the Agent Fee Letter dated June [__], 2017 by and among the Borrowers, Bank of America, Merrill Lynch, Pierce, Fenner & Smith Incorporated, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

"Agents" means collectively, the Administrative Agent and the Collateral Agent.

"Agreement" means this Senior, Secured Super-Priority Debtor-In-Possession Credit Agreement, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

"Applicable Law" means as to any Person: (a) any and all federal, state, provincial, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, codes, ordinances, decrees, permits, concessions, grants, franchises, licenses, agreements, governmental restrictions or other requirements having the force of law; and (b) all court orders, decrees, judgments, injunctions, enforceable notices, binding agreements and/or rulings, in each case of or by any Governmental Authority which has jurisdiction over such Person, or any property of such Person.

"Applicable Lenders" means the Required Lenders, all Lenders or affected Lenders, in each case as applicable.

"Applicable Margin" means, with respect to Revolving Credit Loans, the applicable percentage per annum set forth below:

Tranche A LIBOR Applicable Margin	Tranche A Prime Rate Applicable Margin	FILO LIBOR Applicable Margin	FILO Prime Rate Applicable Margin
2.75%	1.75%	4.25%	3.250%

"Applicable Unused Fee Rate" means, with respect to Revolving Credit Loans, a percentage per annum equal to 0.375%.

"Appraised Value" means the net appraised recovery value of the Borrowers' Inventory as set forth in the Borrowers' stock ledger (expressed as a percentage of the Cost of such Inventory) as reasonably determined from time to time by reference to the most recent appraisal received by the Administrative Agent conducted by an independent appraiser reasonably satisfactory to the Administrative Agent.

"Approved Bank" has the meaning specified in clause (iii) of the definition of "Cash Equivalents."

"Approved Budget" means the budget (including, without limitation, the borrowing base appendix thereto) prepared by the Borrowers in the form of Annex A and initially furnished to the Administrative Agent, the ABL Term Loan Agent and the Lenders on the Closing Date and which is approved by, and in form and substance satisfactory to, the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in their sole discretion, as the same may be updated, modified or supplemented from time to time as provided in SECTION 5.18.

"Approved Budget Variance Report" means a weekly report provided by the Lead Borrower to the Administrative Agent and the ABL Term Loan Agent (a) showing, in each case, by line item Actual Cash Receipts, Actual Disbursement Amounts and Actual Inventory Levels, Availability (as determined pursuant to clause (x) of the definition thereof), Combined Availability and total available liquidity for the last day of the Prior Week, the Cumulative Four Week Period and the Cumulative Period, noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances (including whether such variance is permanent in nature or timing related), and (b) an analysis, certified by a Responsible Officer of the Lead Borrower, demonstrating the Lead Borrower is in compliance with the budget covenants set forth in SECTION 5.18(b). The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Administrative Agent and the ABL Term Loan Agent in their sole discretion.

"Approved Fund" means, with respect to any Credit Party, any Fund that is administered or managed by (a) such Credit Party, (b) an Affiliate of such Credit Party, or (c) an entity or an Affiliate of an entity that administers or manages such Credit Party.

"Arranger" means MLPFS, in its capacity as sole lead arranger and bookrunner.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by SECTION 9.07), and accepted by the Administrative Agent, in substantially the form of Exhibit A-1, Exhibit A-2, or Exhibit A-3, as applicable, or any other form approved by the Administrative Agent.

"Assignment Taxes" shall have the meaning given to such term in SECTION 2.23(b).

"Attorney Costs" means and includes all reasonable and documented or invoiced out-of-pocket fees, expenses and disbursements of any specified law firm or other specified external legal counsel.

"Attributable Indebtedness" means, on any date, in respect of any Capitalized Lease 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 as in effect on the Initial Closing Date.

"Audited Financial Statements" means the audited consolidated balance sheet of the Lead Borrower and its Subsidiaries for the Fiscal Year ending July 30, 2016, and the related consolidated statements of income, stockholders' equity and cash flows of the Lead Borrower and its Subsidiaries.

"Automatic Stay" means the automatic stay provided under Section 362 of the Bankruptcy Code.

"Availability" means (x) for purposes of SECTION 6.15(b), the lesser of (a) and (b), where:

(a) is the result of:

(i) The Revolving Credit Ceiling,

Minus

(ii) The sum of (x) the aggregate outstanding amount of Revolving Credit Extensions to, or for the account of, the Borrowers and (y) the aggregate outstanding amount of Pre-Petition Revolving Credit Extensions; and

(b) is the result of:

(i) The FILO Borrowing Base, as determined from the most recent Borrowing Base Certificate (delivered by the Lead Borrower to the Administrative Agent pursuant to SECTION 5.01(e) hereof (as may be adjusted from time to time pursuant to SECTION 2.03 hereof)),

Minus

(ii) The sum of (x) the aggregate outstanding amount of Revolving Credit Extensions to, or for the account of, the Borrowers and (y) the aggregate outstanding amount of Pre-Petition Revolving Credit Extensions.

and (y) for all purposes other than SECTION 6.15(b), the lesser of (a) Availability calculated pursuant to clause (x) above and (b) Combined Availability.

"Availability Reserves" means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent, from time to time determines in its Permitted Discretion, including those reserves (a) to reflect any impediments to the realization upon the Collateral (including, without limitation, Collateral in the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base and claims and liabilities that the Administrative Agent determines will need to be satisfied in connection with the realization upon such Collateral), (b) to reflect events, conditions, contingencies or risks which adversely affect any component of the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base, the Collateral or the validity or enforceability of this Agreement, the other Loan Documents, the Pre-Petition Loan Documents or any of the material rights or remedies of the Secured Parties hereunder or thereunder, (c) to reflect any restrictions on the amounts which may be borrowed hereunder as a result of any term or provision of the DIP Term Loan Facility or the Orders or the terms thereof, (d) in respect of accrued and unpaid interest or fees on the Obligations, consignee's, warehousemen's, bailee's, shipper's or custom broker's charges, volatility, contingent liabilities of any Loan Party, uninsured losses of any Loan Party, or uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation or to reflect any other Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of the Collateral Agent (such as, without limitation, a right of reclamation or stoppage in transit) or may adversely affect

the ability of the Collateral Agent to realize on the Collateral, (e) to reflect that a Default or Event of Default has occurred and is continuing or is anticipated to occur, or (f) reserves in respect of credit card processing fees owed to any credit card processor or provider. Availability Reserves shall include, without limitation, and without duplication, the Cash Management Reserves and the Bank Product Reserves. Without limiting the foregoing, the initial Reserves in respect of leased locations as of the Closing Date shall be in an amount equal to the sum of (a) all past due rent for all of the Borrower's leased locations plus (b) one (1) months' rent for all of (x) the Borrowers' leased locations in Landlord Lien States (which, as of the Closing Date, include the states of Washington, Virginia and Pennsylvania), and (y) all of the Borrowers' distributions centers or warehouses, other than, in each case, such locations, distribution centers or warehouses with respect to which the Administrative Agent has received a Collateral Access Agreement in form and substance reasonably satisfactory to the Administrative Agent.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means Bank of America, N.A., a national banking association, and its Subsidiaries and Affiliates.

"Bank Products" means, collectively, (a) any services or facilities (other than Cash Management Services) provided to any Loan Party or any of its Subsidiaries by any Revolving Credit Lender or any Affiliate of a Revolving Credit Lender on account of: (i) credit cards, (ii) purchase cards, and (iii) merchant services constituting a line of credit, and (b) any Swap Contracts provided to any Loan Party or any of its Subsidiaries by any Swap Contract Secured Party, designated by the Lead Borrower at the time such Swap Contract is entered into or a reasonable period thereafter as being Obligations under this Agreement, *provided* that (x) any Bank Product for the benefit of any Foreign Subsidiary shall name a Borrower as the party thereto and (y) any Swap Contract provided by the Administrative Agent or its Affiliates shall automatically be Obligations under this Agreement and no designation shall be required on the part of the Lead Borrower.

"Bank Product Reserves" means such reserves as the Administrative Agent, from time to time, or as directed by the ABL Term Loan Agent in accordance SECTION 8.21(a), determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Bank Products then provided or outstanding.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et seq.) as now or hereafter in effect, or any successor thereto.

"Bankruptcy Court" has the meaning provided as in the Recitals hereto.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Cases.

"Blocked Account" has the meaning provided in SECTION 2.18(c).

"Blocked Account Agreement" has the meaning provided in SECTION 2.18(c).

"Blocked Account Banks" means the banks with whom Material DDAs are maintained 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 given to such term in the last paragraph of SECTION 5.02.

"Borrower Notice" shall have the meaning given to such term in the definition of "Evidence of Flood Insurance".

"Borrowers" means, collectively, the Lead Borrower, the Borrowers identified on the signature pages hereto and each other Person (other than an Excluded Subsidiary) who becomes a Borrower hereunder in accordance with the terms of this Agreement. For the avoidance of doubt, the Lead Borrower may cause any Subsidiary that is a wholly-owned Domestic Subsidiary to become a Borrower hereunder by causing such Subsidiary to execute a joinder to this Agreement and the other Loan Documents and taking such other actions, and delivering such other documents, agreements and certificates as shall reasonably be requested by the Administrative Agent, including under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, and any applicable items described in SECTION 5.11(a), and any such Subsidiary shall, after such conditions have been satisfied, be treated as a Borrower hereunder for all purposes.

"Borrowing" means (a) the incurrence of Revolving Credit Loans (other than Swingline Loans) or ABL Term Loans of a single Type, on a single date, and having, in the case of LIBOR Loans, a single Interest Period, or (b) a Swingline Loan.

"Borrowing Base Certificate" has the meaning provided in SECTION 5.01(e).

"Borrowing Request" means a request by the Lead Borrower on behalf of any of the Borrowers for a Borrowing in accordance with SECTION 2.04.

"Breakage Costs" has the meaning provided in SECTION 2.16(c).

"Budgeted Cash Receipts" means the sum of the line items contained in the Approved Budget under the sub-heading "Collections" under the heading "Collections & Disbursements" during the relevant period of determination.

"Budgeted Disbursement Amount" means the sum of the line items contained in the Approved Budget under the sub-heading "Operating Disbursements" under the heading "Collections & Disbursements" during the relevant period of determination.

"Budgeted Inventory Levels" means the budgeted aggregate inventory levels of the Loan Parties contained in borrowing base appendix portion of the Approved Budget opposite the heading "Ending Inventory" as of the relevant date of determination.

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

"Capital Expenditures" means, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a Consolidated statement of cash flows of the Lead Borrower and its Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by the Lead Borrower and its Subsidiaries during such period; *provided* that the term "Capital Expenditures" shall not include (i) any additions to property and equipment and other capital expenditures made with the proceeds of any equity securities issued or capital contributions received by any Loan Party or any Subsidiary, (ii) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (iii) the purchase price of equipment that is purchased substantially concurrently with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iv) the purchase of plant, property or equipment to the extent financed with the proceeds of Dispositions that are not required to be applied to prepay the Obligations or the obligations under DIP Term Loan Facility, (v) expenditures that are accounted for as capital expenditures by the Lead Borrower or any Subsidiary and that actually are paid for by a Person other than the Lead Borrower or any Subsidiary and for which none of the Lead Borrower or any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period) other than rent and similar or related obligations or (vi) expenditures that constitute other Investments permitted hereunder (but the term "Capital Expenditures" shall include all expenditures made with the proceeds of such Investments by the recipient thereof that would otherwise constitute Capital Expenditures).

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases, *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date.

"Capital Stock" means, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise Control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing.

"Carve-Out" has the meaning assigned to the term "Carve-Out" in paragraph 40 (*Carve-Out*) of the Interim Order (or Final Order, when applicable).

"Cash Collateral" has the meaning provided in SECTION 2.29.

"Cash Collateral Account" means an interest bearing account established by the Loan Parties with the Collateral Agent, for its own benefit and the benefit of the other Secured Parties, under the sole and exclusive dominion and control of the Collateral Agent, in the name of the Collateral Agent or as the Collateral Agent shall otherwise direct, in which deposits are required to be made in accordance with SECTION 2.13(j) and SECTION 2.29.

"Cash Equivalents" means any of the following types of Investments, to the extent owned by Holdings, the Lead Borrower or any Subsidiary:

(a) Dollars, Australian Dollars, Canadian Dollars and euros;

(b) in the case of any Foreign Subsidiary, such local currencies held by them from time to time in the ordinary course of business and not for speculation;

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

(d) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(e) investments in demand deposits, certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000 and that issues (or the parent of which issues) commercial paper rated at least "*Prime 1*" (or the then equivalent grade) by Moody's or "*A 1*" (or the then equivalent grade) by S&P;

(f) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (c) above and entered into with a financial institution satisfying the criteria of clause (e) above;

(g) investments in "*money market funds*" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and

(h) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing.

"Cash Management Order" means the order of the Bankruptcy Court entered in the Chapter 11 Cases after the "first day" hearing, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to the Administrative Agent, which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Pre-Petition Credit Agreement) or such other arrangements as shall be acceptable to the Administrative Agent in all material respects.

"Cash Management Reserves" means such reserves as the Administrative Agent, or as directed by the ABL Term Loan Agent in accordance SECTION 8.21(a), determines in its Permitted 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.

"Cash Management Services" means any one or more of the following types of services or facilities provided to any Loan Party or any of its Subsidiaries by any Revolving Credit Lender or any Affiliate of a Revolving Credit Lender: (a) ACH transactions, (b) treasury and/or cash management

services, including, without limitation, controlled disbursement services, depository, overdraft and electronic funds transfer services, (c) foreign exchange facilities, (d) credit or debit cards, (e) deposit and other accounts, and (f) merchant services (other than those constituting a line of credit). For the avoidance of doubt, Cash Management Services do not include Swap Contracts.

"Cash Receipts" has the meaning provided in SECTION 2.18(d).

"Casualty Event" means any event that gives rise to the receipt by the Lead Borrower or any of its Subsidiaries of any insurance proceeds or condemnation awards in respect of any Inventory, equipment, fixed assets or Real Estate (including any improvements thereon).

"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 U.S. Environmental Protection Agency.

"Change in Control" means any of the following:

(a) one or more Permitted Holders (taken collectively) shall fail to own beneficially (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Capital Stock representing at least a majority of the aggregate voting power represented by the issued and outstanding Capital Stock of Holdings; or

(b) any Person (other than a Permitted Holder) or (ii) any Persons (other than one or more Permitted Holders) constituting a "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) shall have, directly or indirectly, acquired beneficial ownership of Capital Stock representing 35% or more of the aggregate voting power represented by the issued and outstanding Capital Stock of Holdings and the Permitted Holders shall own, directly or indirectly, less than such Person or "group" of the aggregate voting power represented by the issued and outstanding Capital Stock of Holdings; or

(c) any "Change in Control" (or any comparable term) in any document pertaining to the DIP Term Loan Facility or any other Post-Petition Material Indebtedness; or

(d) the failure of Holdings to own, directly, one hundred percent (100%) of the Capital Stock of the Lead Borrower.

"Change in Law" means (a) the adoption of any Applicable Law after the Closing Date, (b) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Credit Party (or, for purposes of SECTION 2.14, by any lending office of such Credit Party or by such Credit Party's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date applicable to the Loan Parties. Notwithstanding anything herein to the contrary, (x) the Dodd Frank Wall Street Reform and Consumer Protection Act, and all requests, regulations, rules, guidelines and directives promulgated thereunder or issued in connection therewith and (y) all requests, regulations, rules, guideline and 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 have been adopted after the Closing Date, regardless of the date enacted or adopted.

"Chapter 11 Cases" has the meaning set forth in the Recitals.

"Class" means (i) when used with respect to commitments, refers to whether such commitment is a Commitment or an ABL Tem Loan Commitment, (ii) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Credit Loans or ABL Term Loans and (iii) when used with respect to Lenders, refers to whether such Lenders have a commitment or Loan with respect to a particular Class of Loans or commitments.

"Closing Checklist" means the closing checklist substantially in the form attached hereto as Exhibit M.

"Closing Date" means June [__], 2017.

"Closing Fee Letter" means, collectively, the Closing Fee Letter dated June [__], 2017 by and among the Borrowers and Bank of America, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

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

"Collateral" means (a) any and all "Collateral", "Pledged Collateral" or words of similar intent as defined in any applicable Security Document and (b) the "DIP Collateral" referred to in the Orders, it being understood that "Collateral" shall include all such "DIP Collateral" irrespective of whether any such property was excluded pursuant to the Pre-Petition Loan Documents.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Collateral Agent executed by (a) a bailee or other Person in possession of Collateral, including, without limitation, any warehouseman and (b) a landlord of Real Estate leased by any Loan Party (including, without limitation, any warehouse or distribution center), pursuant to which such Person (i) acknowledges the Collateral 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) agrees to furnish the Collateral Agent with access to the Collateral in such Person's possession or on the Real Estate for the purposes of conducting a Liquidation, and (iv) makes such other agreements with the Collateral Agent as the Collateral Agent may reasonably require.

"Collateral Agent" has the meaning provided in the preamble to this Agreement.

"Combined Availability" means, at any time, an amount equal to (a) the ABL Term Borrowing Base minus (b) the sum of (i) the aggregate outstanding amount of Revolving Credit Extensions to, or for the account of, the Borrowers, *plus* (ii) the aggregate outstanding amount of Pre-Petition Revolving Credit Extensions, *plus* (iii) the aggregate outstanding principal amount of ABL Term Loans *plus* (iv) the aggregate outstanding principal amount of Pre-Petition ABL Term Loans.

"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 Borrower or a Subsidiary in the ordinary course of business of such Borrower or Subsidiary.

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

"Committee" means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

"Commitment" means, with respect to each Lender, the aggregate commitments of such Lender hereunder to make Revolving Credit Loans (including Tranche A Loans and FILO Loans) to the Borrowers and to participate in Letters of Credit and Swingline Loans in the amount set forth opposite its name on Schedule 1.01 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 SECTION 2.15 of this Agreement. The aggregate Commitments on the Closing Date are $225,000,000.

"Commitment Percentage" means, with respect to each Lender, that percentage of the Commitments of all Lenders hereunder to make Revolving Credit Extensions to the Borrowers and to participate in Letters of Credit and Swingline Loans, in the amount set forth opposite such Lender's name on Schedule 1.01 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 SECTION 2.15 of this Agreement, or if the Commitments have been terminated, such percentage as calculated immediately prior to such termination.

"Compliance Certificate" has the meaning provided in SECTION 5.02(b).

"Company" means the Lead Borrower.

"Concentration Account" has the meaning provided in SECTION 2.18(d).

"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 position, cash flows, or operating results of such Person and its Subsidiaries.

"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. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Cost" means the cost of the Loan Parties' Inventory as determined in accordance with the Lead Borrower's accounting policies as in effect on the Closing Date and as reported on the Loan Parties' stock ledger, as such policy may be modified with the consent of the Administrative Agent, whose consent will not be unreasonably withheld.

"Credit Card Advance Rate" means (a) for the Tranche A Borrowing Base and the FILO Borrowing Base, ninety percent (90%) and (b) for the ABL Term Borrowing Base, one hundred and five percent (105%).

"Credit Card Notifications" has the meaning provided in SECTION 2.18(c).

"Credit Extensions" as of any day, shall be equal to the sum of (a) the principal balance of all Revolving Credit Loans (including Swingline Loans) then outstanding, (b) the then amount of the Letter of Credit Outstandings and (c) if applicable, the principal balance of all ABL Term Loans then outstanding.

"Credit Party" means, without duplication, each of the ABL Term Credit Parties and each of the Revolving Credit Parties. Where reference is made to the applicable Credit Parties, such reference shall mean, as the context requires, the ABL Term Credit Parties or the Revolving Credit Parties.

"Credit Party Expenses" means, without limitation, all of the following to the extent incurred in connection with this Agreement and the other Loan Documents: (a) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, and the Arranger, including, without limitation, the reasonable fees, charges and disbursements of Morgan, Lewis & Bockius LLP and of local counsel in Virginia to the Administrative Agent, the Collateral Agent and their Affiliates, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent or any Arranger in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties (or any groups thereof), one additional counsel in each relevant jurisdiction to each group of affected Credit Parties similarly situated taken as a whole), and outside consultants for the Administrative Agent and the Collateral Agent (including, without limitation, inventory appraisal firms, commercial finance examination firms, and financial advisor and consulting firms), in each case, incurred in connection with the credit facilities provided for herein and any matters related hereto, including, without limitation, the preparation and administration of the Loan Documents, the syndication and administration of the credit facilities provided for herein, any amendments, modifications or waivers requested by a Loan Party of the provisions hereof or thereof (whether or not any such amendments, modifications or waivers shall be consummated), and any workout, restructuring, negotiations, protection of rights hereunder or enforcement in respect hereof, (b) all reasonable out-of-pocket expenses incurred by the ABL Term Loan Agent, including, without limitation, the reasonable fees, charges and disbursements of Choate Hall & Stewart LLP and of local counsel in Virginia to the ABL Term Loan Agent, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent or any Arranger in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties (or any groups thereof), one additional counsel in each relevant jurisdiction to each group of affected Credit Parties similarly situated taken as a whole), in each case, incurred in connection with the credit facilities provided for herein and any matters related hereto, including, without limitation, the preparation and administration of the Loan Documents, the syndication and administration of the credit facilities provided for herein, any amendments, modifications or waivers requested by a Loan Party of the provisions hereof or thereof (whether or not any such amendments, modifications or waivers shall be consummated), and any workout, restructuring, negotiations, protection of rights hereunder or enforcement in respect hereof, (c) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (d) all reasonable out-of-pocket expenses incurred by the Administrative Agent or the Collateral Agent, any Lender and their respective Affiliates, and branches, including the fees, charges and disbursements of counsel and outside consultants for any of the foregoing (including, without limitation, inventory appraisal firms, commercial finance examination firms, and financial advisor and consultant firms) in connection with any workout, restructuring, negotiations, protection of rights hereunder or enforcement in respect hereof and (e) all fees, costs and expenses described in SECTION 9.04.

"Cumulative Four Week Period" means the four-week period up to and through the Saturday of the most recent week then ended, or if a four-week period has not then elapsed from the Petition Date, such shorter period since the Petition Date through the Saturday of the most recent week then ended.

"Customer Credit Liabilities" means, at any time, the aggregate remaining balance reflected on the books and records of the Loan Parties at such time of (a) outstanding gift certificates and gift cards of the Loan Parties entitling the holder thereof to use all or a portion of the gift certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits and customer deposits of the Loan Parties.

"Customs Broker Agreement" means an agreement in substantially the form attached hereto as Exhibit B (or such other form as may be reasonably satisfactory to the Administrative Agent) among a Loan Party, a customs broker or other carrier, and the Collateral Agent, in which the customs broker or

other carrier acknowledges that it has control over and holds the documents evidencing ownership of, or other shipping documents relating to, the subject Inventory or other property for the benefit of the Collateral Agent, and agrees, upon notice from the Collateral Agent (which notice shall be delivered only upon the occurrence and during the continuance of an Event of Default), to hold and dispose of the subject Inventory and other property solely as directed by the Collateral Agent.

"DDAs" means any checking or other demand deposit account maintained by the Loan Parties. All funds in such DDAs shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agents or the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the DDAs.

"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.

"Default" means any event or condition described in SECTION 7.01 that constitutes an Event of Default or that upon notice, lapse of any cure period set forth in SECTION 7.01, or both, would, unless cured or waived hereunder, become an Event of Default.

"Delinquent Lender" has the meaning provided in SECTION 8.16.

"Deteriorating Lender" means any Delinquent Lender or any Lender as to which the Administrative Agent and either of the Issuing Bank or the Swingline Lender reasonably determines that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities.

"DIP Term Loan Agent" means Credit Suisse AG, Cayman Islands Branch as administrative agent and collateral agent under the DIP Term Loan Facility, and its successors and permitted assigns in such capacities.

"DIP Term Loan Agreement" means that certain the Debtor-In-Possession Credit Agreement dated as of June [__], 2017, by and among the Lead Borrower, Holdings, the other guarantors from time to time party thereto, the DIP Term Loan Lenders party thereto and Credit Suisse AG, Cayman Islands Branch, as sole lead arranger, sole book runner, administrative agent and collateral agent, as in effect on the Closing Date.

"DIP Term Loan Facility" means the term loan facility established pursuant to the DIP Term Loan Agreement, as amended, modified, or supplemented from time to time to the extent permitted pursuant to SECTION 6.13 hereof and pursuant to the Intercreditor Agreement.

"DIP Term Loan Funding Account" means the "DIP Funding Account" (as such term is defined in the DIP Term Loan Agreement) and any successor account of the DIP Term Loan Agent into which the proceeds of the DIP Term Loan Facility are deposited and held until released to the DIP Term Loan Operating Account.

"DIP Term Loan Operating Account" means the "Segregated Operating Account" (as such term is defined in the DIP Term Loan Agreement) and any successor account of the Lead Borrower into which the proceeds of the DIP Term Loan Facility are deposited and held until disbursed by the Lead Borrower.

"DIP Term Loan Specified Accounts" means the DIP Term Loan Funding Account and the DIP Term Loan Operating Account.

"DIP Term Loan Lenders" means the lenders under the DIP Term Loan Facility.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property (including, without limitation, any Capital Stock of any other Person held by a specified Person) by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disbursement Account" means the bank account of the Loan Parties at Bank of America ending -50026 (or any replacement deposit account at Bank of America, N.A. consent to by the Administrative Agent).

"Disqualified Capital Stock" means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), is putable or exchangeable, or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Capital Stock (other than Disqualified Capital Stock)), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of all Obligations and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Capital Stock (other than Disqualified Capital Stock)), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the then Latest Maturity Date.

"Documents" has the meaning assigned to such term in the Security Agreement.

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

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia. The term "Domestic Subsidiary" shall exclude (x) Gymboree Island, LLC, a Puerto Rico entity, and (y) Gymboree, Inc. (a corporation organized under the laws of the province of New Brunswick)/Gymboree Canada, Inc. (a Delaware corporation), a dual status entity.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means a commercial bank, insurance company, or company engaged in the business of making commercial loans or a commercial finance company, and with respect to any

Revolving Credit Loans which Person, together with its Affiliates, has a combined capital and surplus in excess of $1,000,000,000, or any Affiliate of any Credit Party under common control with such Credit Party, or an Approved Fund of any Credit Party, *provided* that in any event, "Eligible Assignee" shall not include (x) any Loan Party or any of their respective Affiliates, (y) any natural person or (z) any member of the Sponsor Group or any of their respective Affiliates.

"Eligible Credit Card Receivables" means, as of any date of determination, Accounts due to a Borrower or a Subsidiary Facility Guarantor from major credit card and debit card processors (including, but not limited to, JCB, VISA, Mastercard, American Express, Diners Club, DiscoverCard, Interlink, NYCE, Star/Mac, Tyme, Pulse, Accel, AFF, Shazam, CU244, Alaska Option and Maestro) of the Borrower and any Subsidiary Facility Guarantor, as arise in the ordinary course of business and which have been earned by performance and that are not excluded as ineligible by virtue of one or more of the criteria set forth below. None of the following shall be deemed to be Eligible Credit Card Receivables:

(a) Accounts due from major credit card and debit card processors that have been outstanding for more than five (5) Business Days from the date of sale, or for such longer period(s) as may be approved by the Administrative Agent in its Permitted Discretion;

(b) Accounts due from major credit card and debit card processors with respect to which a Borrower or a Subsidiary Facility Guarantor does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, Liens in favor of the DIP Term Loan Agent and/or any other agent or trustee under the DIP Term Loan Facility, and Permitted Encumbrances);

(c) Accounts due from major credit card and debit card processors that are not subject to a first priority security interest in favor of the Collateral Agent for its own benefit and the benefit of the other Secured Parties (other than Permitted Encumbrances having priority by operation of Applicable Law over the Lien of the Collateral Agent) (the foregoing not being intended to limit the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Liens);

(d) Accounts due from major credit card and debit card processors which are disputed, or with respect to which a claim, counterclaim, offset or chargeback (other than chargebacks in the ordinary course by the credit card processors) has been asserted, by the related credit card processor (but only to the extent of such dispute, counterclaim, offset or chargeback);

(e) Except as otherwise approved by the Administrative Agent, Accounts due from major credit card and debit card processors as to which the credit card processor or debit card processor has the right under certain circumstances to require a Borrower or a Subsidiary Facility Guarantor to repurchase the Accounts from such credit card or debit card processor;

(f) Except as otherwise approved by the Administrative Agent in its Permitted Discretion, Accounts arising from any private label credit card program of a Borrower or a Subsidiary Facility Guarantor;

(g) Accounts due from major credit card and debit card processors (other than JCB, Visa, Mastercard, American Express, Diners Club, DiscoverCard, Interlink, NYCE, Star/Mac, Tyme, Pulse, Accel, AFF, Shazam, CU244, Alaska Option and Maestro) which the Administrative Agent determines in its Permitted Discretion and upon notice to the Lead Borrower to be unlikely to be collected, which shall be excluded from the Borrowing Base immediately upon such notice to the Lead Borrower; and

(h) Accounts due from major credit card and debit card processors that the Administrative Agent has determined, in its Permitted Discretion, to exclude from Eligible Credit Card Receivables, *provided* that the exclusion of such Accounts pursuant to this clause (h) shall become effective upon two (2) Business Days' notice to the Lead Borrower.

"Eligible In-Transit Inventory" means, as of any date of determination, without duplication of other Eligible Inventory or Eligible Letter of Credit Inventory, Inventory of a Borrower or a Subsidiary Facility Guarantor which meets the following criteria, as determined from time to time by the Administrative Agent in its Permitted Discretion:

(a) such Inventory has been shipped from any foreign location for receipt by a Borrower or a Subsidiary Facility Guarantor within sixty (60) days of the date of determination and has not yet been received by a Borrower or a Subsidiary Facility Guarantor;

(b) the purchase order for such Inventory is in the name of a Borrower or a Subsidiary Facility Guarantor and, except with respect to the ABL Term Borrowing Base, title has passed to a Borrower or a Subsidiary Facility Guarantor;

(c) with respect to Inventory subject to a negotiable document of title, (i) with respect to the Tranche A Borrowing Base and the FILO Borrowing Base, except as otherwise agreed by the Administrative Agent: (A) such negotiable document of title is in form reasonably satisfactory to the Administrative Agent, (B) such negotiable document of title shall have been endorsed to a Borrower or a Subsidiary Facility Guarantor in a manner reasonably satisfactory to the Administrative Agent, and no further endorsement to, or grant of control to, another Person with respect to such negotiable document of title shall have occurred, and (C) either (1) such negotiable document exists only in electronic form and a Borrower or a Subsidiary Facility Guarantor has received by electronic transaction a copy of such negotiable document or (2) such negotiable document of title shall have been physically received by a Borrower or a Subsidiary Facility Guarantor in the United States of America, and (ii) with respect to the ABL Term Borrowing Base, such negotiable document of title is in form reasonably satisfactory to the Administrative Agent;

(d) with respect to Inventory subject to a non-negotiable document of title or other shipping document reasonably acceptable to the Administrative Agent, (i) such document is in form reasonably acceptable to the Administrative Agent and (ii) such document names a Borrower or a Subsidiary Facility Guarantor as consignee;

(e) (i) each relevant freight carrier, freight forwarder, customs broker, shipping company or other Person in possession of such Inventory and/or the documents relating to such Inventory, and/or who has generated such documents, in each case, as reasonably requested by Administrative Agent, shall have entered into a Customs Broker Agreement and (ii) as reasonably requested by the Administrative Agent, the documents relating to such Inventory shall be in the possession of the Administrative Agent or an agent (or sub-agent) acting on its behalf;

(f) such Inventory is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation marine cargo insurance;

(g) such Inventory is subject, to the reasonable satisfaction of the Administrative Agent, to a first priority perfected security interest in and lien upon such Inventory in favor of the Collateral Agent (subject to Permitted Encumbrances having priority by operation of Applicable Law, and except for any possessory lien upon such goods in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such goods to such Borrower or Subsidiary Facility

Guarantor) (the foregoing not being intended to limit the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Liens); and

(h) such Inventory is not excluded from the definition of Eligible Inventory;

provided, however, that the Administrative Agent may, in its Permitted Discretion, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory", including (i) in the event that the Administrative Agent determines in its Permitted Discretion that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of the Collateral Agent (such as, without limitation, a right of reclamation or stoppage in transit), as applicable, or may otherwise adversely impact the ability of the Collateral Agent to realize upon such Inventory or (ii) in the event the Borrowers have commenced, or are likely to commence, a full-chain liquidation, including a Store Liquidation; *provided* that the exclusion of such Inventory pursuant to this proviso shall become effective upon two (2) Business Days' notice to the Lead Borrower. Eligible In-Transit Inventory shall not include Inventory accounted for as "in transit" by the Lead Borrower by virtue of such Inventory's being in transit between the Loan Parties' locations or in storage trailers at Loan Parties' locations; rather such Inventory shall be treated as "Eligible Inventory" if it satisfies the conditions therefor.

"Eligible Inventory" means, as of any date of determination, items of Inventory of a Borrower or a Subsidiary Facility Guarantor that are finished goods, merchantable and readily saleable to the public in the ordinary course that are not excluded as ineligible by virtue of one or more of the criteria set forth below and which Inventory does not constitute Eligible Letter of Credit Inventory or Eligible In-Transit Inventory. None of the following shall be deemed to be Eligible Inventory:

(a) Inventory with respect to which a Borrower or a Subsidiary Facility Guarantor does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents and Permitted Encumbrances), or is leased by or is on consignment to a Borrower or a Subsidiary Facility Guarantor, or that is not solely owned by a Borrower or a Subsidiary Facility Guarantor;

(b) Inventory (other than any Eligible In-Transit Inventory) that (i) is not located in the United States of America, or (ii) at a location that is not owned or leased by a Borrower or a Subsidiary Facility Guarantor, except to the extent that a Borrower or a Subsidiary Facility Guarantor has furnished the Collateral Agent with (A) any UCC financing statements, registration statements or other filings that the Collateral Agent may reasonably determine to be necessary to perfect its security interest in such Inventory at such location, and (B) unless otherwise agreed by the Administrative Agent (such agreement not to be unreasonably withheld), a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Collateral Agent;

(c) Inventory that represents goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor and which is no longer reflected in a Borrower's or a Subsidiary Facility Guarantor's stock ledger, (iii) are special-order items, work in process, raw materials, or that constitute spare parts, shipping materials or supplies used or consumed in a Borrower's or a Subsidiary Facility Guarantor's business, or (iv) are bill and hold goods;

(d) Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, Inventory that represents goods that do not conform in all material respects to the representations and warranties contained in this Agreement or any of the Security Documents;

(e) Inventory that is not subject to a perfected first priority security interest in favor of the Collateral Agent for its own benefit and the benefit of the other Secured Parties (subject only to Permitted Encumbrances having priority by operation of Applicable Law) (the foregoing not being intended to limit the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Liens);

(f) Inventory which consists of samples, labels, bags, packaging materials, and other similar non-merchandise categories (for greater clarity, display models are not deemed a non-merchandise category);

(g) Inventory as to which casualty insurance in compliance with the provisions of SECTION 5.07 hereof is not in effect;

(h) Inventory which has been sold but not yet delivered or Inventory to the extent that a Borrower or a Subsidiary Facility Guarantor has accepted a deposit therefor and which is no longer reflected in a Borrower's or a Subsidiary Facility Guarantor's stock ledger; and

(i) Inventory that the Administrative Agent has determined, in its Permitted Discretion, to exclude from Eligible Inventory; *provided* that the exclusion of such Inventory pursuant to this clause (i) shall become effective upon two (2) Business Days' notice to the Lead Borrower.

"Eligible Letter of Credit Inventory" means, as of any date of determination thereof, a Commercial Letter of Credit issued under this Agreement which supports the purchase of Inventory, (i) which Inventory does not constitute Eligible Inventory or Eligible In-Transit Inventory and for which no documents of title have then been issued; (ii) which Inventory when the purchase thereof is completed would otherwise constitute Eligible In-Transit Inventory, (iii) which Commercial Letter of Credit has an expiry, subject to the proviso hereto, that is 120 days or less from the date of determination, *provided* that ninety percent (90%) of the maximum Stated Amount of all such Commercial Letters of Credit shall not, at any time, have an initial expiry greater than ninety (90) days after the original date of issuance of such Commercial Letters of Credit, and (iv) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after documents of title have been issued for such Inventory reflecting a Borrower or a Subsidiary Facility Guarantor or the Collateral Agent as consignee of such Inventory; *provided* that the Administrative Agent may, in its Permitted Discretion, exclude any particular Inventory from the definition of "Eligible Letter of Credit Inventory" (i) in the event that the Administrative Agent determines in its Permitted Discretion and upon notice to the Lead Borrower that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of the Collateral Agent (such as, without limitation, a right of reclamation or stoppage in transit), as applicable, or may otherwise adversely impact the ability of the Collateral Agent to realize upon such Inventory, or (ii) in the event the Borrowers have commenced, or are likely to commence, a full-chain liquidation, including a Store Liquidation *provided* that the exclusion of such Inventory pursuant to the foregoing proviso shall become effective upon two (2) Business Days' notice to the Lead Borrower.

"Eligible Trade Receivables" means an Account owing to a Borrower or a Subsidiary Facility Guarantor that arises in the ordinary course of business from the sale of goods or rendition of services, is payable in Dollars and are not excluded as ineligible by one or more of the criteria set forth below. No Account shall be an Eligible Trade Receivable if:

(a) it is unpaid for more than thirty (30) days after the original due date, or more than sixty (60) days after the original invoice date;

(b) thirty percent (30%) or more of the Accounts owing by the Account Debtor are not Eligible Trade Receivables under the foregoing clause;

(c) when aggregated with other Accounts owing by the Account Debtor, it exceeds 10% of the aggregate Eligible Trade Receivables (or such higher percentage as the Administrative Agent may, in its Permitted Discretion, establish for the Account Debtor from time to time) (it being understood that ineligibility shall be limited to the amount of such excess);

(d) it does not conform in all material respects with representations and warranties contained in the Loan Documents;

(e) it is owing by a creditor or supplier (unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent), or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but in each case, ineligibility shall be limited to the amount thereof);

(f) a proceeding under any Debtor Relief Law has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, or is not solvent; or the relevant Borrower or Subsidiary Facility Guarantor is not able to bring suit or enforce remedies against the Account Debtor through judicial process;

(g) the Account Debtor is organized or has its principal offices or assets outside the United States, unless such Account is backed by a letter of credit reasonably acceptable to the Administrative Agent (which issued by a bank reasonably acceptable to the Administrative Agent) and such letter of credit is subject to a first priority perfected Lien in favor of the Collateral Agent (subject to Permitted Encumbrances having priority by operation of Applicable Law) (the foregoing not being intended to limit the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Liens);

(h) it is owing by a Government Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to the Collateral Agent in compliance with the Assignment of Claims Act;

(i) it is not subject to a duly perfected, first priority Lien in favor of the Collateral Agent (subject to Permitted Encumbrances having priority by operation of Applicable Law) (the foregoing not being intended to limit the ability of the Administrative Agent to change, establish or eliminate any Reserves in its Permitted Discretion on account of any such Liens), or is subject to any other Lien (other than a Lien in favor of the DIP Term Loan Agent and/or an agent or trustee under the DIP Term Loan Facility (subject to the Intercreditor Agreement) and Permitted Encumbrances);

(j) the goods giving rise to it have not been delivered to and accepted by the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale;

(k) it is evidenced by chattel paper or an instrument of any kind, or has been reduced to judgment;

(l) its payment has been extended, the Account Debtor has made a partial payment, or it arises from a sale on a cash-on-delivery basis;

(m) it arises from (x) a sale to an Affiliate (including Holdings and its Subsidiaries, but excluding any other portfolio company of the Sponsor (subject to the requirements of SECTION 6.08(b)), (y) a sale on a bill-and-hold, guaranteed sale, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or (z) a sale to a Person for personal, family or household purposes;

(n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued;

(o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof;

(p) except with respect to the ABL Term Borrowing Base (and in such event only to the extent otherwise constituting an Eligible Trade Receivable hereunder), it constitutes an Account arising from third-party gift card companies;

(q) it represents a construction allowance; or

(r) the Administrative Agent has determined, in its Permitted Discretion, to exclude such Account from Eligible Trade Receivables, *provided* that the exclusion of any such Account pursuant to this clause (r) shall become effective upon two (2) Business Days' notice to the Lead Borrower.

In calculating delinquent portions of Accounts under clauses (a) and (b) above, credit balances more than ninety (90) days old will be excluded.

"Environmental Laws" means all Applicable Laws relating to pollution, the protection of the environment, natural resources, or, to the extent relating to exposure to Hazardous Materials, human health or to the release of any materials into the environment, including those related to Hazardous Materials, air emissions and discharges to waste or public systems.

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

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and the regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with Lead Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means in the case of a Plan or Multiemployer Plan subject to ERISA, (a) any "reportable event", as defined in Section 4043 of ERISA with respect to a Plan (other than an event for which the notice is waived); (b) the failure to meet the minimum funding standard with respect to any Plan (as described in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of

the minimum funding standard with respect to any Plan; (d) the incurrence by the Lead Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Lead Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Lead Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Lead Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Lead Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability, or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning provided in SECTION 7.01.

"Evidence of Flood Insurance" in order to comply with the Flood Laws, the following documents: (A) a Flood Determination Form (B) if any of the improvement(s) to the improved Real Property is located in a special flood hazard area, a notification thereof to the Lead Borrower ("Borrower Notice") and (if applicable) notification to the Lead Borrower that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community in which the property is located does not participate in the NFIP; (C) documentation evidencing the Lead Borrower's receipt of the Borrower Notice (e.g., countersigned Borrower Notice, return receipt of certified U.S. Mail, or overnight delivery); (D) if the Borrower Notice is required to be given and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the Lead Borrower's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Collateral Agent and (e) any other documents that the Collateral Agent may require or reasonably request to comply with Flood Laws or any internal regulations or guidance of any Secured Party with respect to compliance with Flood Laws.

"Excess Amount" has the meaning provided in SECTION 2.13(f).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Accounts" means (i) store deposit accounts funded in the ordinary course of business, the deposits in which shall not aggregate more than $3,000,000 or exceed $300,000 with respect to any one account, (ii) payroll, trust and tax withholding accounts funded in the ordinary course of business and required by Applicable Law, (iii) the Term Loan Priority Account, (iv) the Disbursement Account and (v) the DIP Term Loan Specified Accounts.

"Excluded Property" means (i) with respect to any Trademarks, applications in the United States Patent and Trademark Office to register Trademarks or service marks on the basis of any Loan Party's "intent to use" such Trademarks or service marks will not be deemed to be Collateral unless and until a "Statement of Use" or "Amendment to Allege Use" has been filed and accepted in the United States Patent and Trademark Office, whereupon such application shall be automatically subject to the security interest granted herein and deemed to be included in the Collateral, (ii) more than 65% of any class of Capital Stock of any Foreign Subsidiary (provided however, that for the purposes of this clause (i), Gymboree, Inc. (a corporation organized under the laws of the province of New Brunswick)/Gymboree Canada, Inc. (a Delaware corporation), a dual status entity, shall be deemed not to be a Foreign Subsidiary), and (iii) Capital Stock in any joint venture or in any Subsidiary that is not a wholly owned

Subsidiary (other than proceeds thereof), but only to the extent that the creation of a security interest in such Capital Stock is prohibited or restricted by the Organization Documents of such Person or by any contractual restriction contained in any agreement with third party holders of the other Capital Stock in such Person which holders are not Affiliates of the Lead Borrower (except to the extent that any such prohibition or restriction is deemed ineffective under the UCC or other Applicable Law).

"Excluded Subsidiary" means each of the Subsidiaries of the Borrowers set forth on Schedule 1.01(E).

"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 under the Facility Guarantee or other Loan Document of, or the grant under a Loan Document 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 (determined after giving effect to SECTION 9.26 hereof and any other "keepwell, support or other agreement" for the benefit of such Loan Party and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the guarantee of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to the Swap Contacts for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means, with respect to any Credit Party or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder, (a) income or franchise Taxes imposed on (or measured by) its gross or net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or imposed as a result of any present or former connection between the jurisdiction imposing such Tax and such recipient other than a connection arising solely as a result of such recipient having performed its obligations or received payment hereunder or under any Loan Document, 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 of America or any similar Tax imposed by any other jurisdiction in which any Borrower or Facility Guarantor, as applicable, is located, (c) other than with respect to any Credit Party that is an assignee pursuant to a request by a Borrower under SECTION 2.24, any United States Tax that is imposed on amounts payable to such Credit Party at the time it becomes a party to this Agreement (or, in the case of a Foreign Lender, designates a New Lending Office other than the designation of a New Lending Office pursuant to SECTION 2.24), 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 Borrowers with respect to such Tax pursuant to SECTION 2.23(a), (d) Taxes attributable to a failure to comply with SECTION 2.23(e), (e) Taxes imposed by a jurisdiction as a result of any connection between such party and such jurisdiction other than any connection arising from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, or enforcing any Loan Document, or (f) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Letter of Credit" has the meaning set forth in SECTION 2.13(a).

"Facility Guarantee" means any Guarantee of the Obligations executed by any of the Loan Parties in favor of the Agents and the other Secured Parties.

"Facility Guarantors" means any Person (other than a Borrower) executing a Facility Guarantee, but in all events shall not include the Excluded Subsidiaries. As of the Closing Date, Holdings is the Facility Guarantor. For the avoidance of doubt, the Lead Borrower may cause any Subsidiary to become a Facility Guarantor hereunder by causing such Subsidiary to execute a joinder to this Agreement and the other Loan Documents and taking such other actions, and delivering such other documents, agreements and certificates as shall reasonably be requested by the Administrative Agent, including under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act, and any applicable items described in SECTION 5.11(a), and any such Subsidiary shall be treated as a Facility Guarantor hereunder for all purposes.

"FATCA" means Sections 1471 through 1474 of the Code, as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections whether in existence on the Closing Date or promulgated or published thereafter, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreements, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Effective 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, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Effective 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 Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means, collectively, the Agent Fee Letter and the Closing Fee Letter, as amended, amended and restated, supplemented or replaced, and in effect from time to time.

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

(a) the face amount of Eligible Credit Card Receivables of the Loan Parties multiplied by the Credit Card Advance Rate for the FILO Borrowing Base;

plus

(b) the face amount of Eligible Trade Receivables of the Loan Parties multiplied by the Trade Receivables Advance Rate for the FILO Borrowing Base;

plus

(c) the Cost of Eligible Inventory of the Loan Parties (other than Eligible In-Transit Inventory), net of Inventory Reserves, multiplied by the Inventory Advance Rate for the FILO Borrowing Base multiplied by the Appraised Value of Eligible Inventory of the Loan Parties;

plus

(d) the Cost of Eligible In-Transit Inventory of the Loan Parties, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the FILO Borrowing Base multiplied by the Appraised Value of Eligible In-Transit Inventory of the Loan Parties;

plus

(e) with respect to any Eligible Letter of Credit Inventory, the lesser of (x) the Cost of such Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the FILO Borrowing Base for such Inventory when completed, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory or (y) the Stated Amount of the Letter of Credit relating to such Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the FILO Borrowing Base, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory;

minus

(f) the then amount of all Availability Reserves and any other Reserves taken in accordance with SECTION 2.03.

"FILO Commitment" means, with respect to each FILO Lender, the commitment of such FILO Lender hereunder set forth as its FILO Commitment opposite its name on Schedule 1.01 hereto (as it may be amended from time to time) 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. On the Closing Date, the aggregate FILO Commitments are $6,000,000.

"FILO Commitment Percentage" means, with respect to each FILO Lender, that percentage of the FILO Commitments of all Lenders hereunder to make FILO Loans to the Borrowers in the amount set forth opposite its name on Schedule 1.01 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 SECTION 2.15, or if the FILO Commitments have been terminated, such percentage as calculated immediately prior to such termination.

"FILO Credit Extensions" means FILO Loans and, if then applicable, the Excess Amount of Letters of Credit issued hereunder.

"FILO Lender" means each Lender which holds a FILO Commitment and any other Person who becomes a "FILO Lender" in accordance with the provisions of this Agreement.

"FILO Loan" means, collectively, the Revolving Credit Loans made by the FILO Lenders pursuant to SECTION 2.01(a)(vi).

"Final Order" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be satisfactory in form and substance to the Administrative Agent and the ABL Term Loan Agent, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed (unless Administrative Agent waives such requirement), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super-priority of the Administrative Agent's and the Lenders' claims.

"Financial Advisor" means a financial advisor reasonably acceptable to the Administrative Agent. For the avoidance of doubt, Lazard Freres & Co. LLC shall be a reasonably acceptable Financial Advisor.

"Financial Officer" means, with respect to any Loan Party, the chief financial officer, chief accounting officer, treasurer, assistant treasurer, controller, assistant controller or other financial officer of such Loan Party.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally consist of either four (4) or five (5) weeks and shall generally end on the last Saturday of each calendar month in accordance with the fiscal accounting calendar of the Lead Borrower and its Subsidiaries.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally consist of thirteen (13) weeks or fourteen (14) weeks and shall generally end on the last Saturday of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Lead Borrower and its Subsidiaries.

"Fiscal Year" means each period of twelve (12) consecutive months ending on the Saturday closest to January 31 of any calendar year, *provided* that for purposes of any reporting or deliverables the Loan Parties are required to provide pursuant to SECTION 5.01(a) the period twelve (12) consecutive months ending on the Saturday closest to July 31, 2017 shall also constitute a Fiscal Year.

"Flood Determination Form" means a completed standard "life of loan" flood hazard determination form.

"Flood Laws" means the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board), as amended.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any State or territory thereof or the District of Columbia. For greater certainty, each of (a) Gymboree Island, LLC, an entity organized under the laws of Puerto Rico, and (b) Gymboree, Inc. (a corporation organized under the laws of the province of New Brunswick)/Gymboree Canada, Inc. (a Delaware corporation), a dual status entity, shall be a Foreign Subsidiary for the purposes of the Loan Documents.

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

"Fronting Fee" shall have the meaning set forth in SECTION 2.19(d) hereof.

"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 of America, as in effect from time to time; *provided, however*, that if the Lead Borrower notifies the Administrative Agent that the Lead Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders request an

amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith *provided*, *further* that GAAP as applied herein with respect to the Attributable Indebtedness and Capitalized Leases shall be GAAP as in effect on the Closing Date.

"Governmental Authority" means any nation or government, any state, provincial, municipal or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary 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 monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary 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 monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary 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 monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); or (c) to be an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). 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.

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

"Holdings" has the meaning given to such term in the preamble to this Agreement. The primary purpose of Holdings is to own one hundred percent (100%) of the Capital Stock of the Lead Borrower.

"Incremental Availability" means the additional amount available to be borrowed by the Borrowers based upon the difference between the FILO Borrowing Base and the Tranche A Borrowing Base, as reflected on the most recent Borrowing Base Certificate delivered by the Lead Borrower to the Administrative Agent pursuant to SECTION 5.01(e) hereof.

"Inadvertent Overadvances" means the funding of any Loan or the issuance, renewal or amendment of a Letter of Credit which did not result in an Overadvance or the Borrowers failing to be in compliance with SECTION 6.15 when made based upon the most recent Borrowing Base Certificate received by the Administrative Agent prior to such funding or issuance, renewal or amendment of a Letter of Credit but which has, on the relevant date of determination, become an Overadvance or caused the Borrowers to not be in compliance with SECTION 6.15 as the result of circumstances beyond the reasonable control of the Administrative Agent or the other Revolving Credit Parties (including as the result of the entry of an adverse order for use of cash collateral by the United States Bankruptcy Court), including (i) a decline in the value of the Collateral included in the Tranche A Borrowing Base or the FILO Borrowing Base, (ii) errors or fraud on a Borrowing Base Certificate, (iii) components of the Tranche A Borrowing Base or the FILO Borrowing Base on any date thereafter being deemed ineligible, (iv) the return of uncollected checks or other items of payment applied to the reduction of Loans or other similar involuntary or unintentional actions, (v) the imposition of any Reserve or a reduction in advance rates after the funding of any Loan or the issuance, renewal or amendment of a Letter of Credit or (vi) any other circumstance beyond the reasonable control of the Administrative Agent or the other Revolving Credit Parties which reduces availability or the amount that can be borrowed under this Agreement.

"Indebtedness" means as to any Person at a particular time, without duplication, all of the following:

(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 (after giving effect to any prior drawings which may have been reimbursed or reductions) of all Letters of Credit (including Standby Letters of Credit and Commercial Letters of Credit), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(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 (i) trade payables in the ordinary course of business, (ii) any earn-out obligation until such earn-out obligation becomes due and payable and only to the extent that the contingent consideration relating to such earn-out is not paid within 30 days after such date and (iii) liabilities accrued in the ordinary course);

(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 and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Capital Stock;

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

whether or not the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(i) to the extent not otherwise included above, 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, except to the extent such Person's liability for such Indebtedness is otherwise limited. 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. The amount of Indebtedness of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"Indemnified Taxes" means Taxes other than (a) Excluded Taxes and (b) Other Taxes.

"Indemnitee" has the meaning provided in SECTION 9.05.

"Information" has the meaning provided in SECTION 9.08.

"Initial Closing Date" means November 23, 2010.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, 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, all of the goodwill related thereto, and all registrations and applications for registrations thereof; works of authorship and other copyrighted works (including copyrights for computer programs), and all registrations and applications for registrations thereof; inventions (whether or not patentable) and all improvements thereto; patents and patent applications, together with all continuances, continuations, divisions, revisions, extensions, reissuances, and reexaminations thereof; industrial design applications and registered industrial designs; 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; all rights to sue and recover at law or in equity for any past, present or future infringement, dilution or misappropriation, or other violation thereof; and all common law and other rights throughout the world in and to all of the foregoing.

"Intercreditor Acknowledgment" means that certain Acknowledgment and Agreement, dated as of the Closing Date, by and among the Administrative Agreement, the Pre-Petition Agent, the DIP Term Loan Agent and the Pre-Petition Term Loan Agent and acknowledged by the Loan Parties.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of the Initial Closing Date by and among the Administrative Agent, the Collateral Agent and Credit Suisse AG, Cayman Islands Branch as administrative agent under the Term Loan Facility, and the Loan Parties, as supplemented and modified by the Intercreditor Acknowledgment and as may be further amended, amended and restated, supplemented or otherwise modified and in effect from time to time.

"Interest Payment Date" means (a) with respect to any Prime Rate Loan (including a Swingline Loan), the first Business Day of each calendar month, and (b) with respect to any LIBOR Loan, the last day of the Interest Period applicable to the Borrowing of which such LIBOR Loan is a part.

"Interest Payment Date for ABL Term Loans" means with respect to any ABL Term Loan, the last day of each calendar month.

"Interest Period" means, as to each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one (1) month thereafter; *provided* that:

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

(b) 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; and

(c) no Interest Period shall extend beyond the Maturity Date.

Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim Order" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standard prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Borrowers and Guarantors to execute and perform under the terms of this Agreement and the other Loan Documents.

"Inventory" has the meaning assigned to such term in the Security Agreement.

"Inventory Advance Rate" means (a) for the Tranche A Borrowing Base, ninety percent (90%), (b) for the FILO Borrowing Base, ninety-two and one-half percent (92.5%) and (c) for the ABL Term Borrowing Base, one hundred and five percent (105%).

"Inventory Reserves" means (a) such reserves as may be established from time to time by the Administrative Agent, in its Permitted Discretion, with respect to changes in the determination of the salability, at retail, of the Eligible Inventory or which reflect such other factors as negatively affect the market value of the Eligible Inventory, including, without limitation, reserves to reflect reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals and (b) Shrink Reserves.

"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 Capital Stock or debt or other securities or equity interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation

or interest in, another Person, including any partnership or joint venture interest in such other Person or (c) any other Acquisition. Notwithstanding the foregoing, neither the creation of accounts receivable, credit card receivables and debit card receivables due to a Loan Party nor the obtaining of trade credit and the deferred payment of other expenses, in each case, incurred in the ordinary course of business, nor the incurrence of contingent obligations or performance guaranties in the ordinary course of business in respect of obligations not constituting Indebtedness, shall be deemed "Investments." 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.

"Investor" means any one of the Sponsor and the Management Stockholders.

"IP Rights" shall have the meaning given such term in SECTION 3.15.

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

"Issuing Bank" means Bank of America and no more than one other Lender selected by the Lead Borrower which have agreed to become an Issuing Bank hereunder and have been approved by the Administrative Agent in its reasonable discretion. Any Issuing Bank may, in its reasonable discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Joinder Agreement" means an agreement, in substantially the form attached hereto as Exhibit F, 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 Facility Guarantor, as the Administrative Agent may determine.

"Landlord Lien State" means any state in which a landlord's claim for rent has priority by operation of Applicable Law over the lien of the Collateral Agent in any of the Collateral.

"Lead Borrower" has the meaning set forth in the preamble to this Agreement.

"Lease" means any agreement 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 Rejection Date" means the last day of the 120-day lease rejection/assumption period, as such period may be extended or shortened by the Bankruptcy Court.

"Lease Reserve" means a reserve, in an amount established by the Administrative Agent in its Permitted Discretion, in respect of (a) Inventory held at any leased Store locations intended to be closed with respect to which the Lease therefor is, or is intended to be, terminated by the applicable Loan Party (other than any Store location subject to the Specified Store Closing Sale unless such location is subject of a lease rejection motion or there has been filed a motion with the Bankruptcy Court to compel the assumption or rejection of the lease), or (b) Inventory at leased Store locations with respect to which the Lease has not been assumed commencing on the Lease Reserve Commencement Date, or with respect to any specific location, the date that is fifteen (15) weeks prior to the expiration of such period of time as shall have been consented to for rejection/assumption of such Lease by the landlord for such location and approved by the Bankruptcy Court, in each case in an amount determined by the Administrative Agent in its Permitted Discretion.

"Lease Reserve Commencement Date" means the date that is fifteen (15) weeks prior to the Lease Rejection Date.

"Lenders" means the Lenders having Commitments or holding ABL Term Loans from time to time or at any time, and each assignee that becomes a party to this Agreement as set forth in SECTION 9.07.

"Letter of Credit" means (a) each Existing Letter of Credit, (b) a letter of credit that (i) is issued by an Issuing Bank pursuant to this Agreement for the account of a Borrower or a Subsidiary, (ii) constitutes a Standby Letter of Credit or Commercial Letter of Credit (and for which such Issuing Bank is not otherwise prohibited from issuing such letter of credit due to the internal general policies of such Issuing Bank), and (iii) is in form reasonably satisfactory to such Issuing Bank and (c) a bankers' acceptance or time draft issued by the Issuing Bank to a beneficiary of any letter of credit described in foregoing clauses (a) or (b), in form reasonably satisfactory to such Issuing Bank.

"Letter of Credit Disbursement" means a payment made by any Issuing Bank to the beneficiary of, and pursuant to, a Letter of Credit.

"Letter of Credit Fees" means the fees payable in respect of Letters of Credit pursuant to SECTION 2.19.

"Letter of Credit Outstandings" means, at any time, the sum of (a) the Stated Amount of all Letters of Credit outstanding at such time, plus, without duplication, (b) all amounts theretofore drawn or paid under Letters of Credit for which the applicable Issuing Bank has not then been reimbursed.

"Letter of Credit Sublimit" means, at any time, $88,000,000, as such amount may be increased or reduced in accordance with the provisions of this Agreement. The Letter of Credit Sublimit is part of, and not in addition to, the Commitments.

"LIBOR Borrowing" means a Borrowing comprised of LIBOR Loans.

"LIBOR Loan" means any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of ARTICLE II.

"LIBOR Rate" means:

(a) for any Interest Period with respect to a LIBOR Loan, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, or

(b) for any interest calculation with respect to a Prime Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day; and

(c) if the LIBOR Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; *provided*, *further* that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Lien" means 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 of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing) whether or not filed, recorded or perfected under Applicable Law, and 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 Administrative Agent or the Collateral Agent of those rights and remedies accorded to the Administrative Agent or the Collateral Agent under and in accordance with the Loan Documents and Applicable Law as a creditor of the Loan Parties, including (after the occurrence and during the continuation of an Event of Default) the conduct by any or all of the Loan Parties, acting with the consent of the Administrative Agent, of any public, private or "Going-Out-Of-Business Sale" or other Disposition of Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loans" means all Revolving Credit Loans (including Tranche A Loans and FILO Loans), Swingline Loans and the ABL Term Loans.

"Loan Account" has the meaning provided in SECTION 2.20.

"Loan Documents" means this Agreement, the Notes, the Letters of Credit, the Fee Letter, the ABL Term Loan Fee Letter, all Approved Budgets, all Approved Budget Variance Reports, all Borrowing Base Certificates, all Compliance Certificates, the Blocked Account Agreements, the Credit Card Notifications, the Security Documents, the Facility Guarantees, the Intercreditor Agreement, the Intercreditor Acknowledgment and any other document, instrument or agreement now or hereafter delivered by a Loan Party to an Agent, the ABL Term Loan Agent or a Lender in connection with any transactions relating hereto and designated in writing by any Loan Party and any such other Person as a "Loan Document," each as amended and in effect from time to time.

"Loan Party" or "Loan Parties" means the Borrowers and the Facility Guarantors.

"Management Stockholders" means the members of management of Holdings, the Lead Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

"Margin Stock" has the meaning assigned to such term in Regulation U.

"Master Agreement" has the meaning specified in the definition of "Swap Contract."

"Material Adverse Effect" means any event, facts, development, circumstances, or effect that, individually or in the aggregate with all other facts, events, circumstances, developments, and effects has a material adverse effect on (a) the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Loan Parties taken as a whole (other than by virtue of the commencement of the Chapter 11 Cases and the events and conditions reasonable related thereto), or (b)

the validity or enforceability of this Agreement or the other Loan Documents, taken as a whole, the rights or remedies of the Secured Parties hereunder or thereunder, taken as a whole, or the ability of the Loan Parties, taken as a whole, to fully and timely perform their payment obligations under this Agreement or any other Loan Document.

"Material DDA" has the meaning given to such term in SECTION 2.18(c)(ii).

"Material Indebtedness" means Indebtedness (other than the Obligations) of the Loan Parties, individually or in the aggregate, having an aggregate principal amount exceeding $2,000,000. In any event, all Indebtedness under the Senior Notes, the DIP Term Loan Facility and the Prepetition Term Loan Facility shall be deemed Material Indebtedness, regardless of the outstanding balance thereunder from time to time.

"Maturity Date" means December [__], 2017; *provided* that, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

"Maximum Rate" has the meaning provided in SECTION 9.10.

"Minority Lenders" has the meaning provided in SECTION 9.01.

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

"Mortgages" means the mortgages, charge/mortgage of land, collateral mortgages, immovable hypothecs, and deeds of trust and any other security documents granting a Lien on Real Estate between the Loan Party owning the Real Estate encumbered thereby and the Collateral Agent for its own benefit and the benefit of the other Secured Parties.

"Mortgaged Property" any Real Estate subject to a Mortgage.

"MLPFS" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, and its Subsidiaries and Affiliates.

"Multiemployer Plan" means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA and subject to the provisions of Title IV of ERISA, to which any Loan Party 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.

"Net Income" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Restricted Payments.

"Net Proceeds" means,

(a) with respect to the Disposition of any asset by the Lead Borrower or any Subsidiary or any Casualty Event, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (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 and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of the Lead Borrower or any Subsidiary) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition or Casualty Event, but only to the extent that the Lien securing such Indebtedness is senior to the Lien of the

Collateral Agent and that is required to be repaid (and is timely repaid) in connection with such Disposition or Casualty Event (other than Indebtedness under the Loan Documents), (B) the out-of-pocket expenses (including attorneys' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other expenses and brokerage, consultant and other fees) actually incurred by the Lead Borrower or such Subsidiary in connection with such Disposition or Casualty Event, (C) taxes paid or reasonably estimated to be actually payable in connection therewith (*provided* that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid), *provided* that the Administrative Agent may, in its commercially reasonable discretion, establish an Availability Reserve in the amount of any taxes so deducted in calculating Net Proceeds, and (D) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Lead Borrower or any Subsidiary after such sale or other Disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and it being understood that "Net Proceeds" shall include any cash or Cash Equivalents (i) received upon the Disposition of any non-cash consideration received by the Lead Borrower or any Subsidiary in any such Disposition and (ii) upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (D) of the preceding sentence or, if such liabilities have not been satisfied in cash and such reserve is not reversed within three hundred and sixty-five (365) days after such Disposition or Casualty Event, the amount of such reserve; and

(b) with respect to the incurrence or issuance of any Capital Stock (other than the Rights Offering) or Indebtedness by the Lead Borrower or any Subsidiary, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance over (ii) the sum of (A) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other expenses, incurred by the Lead Borrower or such Subsidiary in connection with such incurrence or issuance and (B) taxes paid or reasonably estimated to be actually payable in connection therewith, *provided* that, if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

"New Lending Office" shall have the meaning provided in SECTION 2.23(e)(i).

"NFIP" shall have the meaning given to such term in the definition of "Evidence of Flood Insurance".

"Noncompliance Notice" shall have the meaning provided in SECTION 2.06(b).

"Notes" means, collectively, (i) Revolving Credit Notes, (ii) the Swingline Note, and (iii) ABL Term Notes, each as may be amended, supplemented or modified from time to time.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means, collectively, the Revolving Obligations and the ABL Term Obligations, provided that the Obligations shall exclude any Excluded Swap Obligations.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Order" means, as applicable, and as the context may require, the Interim Order or the Final Order, whichever is then applicable.

"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 unlimited liability company, the memorandum of association, and (d) 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.

"Other Liabilities" means outstanding liabilities with respect to or arising from (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (b) any transaction which arises out of any Bank Product entered into with any Loan Party or any of their Subsidiaries, as each may be amended from time to time.

"Other Taxes" means any and all current or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies in the nature of a Tax arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, but not including, for the avoidance of doubt, any Excluded Taxes.

"Overadvance" means a Revolving Credit Loan, advance, or providing of credit support (such as the issuance of a Letter of Credit) to the Borrowers to the extent that, immediately after the making of such loan or advance or the providing of such credit support, Availability calculated pursuant to clause (x) of the definition thereof is less than zero.

"Participant" shall have the meaning provided in SECTION 9.07(d).

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

"Permitted Discretion" means a determination made by the Administrative Agent or the Collateral Agent (as applicable) in good faith in the exercise of its reasonable (from the perspective of an asset-based lender) business judgment.

"Permitted Disposition" shall have the meaning set forth in SECTION 6.05.

"Permitted Encumbrances" has the meaning set forth in SECTION 6.01.

"Permitted Equity Issuance" means any sale or issuance of any Capital Stock of Lead Borrower to the extent permitted hereunder (including any capital contribution).

"Permitted Holder" means any of the Investors; *provided* that if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding voting stock of Holdings in the aggregate at any time, for purposes of any determination of Permitted Holders (including pursuant to the definition of "Change of Control") at such time, the Management Stockholders shall be deemed to hold ten percent (10%) of the outstanding voting stock of Holdings at such time.

"Permitted Indebtedness" has the meaning set forth in SECTION 6.03.

"Permitted Investments" has the meaning set forth in SECTION 6.02.

"Permitted Overadvance" means an extension of credit hereunder (whether in the form of a Revolving Credit Loan, the issuance of a Letter of Credit, or an advance made by the Administrative Agent), in its reasonable discretion, which:

(a) is made to maintain, protect or preserve the Collateral and/or the Revolving Secured Parties' rights under the Loan Documents or which is otherwise for the benefit of the Revolving Secured Parties; or

(b) is made to enhance the likelihood of, or maximize the amount of, repayment of any Revolving Obligation; or

(c) is made to pay any other amount chargeable to any Borrower hereunder;

(d) after giving effect to such extension of credit, either (i) an Overadvance would exist or (ii) the Borrowers would not be in compliance with SECTION 6.15; and

(e) together with all other Permitted Overadvances then outstanding, shall not (i) exceed five percent (5%) of the then FILO Borrowing Base in the aggregate outstanding at any time or (ii) unless a Liquidation is taking place, remain outstanding for more than forty-five (45) consecutive Business Days;

provided, however, that the foregoing shall not (i) modify or abrogate any of the provisions of (A) SECTION 2.13(e) regarding any Revolving Credit Lender's obligations with respect to Letter of Credit Disbursements, or (B) SECTION 2.06 and SECTION 2.22 regarding any Revolving Credit Lender's obligations with respect to participations in Swingline Loans and settlements thereof, or (ii) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for "inadvertent Overadvances" (i.e., where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)), and *further provided* that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Revolving Credit Extensions would exceed the aggregate of the Commitments (as in effect prior to any termination of the Commitments pursuant to SECTION 7.01 hereof).

"Permitted Refinancing" means, with respect to any Loan Party, any refinancing, refunding, renewal or extension of all of the Indebtedness under the DIP Term Loan Agreement (the "Specified Indebtedness"); *provided* that (a) the principal amount thereof does not exceed the principal amount of the Specified Indebtedness except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred (including upfront fees and original issue discount), in connection with such refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) such refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Specified Indebtedness, (c) at the time thereof, no Event of Default shall have occurred and be continuing, (d) the collateral granted pursuant to any such refinancing Indebtedness is the same or less than the collateral under the Specified Indebtedness, (e) the terms and conditions (including, if applicable, as to collateral) of any such refinanced, refunded, renewed or extended Indebtedness, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms and conditions of the Specified Indebtedness and (f) such Indebtedness shall be subject to the Intercreditor Agreement and the holders of such refinancing

Indebtedness shall enter into a joinder to Intercreditor Agreement (in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent).

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

"Petition Date" has the meaning set forth in the Recitals hereto.

"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 any Loan Party or any ERISA Affiliate or to which any Loan Party 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 (5) plan years.

"Plan of Reorganization" means a plan of reorganization in form and substance satisfactory to the Administrative Agent in all respects and consented to by the Administrative Agent and the ABL Term Loan Agent, confirmed by an order (in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent) of the Bankruptcy Court in the Chapter 11 Cases and containing (a) a provision for termination of the Commitments and repayment in full in cash of all of the Obligations and the Pre-Petition Obligations on or before the effective date of such plan, (b) a release in favor of the Agents, the ABL Term Loan Agent and the Lenders and their respective Related Parties, (c) provisions with respect to the settlement or discharge of all claims and other debts and liabilities, and such Plan of Reorganization shall be in full force and effect and shall not have been modified, altered, amended or otherwise changed or supplemented without the prior written consent of the Administrative Agent and the ABL Term Loan Agent and (d) such other terms as the Administrative Agent and the ABL Term Loan Agent may reasonably require.

"Platform" has the meaning given to such term in the last paragraph of SECTION 5.02.

"Post-Petition" means the time period commencing immediately upon the filing of the applicable Chapter 11 Cases.

"Pre-Petition" means the time period ending immediately prior to the filing of the applicable Chapter 11 Cases.

"Pre-Petition ABL Term Loan" means the "ABL Term Loans" as defined in the Pre-Petition Credit Agreement.

"Pre-Petition ABL Term Loan Prepayment Fee" means the "ABL Term Loan Prepayment Premium" as defined in the Pre-Petition Credit Agreement.

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

"Pre-Petition Closing Date" means March 30, 2012.

"Pre-Petition Credit Agreement" has the meaning set forth in the Recitals hereto.

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

"Pre-Petition FILO Credit Extensions" means Pre-Petition Obligations in respect of the principal of "FILO Credit Extensions" under, and as defined in, the Pre-Petition Credit Agreement.

"Pre-Petition Indemnity Account" means an amount equal to $500,000 for the purpose of securing contingent indemnification obligations and other contingent claims arising under the Pre-Petition Credit Agreement, the other Pre-Petition Loan Documents or otherwise in respect of the Pre-Petition Obligations in the event the Pre-Petition Agent, Pre-Petition ABL Term Loan Agent and the Pre-Petition Lenders have not received releases and discharges of claims and liabilities, in form and substance reasonably satisfactory to the Pre-Petition Agent, Pre-Petition ABL Term Loan Agent and the Pre-Petition Lenders, at the time of payment in full in cash of all Pre-Petition Obligations other than contingent obligations relating thereto.

"Pre-Petition Lenders" means the "Lenders" from time to time party to the Pre-Petition Credit Agreement.

"Pre-Petition Letter of Credit Outstandings" means Pre-Petition Obligations in respect of "Letter of Credit Outstandings" under, and as defined in, the Pre-Petition Credit Agreement and all interest, expenses, fees and other amounts payable in respect thereof under the Pre-Petition Credit Agreement.

"Pre-Petition Loan Documents" means the "Loan Documents" as set forth in the Pre-Petition Credit Agreement.

"Pre-Petition Obligations" means all of the "Obligations" as set forth in the Pre-Petition Credit Agreement.

"Pre-Petition Revolving Credit Extensions" means Pre-Petition Obligations in respect of the principal of "Revolving Credit Extensions" under, and as defined in, the Pre-Petition Credit Agreement and interest, expenses, fees and other sums payable in respect thereof under the Pre-Petition Loan Documents.

"Pre-Petition Security Documents" means the "Security Documents" as set forth in the Pre-Petition Credit Agreement.

"Pre-Petition Term Loan Agent" means Credit Suisse AG, Cayman Islands Branch as administrative agent under the Term Loan Facility, and its successors and assigns in such capacity.

"Pre-Petition Term Loan Agreement" means that certain the Amended and Restated Credit Agreement dated as of February 11, 2011, by and among the Lead Borrower, Holdings, the other guarantors from time to time party thereto, the lenders party thereto and Credit Suisse AG, Cayman Islands Branch, as sole lead arranger, sole book runner, administrative agent and collateral agent, as amended, restated, supplemented, waived or otherwise modified prior to the Closing Date in accordance with the terms of the Pre-Petition Loan Agreement and the Intercreditor Agreement.

"Pre-Petition Term Loan Facility" means the term credit facility provided to the Lead Borrower by the Pre-Petition Term Loan Lenders established pursuant to the Pre-Petition Term Loan Agreement and the Intercreditor Agreement.

"Pre-Petition Term Loan Lenders" means the lenders under the Pre-Petition Term Loan Facility.

"Pre-Petition Tranche A Credit Extensions" means Pre-Petition Obligations in respect of the principal of "Tranche A Credit Extensions" under, and as defined in, the Pre-Petition Credit Agreement.

"Prime Rate" means, as to any applicable Borrowing existing on or after the Closing Date for any day, the highest of: (a) the variable annual rate of interest then most recently announced by Bank of America, N.A. at its head office in Charlotte, North Carolina as its "prime rate"; (b) the Federal Funds Effective Rate in effect on such day plus one-half of one percent (0.50%) per annum; or (c) the Adjusted LIBOR Rate (calculated utilizing the LIBOR Rate for a one-month Interest Period as determined on such day) plus one percent (1.00%) per annum. The "prime rate" is a reference rate and does not necessarily represent the lowest or best rate being charged by Bank of America, N.A. to any customer. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the LIBOR Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations thereof in accordance with the terms hereof, the Prime Rate shall be determined without regard to clauses (b) or (c), as applicable, of the first sentence of this definition, until the circumstances giving rise to such inability no longer exist. Any change in the Prime Rate due to a change in Bank of America's "prime rate", the Federal Funds Effective Rate or the Adjusted LIBOR Rate shall be effective on the effective date of such change in Bank of America's Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate, respectively.

"Prime Rate Loan" means any Loan bearing interest at a rate determined by reference to the Prime Rate in accordance with the provisions of ARTICLE II.

"Prior Week" means, as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

"Priority Carve-Out" means an amount equal to the sum of: the ABL Professional Fee Carve Out Cap (as defined in the applicable Order), plus the Post-Carve Out Trigger Notice Cap (as defined in the applicable Order), plus the amounts set forth in clauses (a)(i) and (a)(ii) of paragraph 40 (*Carve-Out*) of the Interim Order (or the corresponding paragraph of the Final Order, when applicable).

"Pro Rata Percentage" means, with respect to each Lender, at any time the percentage (carried out to the ninth decimal place) of the sum of the Commitments and the ABL Term Loan represented by such Lender's Commitments and ABL Term Loan at such time (or if the Commitments have been terminated, the percentage of Credit Extensions).

"Purchase Option Event" has the meaning provided in SECTION 9.01.

"Public Lender" has the meaning given to such term in the last paragraph of SECTION 5.02.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Cash" means unrestricted cash or Cash Equivalents of the Loan Parties that are subject to the valid, enforceable and first priority perfected security interest of the Collateral Agent in a concentration account maintained by the Administrative Agent at Bank of America as to which access is restricted on terms and conditions reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent.

"Qualified Cash Advance Rate" means one hundred percent (100%).

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another person to qualify as an "eligible contract participant" at such time under §1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

"Register" has the meaning provided in SECTION 9.07(c).

"Regulation U" means Regulation U of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the FRB as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective partners, directors, officers, employees, agents, trustees and advisors of such Person and such Person's Affiliates, including, with respect to the Administrative Agent and the Collateral Agent, the Agent's Advisors.

"Release" has the meaning provided in Section 101(22) of CERCLA.

"Remedies Notice Period" has the meaning specified in the Interim Order (or the Final Order, when applicable).

"Reports" has the meaning provided in SECTION 8.14.

"Required Lenders" means, at any time, Lenders (other than Delinquent Lenders) having Commitments and holding ABL Term Loans aggregating more than fifty percent (50%) of the sum of the Commitments and the principal amount of the ABL Term Loans outstanding, or if the Commitments have been terminated, Lenders (other than Delinquent Lenders) whose percentage of the outstanding Credit Extensions (calculated assuming settlement and repayment of all Swingline Loans by the Revolving Credit Lenders) aggregate more than fifty percent (50%) of all such Credit Extensions.

"Required Revolving Lenders" means, at any time, Revolving Credit Lenders (other than Delinquent Lenders) having Commitments aggregating more than fifty percent (50%) of the sum of the Commitments, or if the Commitments have been terminated, Revolving Credit Lenders (other than Delinquent Lenders) whose percentage of the outstanding Revolving Credit Extensions (calculated assuming settlement and repayment of all Swingline Loans by the Revolving Credit Lenders) aggregate more than fifty percent (50%) of all such Revolving Credit Extensions.

"Required Term Lenders" means, at any time, ABL Term Lenders holding ABL Term Loans aggregating more than fifty percent (50%) of the sum of the principal balance of all ABL Term Loans outstanding.

"Reserves" means, without duplication, any Inventory Reserves, any Availability Reserves, any Cash Management Reserves, any Bank Product Reserves, any reserves for Customer Credit Liabilities, the Lease Reserve, reserves in respect of the Carve-Out and (without duplication) the Priority Carve-Out and any other reserves implemented from time to time by the Administrative Agent in its Permitted Discretion.

"Responsible Officer" means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, director of treasury or other similar officer of a Loan Party and, as

to any document delivered on the Closing Date, any secretary or assistant secretary of a Loan Party. 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 of the Lead Borrower or any Subsidiary, 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 on account of any return of capital to the Lead Borrower's or any Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

"Restructuring Advisor" means a financial advisor reasonably acceptable to the Administrative Agent. For the avoidance of doubt, AlixPartners, LLC, a California limited liability company, shall be a reasonably acceptable Restructuring Advisor.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, dated as of June [___], 2017, by and among the Loan Parties, certain Pre-Petition Term Loan Lenders (as a "[Consenting Creditor]" thereunder) and the other parties thereto, which is upon terms and conditions acceptable to the Administrative Agent and the ABL Term Loan Agent, as amended, modified or supplemented with the prior written consent of the Administrative Agent and the ABL Term Loan Agent.

"Revolving Credit Ceiling" means the amount of the Commitments from time to time in effect. On the Closing Date, the Revolving Credit Ceiling is $225,000,000, as such amount may be increased or reduced in accordance with the terms of this Agreement.

"Revolving Credit Extensions" as of any day, shall be equal to the sum of (a) the principal balance of all Revolving Credit Loans (including Swingline Loans) then outstanding, and (b) the then amount of the Letter of Credit Outstandings.

"Revolving Credit Lender" means, at any time, any Lender that has a Commitment at such time, or, if the Commitments have terminated, Revolving Credit Extensions.

"Revolving Credit Loans" means all loans at any time made by any Revolving Credit Lender (including, without limitation, Tranche A Loans and FILO Loans) pursuant to ARTICLE II and, to the extent applicable shall include Swingline Loans made by the Swingline Lender pursuant to SECTION 2.06.

"Revolving Credit Notes" means the promissory notes of the Borrowers substantially in the form of Exhibit D-1, each payable to a Revolving Credit Lender, evidencing the Revolving Credit Loans made to the Borrowers.

"Revolving Credit Party" means (a) the Revolving Credit Lenders, (b) the Administrative Agent and the Collateral Agent and their respective Affiliates and branches, (c) each Issuing Bank, (d) the Arranger and its Affiliates and branches and (e) the successors and permitted assigns of each of the foregoing.

"Revolving Default Rate" has the meaning provided in SECTION 2.12(a).

"Revolving Obligations" means (x) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries arising under any Loan Document (or otherwise) with respect to any Revolving Credit Loan, Swingline Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under the Bankruptcy Code or any other federal, state, or provincial bankruptcy, insolvency, receivership or similar law, naming such Person as the debtor in such proceeding, regardless of whether such charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts are allowed claims in such proceeding, and (y) obligations of any Loan Party and its Subsidiaries arising with respect to any Other Liabilities, *provided* that the Revolving Obligations shall exclude any Excluded Swap Obligations. Without limiting the generality of the foregoing, the Revolving Obligations of the Loan Parties under the Loan Documents (and of their Subsidiaries to the extent they have obligations to the Revolving Credit Parties under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, Letter of Credit commissions, reimbursement obligations, charges, expenses, fees, attorneys' fees, indemnities and other amounts payable by any Loan Party or its Subsidiaries under any Loan Document to any Revolving Credit Party, including charges, interest, expenses, fees, attorneys' fees, indemnities and other amounts that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under the Bankruptcy Code or any other federal, state, or provincial bankruptcy, insolvency, receivership or similar law, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, and (b) the obligation of any Loan Party or any of its Subsidiaries to reimburse any amount in respect of any of the foregoing that any Revolving Credit Party, in its sole discretion, may elect to pay or advance on behalf of such Loan Party or such Subsidiary in accordance with, and to the extent permitted, by the Loan Documents, *provided* that the Revolving Obligations shall exclude any Excluded Swap Obligations.

"Revolving Purchase Date" has the meaning provided in SECTION 9.01.

"Revolving Purchase Notice" has the meaning provided in SECTION 9.01.

"Revolving Purchasing Creditors" has the meaning provided in SECTION 9.01.

"Revolving Secured Party" means (a) each Revolving Credit Party, (b) any Person providing Cash Management Services or entering into or furnishing any Bank Products to or with any Loan Party or any of their Subsidiaries, (c) the beneficiaries of each indemnification obligation in respect of the Revolving Credit Facility undertaken by any Loan Party under any Loan Document, and (d) the successors and, subject to any limitations contained in this Agreement, assigns of each of the foregoing.

"Rights Offering" means a new money rights offerings under an Acceptable Plan or otherwise consented to by the Administrative Agent consisting of (i) a rights offering in reliance upon the exemption from registration under the Securities Act provided in section 1145 of the Bankruptcy Code and (ii) a rights offering in reliance upon the exemption from registration provided in section 4(a)(2) of the Securities Act.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002, as amended.

"Sanction(s)" means any sanction administered or enforced by the United States Department of State or OFAC.

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

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

"Secured Party" means each ABL Term Secured Party and each Revolving Secured Party. Where reference is made to the applicable Secured Parties, such reference shall mean, as the context requires, the ABL Term Secured Parties or the Revolving Secured Parties.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, among the Loan Parties and the Collateral Agent for its benefit and for the benefit of the other Secured Parties, as amended and in effect from time to time.

"Security Documents" means the Orders, the Security Agreement, the Mortgages, the Facility Guarantee and each other security agreement, pledge agreement or other instrument or document executed and delivered pursuant to this Agreement or any other Loan Document that creates a Lien in favor of the Collateral Agent or the Administrative Agent to secure any of the Obligations.

"Senior Note Documents" means the indenture under which the Senior Notes are issued and all other instruments, agreements and other documents evidencing or governing the Senior Notes or providing for any Guarantee or other right in respect thereof.

"Senior Notes" means the 9.125% Senior Notes due 2018 issued by the Lead Borrower.

"Settlement Date" has the meaning provided in SECTION 2.22(b).

"Shares" means the shares of common stock, $0.001 par value per share, of the Company.

"Shrink Reserves" means an amount reasonably estimated by the Administrative Agent in its Permitted Discretion to be equal to that amount that is required in order that the shrink reflected in current books and records of the Loan Parties' would be reasonably equivalent to the shrink calculated as part of the Loan Parties' most recent physical Inventory.

"Specified Event" means the occurrence of any of the following events:

(a) Any sale, transfer or other Disposition (including pursuant to a sale and leaseback transaction) of any Collateral (other than the transfer of any Collateral among Stores and other locations of the Loan Parties) 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 Collateral Agent; or

(b) Any Casualty Event 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 Collateral Agent.

"Specified Liquidation Agent" means Great American/Tiger, together with their Affiliates acting with respect to the Specified Store Closing Sales described in the definition thereof, or any successors to such Person acceptable to the Administrative Agent.

"Specified Liquidation Agreement" means that certain liquidation agreement by and among the Lead Borrower and the Specified Liquidation Agent, which, among other things provides for the Specified Store Closing Sales referenced in clause (i) of such definition on terms reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, and which agreement, together with (x) all

material documents relating thereto and (y) all exhibits, annex and schedules thereto, shall be approved by the Administrative Agent and the ABL Term Loan Agent prior to execution, as further amended, supplemented and modified with the consent of the consent of the Administrative Agent and the ABL Term Loan Agent.

"Specified Loan Party" means any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to SECTION 9.26).

"Specified Release Paragraph" has the meaning provided in SECTION 9.01.

"Specified Sale Process Default" means the occurrence of an Event of Default specified in (a) SECTION 7.01(a) (Non-Payment), (b) SECTION 7.01(d)(ii) (Incorrect Information), and (c) SECTION 7.01(b) with respect to (i) SECTIONS 5.01(d) and 5.01(e) (Borrowing Base Certificate and Related Information), (ii) SECTION 5.18(b) (Budget Covenants) and 5.18(c) (Budget Reporting), (iii) SECTION 5.19 (Required Milestones) and (iv) SECTION 6.15 (Availability Covenants) (solely in the case of clauses (b) and (c), which has occurred and is continuing for two (2) Business Days or more).

"Specified Store Closing Sales" means (i) the closure of up to 450 (with a minimum of 375) of the Loan Party's Store locations identified in a written notice from the Lead Borrower to the Administrative Agent and the ABL Term Loan Agent (as such notice may be updated from time to time with the consent of the Administrative Agent and the ABL Term Loan Agent), commencing on or about July 1, 2017 referenced in the Specified Liquidation Agreement conducted by the Specified Liquidation Agent pursuant to the Specified Liquidation Agreement and (ii) the closure of any additional stores approved in writing by the Administrative Agent and the ABL Term Loan Agent in their reasonable discretion (subject to the performance of a desktop appraisal in form and substance reasonably acceptable to Administrative Agent), and the liquidation of assets related thereto by a liquidator approved by the Administrative Agent and the ABL Term Loan Agent (it being agreed that the Specified Liquidation Agent shall be satisfactory) pursuant to bidding procedures, a liquidation agreement approved by the Administrative Agent and the ABL Term Loan Agent and all other relevant documents executed in connection therewith, each, as applicable, to be in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent.

"Sponsor" means any of Bain Capital Partners, LLC and its Affiliates, and any fund or partnership managed or advised by any such Person, but not including, however, any operating portfolio companies of any of the foregoing.

"Sponsor Group" means the Sponsor and the Sponsor Related Parties.

"Sponsor Management Agreement" means that certain Management Agreement, dated as of October 23, 2010, by and among Giraffe Holding, Inc., Merger Sub and Bain Capital Partners, LLC, as in effect on the Initial Closing Date and as the same may be amended, supplemented or otherwise modified in a manner not prohibited hereunder.

"Sponsor Related Parties" means, with respect to any Person, (a) any Controlling stockholder or partner (including, in the case of an individual Person who possesses Control, the spouse or immediate family member of such Person; provided that such Person retains Control of the voting rights, by stockholders agreement, trust agreement or otherwise of the Capital Stock owned by such spouse or immediate family member) or 80% (or more) owned Subsidiary, or (b) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a 51% or more Controlling interest of which consist of such Person and/or such Persons referred to in the immediately preceding clause (a), or (c) the limited partners of the Sponsors; provided further that

"Sponsor Related Parties" does not include Holdings nor any Person in which Holdings holds a Controlling interest.

"Standby Letter of Credit" means any Letter of Credit other than a Commercial Letter of Credit.

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

"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 Administrative Agent is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the FRB). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR 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 includes any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party or a Subsidiary.

"Store Liquidation" means a liquidation of the entire chain of stores of the Loan Parties and all of the assets relating thereto under Section 363 of the Bankruptcy Code. The Store Liquidation shall be conducted pursuant to bidding procedures, sales procedures, approval orders, purchase agreements, agency documents or other agreements, documents or instruments, as applicable, in form and substance and on terms satisfactory to the Administrative Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company, unlimited liability company, or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) 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 Holdings.

"Subsidiary Facility Guarantors" means any Person (other than a Borrower) executing a Facility Guarantee which is a Subsidiary of the Lead Borrower, but in all events shall not include (x) the Excluded Subsidiaries and (y) Holdings.

"Supermajority Consent of the FILO Lenders" means the consent of FILO Lenders (other than Delinquent Lenders) holding at least sixty-six and two-thirds percent (66.67%) of the FILO Commitments (other than FILO Commitments held by a Delinquent Lender), or if the FILO Commitments have been terminated, the consent of FILO Lenders (other than Delinquent Lenders) holding at least sixty-six and two-thirds percent (66.67%) of the outstanding FILO Loans (to the extent applicable, calculated assuming settlement and repayment of all Swingline Loans by the FILO Lenders).

"Supermajority Consent of the Revolving Lenders" means the consent of Revolving Credit Lenders (other than Delinquent Lenders) holding at least sixty-six and two-thirds percent (66.67%) of the

Commitments (other than Commitments held by a Delinquent Lender), or if the Commitments have been terminated, the consent of Revolving Credit Lenders (other than Delinquent Lenders) holding at least sixty-six and two-thirds percent (66.67%) of the outstanding Revolving Credit Extensions (calculated assuming settlement and repayment of all Swingline Loans by the Revolving Credit Lenders).

"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 Contract Secured Parties" means, with respect to any Swap Contract, collectively, (a) the Administrative Agent or an Affiliate of the Administrative Agent, (b) any Revolving Credit Lender or any Affiliate of a Revolving Credit Lender, (c) any Person who (i) was a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender at the time such Swap Contract was entered into and who is no longer a Revolving Credit Lender or an Affiliate of a Revolving Credit Lender, and (ii) is, and at all times remains, in compliance with the provisions of SECTION 8.14(a) and (iii) agrees in writing that the Administrative Agent, Collateral Agent and the other Revolving Secured Parties shall have no duty to such Person (other than the payment of any amounts to which such Person may be entitled under SECTION 2.27) and acknowledges that the Administrative Agent, Collateral Agent and the other Revolving Secured Parties may deal with the Loan Parties and the Collateral as they deem appropriate (including the release of any Loan Party or all or any portion of the Collateral) without notice or consent from such Person, whether or not such action impairs the ability of such Person to be repaid its Other Liabilities) and agrees to be bound by SECTION 8.18.

"Swap Obligations" means with respect to any Loan Party, 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).

"Swingline Lender" means Bank of America, N.A., in its capacity as lender of Swingline Loans hereunder to the Borrowers hereunder.

"Swingline Loan" means a Revolving Credit Loan made by the Swingline Lender to the Borrowers pursuant to SECTION 2.06.

"Swingline Loan Ceiling" means $30,000,000, as such amount may be reduced in accordance with the provisions of this Agreement.

"Swingline Note" means the promissory note of the Borrowers substantially in the form of Exhibit E, payable to the Swingline Lender, evidencing the Swingline Loans made by the Swingline Lender to the Borrowers.

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

"Taxes" means any and all current or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges) or withholdings in the nature of taxes imposed by any Governmental Authority, and any and all interest and penalties related thereto.

"Term Loan Priority Account" has the meaning set forth in the Intercreditor Agreement.

"Term Priority Collateral" has the meaning set forth in the Intercreditor Agreement.

"Termination Date" means, the earlier to occur of (a) the Maturity Date, (b) the date on which the maturity of the Obligations (other than the Other Liabilities) is accelerated (or deemed accelerated) and the Commitments are irrevocably terminated (or deemed terminated) in accordance with ARTICLE VII, whether by acceleration or otherwise, (c) the date of termination of the Commitments pursuant to SECTION 2.15, (d) the effective date of a Plan of Reorganization for the Debtors, (v) the date of consummation of a sale of all or substantially all of the Debtors' working capital assets under Section 363 of the Bankruptcy Code, (e) the first Business Day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and become effective prior thereto (unless otherwise consented to in writing by the Administrative Agent and the ABL Term Loan Agent), (f) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Administrative Agent, the Required Revolving Lenders and the ABL Term Loan Agent, and (g) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the Administrative Agent, the Required Revolving Lenders and the ABL Term Loan Agent.

"Trade Receivables Advance Rate" means (a) for the Tranche A Borrowing Base and the FILO Borrowing Base, eighty-five percent (85%) and (b) for the ABL Term Borrowing Base, one hundred and five percent (105%).

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

(a) the face amount of Eligible Credit Card Receivables of the Loan Parties multiplied by the Credit Card Advance Rate for the Tranche A Borrowing Base;

plus

(b) the face amount of Eligible Trade Receivables of the Loan Parties multiplied by the Trade Receivables Advance Rate for the Tranche A Borrowing Base;

plus

(c) the Cost of Eligible Inventory of the Loan Parties (other than Eligible In-Transit Inventory), net of Inventory Reserves, multiplied by the Inventory Advance Rate for the Tranche A Borrowing Base multiplied by the Appraised Value of Eligible Inventory of the Loan Parties;

plus

(d) the Cost of Eligible In-Transit Inventory of the Loan Parties, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the Tranche A Borrowing Base multiplied by the Appraised Value of Eligible In-Transit Inventory of the Loan Parties;

plus

(e) with respect to any Eligible Letter of Credit Inventory, the lesser of (x) the Cost of such Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the Tranche A Borrowing Base for such Inventory when completed, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory or (y) the Stated Amount of the Letter of Credit relating to such Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Inventory Advance Rate for the Tranche A Borrowing Base, multiplied by the Appraised Value of such Eligible Letter of Credit Inventory;

minus

(f) the then amount of all Availability Reserves and any other Reserves taken in accordance with SECTION 2.03.

"Trademark" has the meaning set forth in the Security Agreement.

"Tranche A Commitment" means, with respect to each Tranche A Lender, the commitment of such Tranche A Lender hereunder set forth as its Tranche A Commitment opposite its name on Schedule 1.01 hereto (as it may be amended from time to time) or as may subsequently be set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement. The aggregate Tranche A Commitments on the Closing Date are $219,000,000.

"Tranche A Commitment Percentage" means, with respect to each Tranche A Lender, that percentage of the Tranche A Commitments of all Lenders hereunder to make Tranche A Loans to the Borrowers in the amount set forth opposite its name on Schedule 1.01 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 SECTION 2.15, or if the Tranche A Commitments have been terminated, such percentage as calculated immediately prior to such termination.

"Tranche A Credit Extensions" means Tranche A Loans and Letters of Credit issued hereunder.

"Tranche A Lender" means each Lender which holds a Tranche A Commitment and any other Person who becomes a "Tranche A Lender" in accordance with the provisions of this Agreement.

"Tranche A Loans" means collectively, the Revolving Credit Loans (including Swingline Loans) made by the Lenders pursuant to ARTICLE II, other than FILO Loans.

"Transaction" means any or all of the Plan of Reorganization or the Store Liquidation; *provided* that any such Transaction shall be conducted pursuant to bidding procedures, sales procedures, approval orders, purchase agreements, agency documents or other agreements, documents or instruments, as

applicable, in form and substance and on terms satisfactory to the Administrative Agent and the ABL Term Loan Agent.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Prime Rate, as applicable.

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

"Unaudited Financial Statements" means the unaudited consolidated balance sheets and the related statements of income, stockholders' equity and cash flows of the Lead Borrower and its Subsidiaries for the Fiscal Quarter ending January 28, 2017.

"Uncontrolled Cash" means amounts on deposit in the Loan Parties' deposit accounts at Bank of America, N.A. ending in -12981 (or any replacement deposit account therefor) solely in connection with gift card obligations and benefit plans which are funded by the Loan Parties (and into which the Loan Parties have deposited no other amounts) in an aggregate amount not to exceed $1,000,000.

"Unfunded Pension Liability" means, at a point in time, the excess of a Plan's benefit liabilities, over the current value of that Plan's assets, determined in accordance with the assumptions used for funding the Plan pursuant to applicable laws for the applicable plan year and includes any unfunded liability or solvency deficiency as determined for the purposes of the PBA.

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

"Unused Commitment" means, on any day, (a) as to the Tranche A Lenders, (i) the then aggregate Tranche A Commitments, minus (ii) the sum of (A) the principal amount of Tranche A Loans (other than Swingline Loans) of the Borrowers then outstanding, and (B) the then Letter of Credit Outstandings; and (b) as to the FILO Lenders, (i) the then aggregate FILO Commitments, minus (ii) the principal amount of FILO Loans of the Borrowers then outstanding.

"Unused Fee" has the meaning provided in SECTION 2.19(b).

"U.S. Trustee" means the United States Trustee applicable in the Chapter 11 Cases.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02 Terms Generally.

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 permitted 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, (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, and (vii) all references to "$" or "dollars" or to amounts of money and all calculations of Availability, Combined Availability, the Tranche A Borrowing Base, the FILO Borrowing Base, the ABL Term Borrowing Base, permitted "baskets" and other similar matters shall be deemed to be references to the lawful currency of the United States of America.

(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) This Agreement and the other Loan Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Loan Parties, the Administrative Agent and the ABL Term Loan Agent and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Loan Documents are not intended to be construed against the Administrative Agent, the ABL Term Loan Agent or any of the Lenders merely on account of the Administrative Agent's, the ABL Term Loan Agent's or any Lender's involvement in the preparation of such documents.

SECTION 1.03 Accounting Terms.

(a) 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, except as otherwise specifically prescribed herein.

(b) The principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP.

SECTION 1.04 Rounding.

Any financial ratios required to be maintained by the Lead Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under 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).

SECTION 1.05 Times of Day; Rates.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBOR Rate" or with respect to any comparable or successor rate thereto.

SECTION 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 mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit, whether or not such maximum face amount is in effect at such time.

SECTION 1.07 Certifications.

All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such person's individual capacity.

SECTION 1.08 Currency Equivalents Generally.

Any amount specified in this Agreement (other than in ARTICLE II) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount to be determined at the rate of exchange quoted by the Reuters World Currency Page for the applicable currency at 11:00 a.m. (London time) on such day (or, in the event such rate does not appear on any Reuters World Currency Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Lead Borrower, or, in the absence of such agreement, such rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m. (New York City time) on such date for the purchase of Dollars for delivery two Business Days later). Notwithstanding the foregoing, for purposes of determining compliance with SECTION 6.01, SECTION 6.02, SECTION 6.03, SECTION 6.05 and SECTION 6.06, (i) any amount in a currency other than Dollars will be converted to Dollars based on the exchange rate for such currency as determined above, and (ii) no Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time any transaction described in any of such Sections is consummated; *provided* that, for the avoidance of doubt, the foregoing provisions of this SECTION 1.08 shall otherwise apply to such

Sections, including with respect to determining whether any such transaction described in such Sections may be consummated at any time under such Sections.

SECTION 1.09 Change of Currency.

Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Lead Borrower's consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

ARTICLE II

Amount and Terms of Credit

SECTION 2.01 Commitment of the Revolving Credit Lenders; Full-Roll of Pre-Petition Obligations.[1]

(a) Each Revolving Credit Lender, severally and not jointly with any other Lender, agrees, upon the terms and subject to the conditions herein set forth, to make Revolving Credit Extensions to or for the benefit of the Borrowers, on a revolving basis, subject in each case to the following limitations:

(i) The aggregate outstanding amount of the sum of (x) Revolving Credit Extensions plus (y) Pre-Petition Revolving Credit Extensions to the Borrowers shall not at any time cause Availability to be less than zero;

(ii) Letters of Credit shall be available from the Issuing Banks to the Borrowers and their Subsidiaries, *provided* that the Borrowers shall not at any time permit the aggregate Letter of Credit Outstandings at any time to exceed the Letter of Credit Sublimit; and *provided* further that any Letter of Credit issued for the benefit of any Foreign Subsidiary shall be issued naming the Lead Borrower as the account party on any such Letter of Credit but such Letter of Credit may contain a statement that it is being issued for the benefit of such Foreign Subsidiary;

(iii) No Revolving Credit Lender shall be obligated to make any Revolving Credit Extension to the Borrowers if the sum of (x) such Revolving Credit Lender's outstanding Revolving Credit Extensions plus (y) such Revolving Credit Lender's outstanding Pre-Petition Revolving Credit Extensions to the Borrowers are in excess of such Revolving Credit Lender's Tranche A Commitment or FILO Commitment, as applicable;

(iv) The sum of the aggregate outstanding amount of (x) the Tranche A Credit Extensions *plus* (y) the Pre-Petition Tranche A Credit Extensions shall not exceed the lesser of the Tranche A Commitments or the Tranche A Borrowing Base;

(v) The sum of aggregate outstanding amount of (x) the FILO Credit Extensions *plus* (y) the Pre-Petition FILO Credit Extensions shall not exceed the lesser of the FILO Commitments or Incremental Availability;

(vi) The Lead Borrower 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 of the lesser of the FILO Commitments or Incremental Availability (to the extent that such FILO Commitments

[1] **Note to Draft** – All Pre-Petition ABL obligations to be fully-rolled on the Closing Date.

have not been terminated). Except as otherwise provided in SECTION 2.13(f), all FILO Credit Extensions shall be FILO Loans and all Letters of Credit and Swingline Loans shall constitute Tranche A Credit Extensions; and

(vii) Subject to all of the other provisions of this Agreement, Revolving Credit Loans to the Borrowers that are repaid may be reborrowed prior to the Termination Date.

(b) Except as provided in SECTION 2.01(a)(vi), each Borrowing of Revolving Credit Loans to the Borrowers (other than Swingline Loans) shall be made by the Revolving Credit Lenders pro rata in accordance with their respective Tranche A Commitments or FILO Commitments, as applicable. The failure of any Revolving Credit Lender to make any Revolving Credit Loan to the Borrowers shall neither relieve any other Revolving Credit Lender of its obligation to fund its Revolving Credit Loan to the Borrowers in accordance with the provisions of this Agreement nor increase the obligation of any such other Revolving Credit Lender.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, on the Closing Date the total outstanding amount of the Pre-Petition Obligations shall constitute Obligations hereunder, with (i) (x) the outstanding amount of all Pre-Petition Revolving Credit Extensions as of the Closing Date, being refinanced as Revolving Credit Loans hereunder on the Closing Date and (y) all Pre-Petition Letter of Credit Outstandings on the Closing Date, being refinanced and constituting Letter of Credit Outstandings hereunder on the Closing Date (including all Existing Letters of Credit being deemed issued under this Agreement on Closing Date) and (ii) the sum of (x) the principal amount of all Pre-Petition ABL Term Loans outstanding as of the Closing Date, *plus* (y) the outstanding amount of Pre-Petition ABL Term Loan Prepayment Fee as of the Closing Date shall be refinanced as ABL Term Loans hereunder on the Closing Date (with such Pre-Petition ABL Term Loan Prepayment Fee being capitalized and added to the outstanding principal amount of the Pre-Petition ABL Term Loans on the Closing Date). The ABL Term Loan Commitments shall be reduced on a dollar for dollar basis by the ABL Term Loans made, or deemed made, on the Closing Date pursuant to SECTION 2.15(b). ABL Term Loans repaid or prepaid may not be reborrowed, provided that prepayments and repayments of the ABL Term Loans shall be made only in accordance with SECTION 2.16(e).

SECTION 2.02 [Reserved].

SECTION 2.03 Reserves. The initial Reserves as of the Closing Date for purposes of Section 8.21(b) shall be as set forth on the Borrowing Base Certificate dated June [___], 2017, and delivered to, and approved by, the Administrative Agent. The Administrative Agent shall have the right from time to time to establish, modify, or eliminate any applicable Reserves against the Tranche A Borrowing Base, the FILO Borrowing Base, the ABL Term Borrowing Base, Eligible Credit Card Receivables, Eligible In-Transit Inventory, Eligible Inventory, Eligible Letter of Credit Inventory, Eligible Trade Receivables, in each case, in its Permitted Discretion and as may be applicable under the circumstances based on any field examination, appraisal and other due diligence to be conducted and for matters that adversely affect the Collateral, its value or the amount that the Administrative Agent might receive from the sale or other disposition thereof or the ability of the Administrative Agent to realize thereon, Defaults and other matters. The amount of any Reserve established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter that is the basis for the Reserve as determined by the Administrative Agent in its Permitted Discretion.

SECTION 2.04 Making of Revolving Credit Loans.

(a) Except as set forth in SECTION 2.09, SECTION 2.10 and SECTION 2.11, Revolving Credit Loans (other than Swingline Loans) shall be either Prime Rate Loans or LIBOR Loans as the Lead

Borrower on behalf of the Borrowers may request (which request shall substantially be made in the form attached hereto as Exhibit C) subject to and in accordance with this SECTION 2.04. All Swingline Loans shall be only Prime Rate Loans. All Revolving Credit Loans made pursuant to the same Borrowing shall, unless otherwise specifically provided herein, be Revolving Credit Loans of the same Type. Each Lender may fulfill its Commitment with respect to any Revolving Credit Loan by causing any lending office of such Lender to make such Revolving Credit Loan; *provided, however*, that any such use of a lending office shall not affect the obligation of the Borrowers to repay such Revolving Credit Loan in accordance with the terms of the applicable Revolving Credit Note. Each Lender shall, subject to its overall policy considerations, use reasonable efforts to select a lending office which will not result in the payment of increased costs by the Borrowers. Subject to the other provisions of this SECTION 2.04 and the provisions of SECTION 2.10 and SECTION 2.11, Borrowings of Revolving Credit Loans of more than one Type may be incurred at the same time.

(b) The Lead Borrower shall give the Administrative Agent (x) two (2) Business Days' prior telephonic notice (thereafter confirmed in writing) of each Borrowing of LIBOR Loans, and (y) prior telephonic notice (thereafter confirmed in writing) of each Borrowing of Prime Rate Loans by the Borrowers on the same Business Day requested for such Borrowing. Any such notice, to be effective, must be received by the Administrative Agent not later than 1:00 p.m. on the second Business Day in the case of LIBOR Loans, and not later than 1:00 p.m. on the same Business Day in the case of Prime Rate Loans, prior to or on, as the case may be, the date on which such Borrowing is to be made. Such notice shall be irrevocable (except to the extent set forth in SECTION 2.10 or SECTION 2.11 hereof), shall contain disbursement instructions and shall specify: (i) whether the Borrowing then being requested is to be a Borrowing of Prime Rate Loans or LIBOR Loans and, if LIBOR Loans, the Interest Period with respect thereto (which shall be one-month); (ii) the amount of the proposed Borrowing (which shall be in an integral multiple of $1,000,000, but not less than $5,000,000 in the case of LIBOR Loans); and (iii) the date of the proposed Borrowing (which shall be a Business Day). If no election of Interest Period is specified in any such notice for a Borrowing of LIBOR Loans, such notice shall be deemed a request for an Interest Period of one (1) month. If no election is made as to the Type of Revolving Credit Loan, such notice shall be deemed a request for Borrowing of Prime Rate Loans. The Administrative Agent shall promptly notify each Lender of its proportionate share of such Borrowing, the date of such Borrowing, the Type of Borrowing being requested and the Interest Period applicable thereto, as appropriate. On the borrowing date specified in such notice, each Lender shall make its share of the Borrowing available at the office of the Administrative Agent at 100 Federal Street, Boston, Massachusetts 02110 (or such other place as the Administrative Agent may request) no later than 3:00 p.m., in immediately available funds. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this SECTION 2.04 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In the event a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent, forthwith on demand such corresponding amount, 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 Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, or (ii) in the case of the Borrowers, the interest rate applicable to Prime Rate Loans determined by reference to the Prime Rate. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Revolving Credit Loan included in such Borrowing. Upon receipt of the funds made available by the Lenders to fund any borrowing hereunder, the Administrative Agent shall disburse such funds in the manner specified in the notice of borrowing delivered by the Lead Borrower and shall use reasonable efforts to make the funds so received from the Lenders available to the Borrowers no later than 5:00 p.m.

(c) Notwithstanding anything to the contrary herein contained, all Revolving Credit Loans to the Borrowers shall be FILO Loans (without regard to minimum or integral amounts for such Loans) until the outstanding principal amount of such Revolving Credit Loans equal the lesser of Incremental Availability or the then FILO Commitments. If any FILO Loan is prepaid in part pursuant to SECTION 2.16(b), any Revolving Credit Loans to the Borrowers thereafter requested shall be FILO Loans until the maximum principal amount of FILO Loans outstanding equals the lesser of Incremental Availability or FILO Commitments and thereafter all Revolving Credit Loans shall be Tranche A Loans.

(d) To the extent not paid by the Borrowers when due (after taking into consideration any applicable grace period), the Administrative Agent, without the request of the Lead Borrower, may advance any interest or fee payable pursuant to SECTION 2.19 or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto, any other Loan Document or any other Obligations, and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby; *provided* that the Administrative Agent may not charge amounts owing in respect of Other Liabilities to the Loan Account to the extent that an Overadvance may result thereby. The Administrative Agent shall endeavor to advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under SECTION 2.17(a) or SECTION 2.17(b). Any amount which is added to the principal balance of the Loan Account as provided in this SECTION 2.04(d) shall bear interest at the interest rate then and thereafter applicable to Prime Rate Loans determined by reference to the Prime Rate.

SECTION 2.05 Overadvances.

(a) None of the Administrative Agent, the Collateral Agent and the Revolving Credit Lenders shall have any obligation to make any Revolving Credit Loan (including, without limitation, any Swingline Loan) or to provide any Letter of Credit if an Overadvance would result.

(b) The Administrative Agent may, in its discretion, make Permitted Overadvances to the Borrowers without the consent of the Lenders and each Lender shall be bound thereby. Any Permitted Overadvances may constitute Swingline Loans. The making of a Permitted Overadvance is for the benefit of the Borrowers and shall constitute a Revolving Credit Loan and a Revolving Obligation. Each Revolving Credit Lender shall participate in each Permitted Overadvance (including each Permitted Overadvance made under SECTION 2.06(a) through the settlement thereof pursuant to SECTION 2.22). The obligation of each Revolving Credit Lender to participate in each Permitted Overadvance shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Administrative Agent, any Issuing Bank, the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default, or (iii) any other occurrence, event or condition (including the failure to satisfy any condition set forth in SECTION 4.02). The making of any such Permitted Overadvance on any one occasion shall not obligate the Administrative Agent or any Revolving Credit Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding, nor shall the making of any such Permitted Overadvance modify or abrogate the Borrowers' obligations under SECTION 2.17(a) and SECTION 2.17(b) hereof.

(c) The making by the Administrative Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of (i) SECTION 2.13(g) regarding the Revolving Credit Lenders' obligations to purchase participations with respect to Letter of Credit Disbursements, or (ii) SECTION 2.06 and SECTION 2.22 regarding the Revolving Credit Lenders' obligations with respect to participations in Swingline Loans and settlements thereof.

SECTION 2.06 Swingline Loans.

(a) The Swingline Lender is authorized by the Revolving Credit Lenders to, and may in its sole discretion make, Swingline Loans at any time (subject to SECTION 2.01(a) and SECTION 2.06(b)) to the Borrowers up to, together with all Pre-Petition Obligations in respect of "Swingline Loans", the amount of the sum of (i) the Swingline Loan Ceiling, upon a notice of Borrowing from Lead Borrower received by the Administrative Agent and the Swingline Lender (which notice, at the Swingline Lender's discretion, may be submitted prior to 3:00 p.m. on the Business Day on which such Swingline Loan is requested), plus (ii) any Permitted Overadvances; *provided* that the Swingline Lender shall not be obligated to make any Swingline Loan. Swingline Loans shall be Prime Rate Loans bearing interest with reference to the Prime Rate and shall be subject to periodic settlement with the Lenders under SECTION 2.22 below. The Lead Borrower may request, and the Swingline Lender may make, a Swingline Loan notwithstanding that the Borrowers have not borrowed the full amount of the lesser of the FILO Commitments or Incremental Availability at the time of such request. Any Swingline Loan advanced by the Swingline Lender is made in reliance on the agreements of the other Revolving Credit Lenders set forth in this Agreement.

(b) The Lead Borrower's request for a Swingline Loan shall be deemed a representation that the applicable conditions for borrowing under SECTION 4.02 are satisfied (unless such conditions have been waived). If the conditions for borrowing under SECTION 4.02 cannot in fact be fulfilled, (x) the Lead Borrower shall give immediate notice (a "Noncompliance Notice") thereof to the Administrative Agent and the Swingline Lender, and the Administrative Agent shall promptly provide each Revolving Credit Lender with a copy of the Noncompliance Notice, and (y) the Required Revolving Lenders may direct the Swingline Lender to, and the Swingline Lender thereupon shall, cease making Swingline Loans (other than Permitted Overadvances) until such conditions can be satisfied or are waived in accordance with SECTION 9.01. Unless the Required Revolving Lenders so direct the Swingline Lender, the Swingline Lender may, but is not obligated to, continue to make Swingline Loans commencing one (1) Business Day after the Noncompliance Notice is furnished to the Revolving Credit Lenders. Notwithstanding the foregoing, no Swingline Loans (other than Permitted Overadvances) shall be made pursuant to this SECTION 2.06(b) if the Tranche A Credit Extensions and/or the aggregate outstanding amount of the Revolving Credit Extensions and Swingline Loans would exceed the limitations set forth in SECTION 2.01.

(c) Immediately upon the making of a Swingline Loan, each Tranche A Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Tranche A Lender's Tranche A Commitment Percentage times the amount of such Swingline Loan.

SECTION 2.07 Notes.

(a) The Borrowings and other credit extensions made by each Lender hereunder shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Borrowings and other 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 Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall promptly execute and deliver a Revolving Credit Note or ABL

Term Note, as applicable, duly executed on behalf of the Borrowers, payable to such Lender in an aggregate principal amount equal to such Lender's Commitment or ABL Term Loan Commitment, as applicable, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Revolving Credit Note or ABL Term Note, as applicable, and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in SECTION 2.07(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of the Swingline Lender made through the Administrative Agent, the Borrowers shall promptly execute and deliver a Swingline Note, duly executed on behalf of the Borrowers, payable to the Swingline Lender, in an aggregate principal amount equal to the Swingline Loan Ceiling, which evidence such Swingline Lender's Swingline Loans in addition to such accounts or records.

SECTION 2.08 Interest on Loans.

(a) Interest on Revolving Credit Loans.

(i) Subject to SECTION 2.12, each Revolving Credit Loan that is a Prime Rate Loan made by a Revolving Credit Lender shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) at a rate per annum that shall be equal to the then Prime Rate plus the Applicable Margin for Revolving Credit Loans that are Prime Rate Loans.

(ii) Subject to SECTION 2.09 through SECTION 2.12, each Revolving Credit Loan that is a LIBOR Loan made by a Revolving Credit Lender shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBOR Rate for such Interest Period, plus the Applicable Margin for Revolving Credit Loans that are LIBOR Loans.

(b) Interest on ABL Term Loans. Subject to SECTION 2.12, each ABL Term Loan made by an ABL Term Lender shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum that shall be equal to the ABL Term Loan Rate, plus eleven percent (11.0%) per annum provided that if the ABL Term Loan Agent cannot determine the ABL Term Loan Rate as provided in SECTION 2.10 below, then such rate shall be equal to the Prime Rate plus ten percent (10.0%) per annum. The ABL Term Loan Rate for any monthly payment shall be determined on the first day of the calendar month for which such rate is applicable and will apply for the month then being paid.

(c) Accrued interest on all Loans other than the ABL Term Loans shall be payable in arrears on each Interest Payment Date applicable thereto and in the case of ABL Term Loans, all accrued interest thereon shall be payable in arrears on each Interest Payment Date for ABL Term Loans, and in each case, at the Termination Date and after such Termination Date, on demand.

SECTION 2.09 Conversion and Continuation of Loans.

(a) The Lead Borrower shall have the right at any time, on three (3) Business Days' prior notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative

Agent not later than 1:00 p.m. on the third Business Day preceding the date of any conversion), (i) to convert any outstanding Borrowings of Prime Rate Loans to Borrowings of LIBOR Loans, or (ii) to continue an outstanding Borrowing of LIBOR Loans for an additional Interest Period, or (iii) to convert any outstanding Borrowings of LIBOR Loans to a Borrowing of Prime Rate Loans, subject in each case to the following:

(i) No Borrowing of Loans may be converted into, or continued as, LIBOR Loans at any time when any Event of Default has occurred and is continuing (nothing contained herein being deemed to obligate the Borrowers to incur Breakage Costs upon the occurrence and during the continuance of an Event of Default unless the Obligations are accelerated);

(ii) If less than a full Borrowing of Loans is converted, such conversion shall be made pro rata among the Lenders based upon their Tranche A Commitment Percentages (or FILO Commitment Percentages, or ABL Term Loan Percentages, as the case may be) in accordance with the respective principal amounts of the Loans comprising such Borrowing held by such Lenders immediately prior to such conversion;

(iii) The aggregate principal amount of Prime Rate Loans being converted into or continued as LIBOR Loans shall be in an integral of $1,000,000 and at least $5,000,000 (or $1,000,000, in the case of ABL Term Loans);

(iv) Each Lender shall effect each conversion by applying the proceeds of its new LIBOR Loan or Prime Rate Loan, as the case may be, to its Loan being so converted;

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

(vi) A Borrowing of LIBOR Loans may not be converted prior to the last day of an Interest Period applicable thereto, unless the applicable Borrower pays all Breakage Costs incurred in connection with such conversion;

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

(viii) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect at any one time under this Agreement.

(b) If the Lead Borrower does not give notice to convert any Borrowing of LIBOR Loans, or does not give notice to continue, or does not have the right to continue, any Borrowing as LIBOR Loans, in each case as provided in SECTION 2.09(a) above, such Borrowing shall automatically be converted to, or continued as, as applicable, a Borrowing of LIBOR Loans with an Interest Period of one (1) month, at the expiration of the then-current Interest Period, *provided* that if an Event of Default then exists and is continuing, such Borrowing shall be converted to, or continued as a Prime Rate Loan. The Administrative Agent shall, after it receives notice from the Lead Borrower, promptly give each Lender notice of any conversion, in whole or part, of any Loan made by such Lender.

SECTION 2.10 Alternate Rate of Interest for Loans.

If prior to the commencement of any Interest Period for a LIBOR Borrowing, the Administrative Agent, or if prior to the first day of a calendar month regarding any reference to the ABL Term Loan Rate, the ABL Term Loan Agent:

(a) Reasonably determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate (in accordance with the terms of the definition thereof) for such Interest Period or the ABL Term Loan Rate, respectively; or

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

then (1) in the case of a LIBOR Borrowing, the Administrative Agent, shall give notice thereof to the Lead Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Lead Borrower and the applicable Lenders that the circumstances giving rise to such notice no longer exist (which notice the Administrative Agent shall deliver promptly upon obtaining knowledge of the same), (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBOR Borrowing shall be ineffective, (ii) if any Borrowing Request requests a LIBOR Borrowing, such Borrowing shall be made as a Borrowing of Prime Rate Loans unless withdrawn by the Lead Borrower and (2) in the case of the interest rate regarding a ABL Term Loan, the ABL Term Loan Agent shall give notice thereof to the Lead Borrower by telephone or telecopy as promptly as practicable thereafter and, until the ABL Term Loan Agent notifies the Lead Borrower that the circumstances giving rise to such notice no longer exist (which notice the ABL Term Loan Agent shall deliver promptly upon obtaining knowledge of the same) the ABL Term Loans shall bear interest with reference to the Prime Rate and such interest shall be calculated as provided in SECTION 2.08(b).

SECTION 2.11 Change in Legality.

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if any Change in Law occurring after the Closing Date shall make it unlawful for a Lender to make or maintain a LIBOR Loan or to give effect to its obligations as contemplated hereby with respect to a LIBOR Loan, then, by written notice to the Lead Borrower, such Lender may (x) declare that LIBOR Loans will not thereafter be made by such Lender hereunder, whereupon any request by the Lead Borrower for a LIBOR Borrowing shall, as to such Lender only, be deemed a request for a Prime Rate Loan unless such declaration shall be subsequently withdrawn; and (y) require that all outstanding LIBOR Loans made by such Lender be converted to Prime Rate Loans, in which event all such LIBOR Loans shall be automatically converted to Prime Rate Loans as of the effective date of such notice as provided in SECTION 2.09(b). In the event any Lender shall exercise its rights hereunder, all payments and prepayments of principal which would otherwise have been applied to repay the LIBOR Loans that would have been made by such Lender or the converted LIBOR Loans of such Lender, shall instead be applied to repay the Prime Rate Loans made by such Lender in lieu of, or resulting from the conversion of, such LIBOR Loans.

(b) For purposes of this SECTION 2.11, a notice to the Lead Borrower pursuant to SECTION 2.11(a) above shall be effective, if lawful, and if any LIBOR Loans shall then be outstanding, on the last day of the then-current Interest Period; and otherwise such notice shall be effective on the date of receipt by the Lead Borrower.

SECTION 2.12 Default Interest.

(a) Effective upon written notice from the Administrative Agent (which notice may be given at the election of the Administrative Agent, or at the direction of the Required Revolving Lenders, after the occurrence of any Event of Default), and at all times thereafter while such Event of Default is continuing, interest shall accrue on all outstanding Revolving Obligations owing by the Borrowers (after as well as before judgment, as and to the extent permitted by law) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days as applicable) (the "Revolving Default Rate") equal to the rate (including the Applicable Margin for Tranche A Loans or FILO Loans, as applicable) in effect from time to time plus two percent (2.00%) per annum and such interest shall be payable on each Interest Payment Date (or any earlier maturity of the Revolving Credit Loans).

(b) Effective upon written notice from the Administrative Agent (which notice shall be given at the election of the ABL Term Loan Agent, or at the direction of the Required Term Lenders, after the occurrence of any Event of Default), and at all times thereafter while such Event of Default is continuing, interest shall accrue on all outstanding ABL Term Obligations owing by the Borrowers (after as well as before judgment, as and to the extent permitted by law) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days as applicable) (the "ABL Default Rate") equal to the ABL Term Loan Rate plus two percent (2.00%) per annum and such interest shall be payable on each Interest Payment Date for ABL Term Loans (or any earlier maturity of the ABL Term Loans).

SECTION 2.13 Letters of Credit.

(a) Upon the terms and subject to the conditions herein set forth, at any time and from time to time after the date hereof and prior to the Termination Date, the Lead Borrower on behalf of the Borrowers may request an Issuing Bank to issue, and subject to the terms and conditions contained herein and in reliance on the agreement of the Lenders set forth in this SECTION 2.13, the applicable Issuing Bank shall issue, for the account of the Lead Borrower or a Subsidiary, one or more Letters of Credit; *provided, however*, that no Letter of Credit shall be issued if after giving effect to such issuance (i) the aggregate Letter of Credit Outstandings shall exceed the Letter of Credit Sublimit, or (ii) the Tranche A Credit Extensions and/or the aggregate Revolving Credit Extensions (including Swingline Loans) would exceed the limitations set forth in SECTION 2.01(a); *provided, further*, that no Letter of Credit shall be issued unless an Issuing Bank shall have received notice from the Administrative Agent that the conditions to such issuance have been met (such notice shall be deemed given if the Issuing Bank has not received notice that the conditions have not been met within two Business Days of the initial request to the Issuing Bank and the Administrative Agent pursuant to SECTION 2.13(h); *provided further* that any Letter of Credit issued for the benefit of any Subsidiary that is not a Borrower shall be issued naming the Lead Borrower as the account party on any such Letter of Credit but such Letter of Credit may contain a statement that it is being issued for the benefit of such Subsidiary; *provided further* that an Issuing Bank shall not be required to issue any such Letter of Credit in its reasonable discretion if: (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Applicable Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it, (B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally, or (C) any Lender is at such time a Deteriorating Lender hereunder, unless the Issuing Bank has entered into reasonably satisfactory arrangements with the Borrowers or such Lender to eliminate the Issuing Bank's risk of full reimbursement with respect to such Letter of Credit and all other Letters of

Credit as to which the Issuing Banks has actual or potential fronting exposure with respect to such Deteriorating Lender (as determined by each Issuing Bank in its sole discretion). A permanent reduction of the Tranche A Commitments shall not require a corresponding pro rata reduction in the Letter of Credit Sublimit; *provided*, *however*, that if the 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 Tranche A Commitments. Any Issuing Bank (other than Bank of America or any of its Affiliates) shall notify the Administrative Agent in writing on each Business Day of all Letters of Credit issued on the prior Business Day by such Issuing Bank. If the conditions for borrowing under SECTION 4.02 cannot in fact be fulfilled, the Required Revolving Lenders may direct the Issuing Banks to, and the Issuing Banks thereupon shall, cease issue Letters of Credit (other than Permitted Overadvances) until such conditions can be satisfied or are waived in accordance with SECTION 9.01. It is hereby acknowledged and agreed that each of the letters of credit described in Schedule 2.13 (each an "Existing Letter of Credit") shall constitute a "Letter of Credit" for all purposes of this Agreement and shall be deemed issued under this Agreement on the Closing Date and all Pre-Petition Letter of Credit Outstandings shall constitute "Letter of Credit Outstandings" for all purposes of this Agreement.

(b) Each Standby Letter of Credit shall expire at or prior to the close of business on the earlier of the date which is (i) one (1) year after the date of the issuance of such Letter of Credit (or such other longer period of time as the Administrative Agent and the applicable Issuing Bank may agree) (or, in the case of any renewal or extension thereof, one (1) year after such renewal or extension) and (ii) unless Cash Collateralized or otherwise credit supported to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Bank (in which case, the expiry may extend no longer than twelve (12) months after the Maturity Date), five (5) Business Days prior to the Maturity Date; *provided*, *however*, that each Standby Letter of Credit may, upon the request of the Lead Borrower, include a provision whereby such Letter of Credit shall be renewed automatically (unless the applicable Issuing Bank notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed) for additional consecutive periods of twelve (12) months or less (but not beyond the date that is five (5) Business Days prior to the then Latest Maturity Date, unless Cash Collateralized or otherwise credit supported to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Bank (in which case, the expiry may extend no longer than twelve (12) months after the Maturity Date)).

(c) Each Commercial Letter of Credit shall expire at or prior to the close of business on the earlier of the date which is (i) one (1) year after the date of the issuance of such Commercial Letter of Credit (or such other period as may be acceptable to the Administrative Agent and the applicable Issuing Bank) and (ii) unless Cash Collateralized or otherwise credit supported to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Bank (in which case, the expiry may extend no longer than twelve (12) months after the then Latest Maturity Date), five (5) Business Days prior to the Maturity Date.

(d) Drafts drawn under each Letter of Credit shall be reimbursed by the Borrowers by paying to the Administrative Agent an amount equal to such drawing not later than 1:00 p.m. on the second Business Day immediately following the day that the Lead Borrower receives notice of such drawing and demand for payment by the applicable Issuing Bank, *provided* that (i) in the absence of written notice to the contrary from the Lead Borrower, and subject to the other provisions of this Agreement, such payments shall be financed when due with a Prime Rate Loan or Swingline Loan to the applicable Borrower in an equivalent amount and, to the extent so financed, the respective Borrower's obligation to make such payment shall be discharged and replaced by the resulting Prime Rate Loan or Swingline Loan, and (ii) in the event that the Lead Borrower has notified the Administrative Agent that it will not so finance any such payments, the applicable Borrowers will make payment directly to the applicable

Issuing Bank when due. The Administrative Agent shall promptly remit the proceeds from any Loans made pursuant to clause (i) above in reimbursement of a draw under a Letter of Credit to the applicable Issuing Bank. Such Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Lead Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make payment thereunder; *provided, however*, that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Lenders with respect to any such payment.

(e) If any Issuing Bank shall make any Letter of Credit Disbursement, then, unless the applicable Borrowers shall reimburse such Issuing Bank in full on the date provided in SECTION 2.13(d) above, the unpaid amount thereof shall bear interest at the rate per annum then applicable to Prime Rate Loans determined by reference to the Prime Rate for each day from and including the date such payment is made to, but excluding, the date that such Borrowers reimburse such Issuing Bank therefor, *provided, however*, that, if such Borrowers fail to reimburse any Issuing Bank when due pursuant to SECTION 2.13(d), then interest shall accrue at the Revolving Default Rate. Interest accrued pursuant to this paragraph shall be for the account of, and promptly remitted by the Administrative Agent, upon receipt to, the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to SECTION 2.13(g) to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(f) Immediately upon the issuance of any Letter of Credit by any Issuing Bank (or the amendment of a Letter of Credit increasing the amount thereof), and without any further action on the part of such Issuing Bank, such Issuing Bank shall be deemed to have sold to each Tranche A Lender, and each such Tranche A Lender shall be deemed unconditionally and irrevocably to have purchased from such Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such Tranche A Lender's Tranche A Commitment Percentage, in such Letter of Credit, each drawing thereunder and the obligations of the Borrowers under this Agreement and the other Loan Documents with respect thereto. Upon any change in the Tranche A Commitments pursuant to SECTION 2.15, SECTION 2.17 or SECTION 9.07 of this Agreement, it is hereby agreed that with respect to all Letter of Credit Outstandings, there shall be an automatic adjustment to the participations hereby created to reflect the new Tranche A Commitment Percentages of the assigning and assignee Tranche A Lenders and the Additional Commitment Lenders, if applicable. If any Letter of Credit Outstandings remain upon the termination of the Tranche A Commitments, and if the lesser of (i) FILO Commitments (determined without regard to any concurrent termination of such FILO Commitments) or (ii) Incremental Availability exceeds the FILO Credit Extensions (the "Excess Amount"), then upon such termination of the Tranche A Commitments, the Tranche A Lenders shall be deemed to have sold to each FILO Lender, and each FILO Lender shall be deemed unconditionally and irrevocably to have so purchased from the Tranche A Lenders, without recourse or warranty, an undivided interest and participation, to the extent of such FILO Lender's FILO Commitment Percentage in the lesser of such Excess Amount or such undivided interest and participation of each Tranche A Lender in the Letter of Credit Outstandings, each drawing thereunder and the obligations of the Borrowers under this Agreement and the other Loan Documents with respect thereto. Any action taken or omitted by any Issuing Bank under or in connection with a Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such Issuing Bank any resulting liability to any Lender.

(g) In the event that any Issuing Bank makes any Letter of Credit Disbursement and the Borrowers shall not have reimbursed such amount in full to such Issuing Bank pursuant to this SECTION 2.13, such Issuing Bank shall promptly notify the Administrative Agent, which shall promptly notify each Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable), of such failure, and each Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if

applicable) shall promptly and unconditionally pay to the Administrative Agent, for the account of such Issuing Bank the amount of such Tranche A Lender's (or FILO Lender's, with respect to the Excess Amount, if applicable) Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of such unreimbursed payment in Dollars and in same day funds. If the applicable Issuing Bank so notifies the Administrative Agent and the Administrative Agent so notifies the Tranche A Lenders (or FILO Lender, with respect to the Excess Amount, if applicable) prior to 11:00 a.m. on any Business Day, each such Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) shall make available to the applicable Issuing Bank such Tranche A Lender's (or FILO Lender's, with respect to the Excess Amount, if applicable) Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of the amount of such payment on such Business Day in same day funds (or if such notice is received by the Tranche A Lenders (or FILO Lender, with respect to the Excess Amount, if applicable) after 11:00 a.m. on the day of receipt, payment shall be made on the immediately following Business Day in same day funds). If and to the extent such Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) shall not have so made its Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of the amount of such payment available to the applicable Issuing Bank, such Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) agrees to pay to such Issuing Bank forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such Issuing Bank at the Federal Funds Effective Rate. Each Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) agrees to fund its Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of such unreimbursed payment notwithstanding a failure to satisfy any applicable lending conditions or the provisions of SECTION 2.01 or SECTION 2.06, or the occurrence of the Termination Date. The failure of any Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) to make available to the applicable Issuing Bank its Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of any payment under any Letter of Credit shall neither relieve any Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) of its obligation hereunder to make available to such Issuing Bank its Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable) of any payment under any Letter of Credit on the date required, as specified above, nor increase the obligation of such other Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable). Whenever any Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) has made payments to any Issuing Bank in respect of any reimbursement obligation for any Letter of Credit, such Tranche A Lender (or FILO Lender, with respect to the Excess Amount, if applicable) shall be entitled to share ratably, based on its Tranche A Commitment Percentage (or FILO Commitment Percentage, with respect to the Excess Amount, if applicable), in all payments and collections thereafter received on account of such reimbursement obligation.

(h) Whenever the Lead Borrower desires that any Issuing Bank issue a Letter of Credit (or the amendment, renewal or extension (other than automatic renewal or extensions) of an outstanding Letter of Credit), the Lead Borrower shall give to the applicable Issuing Bank and the Administrative Agent at least two (2) Business Days' prior written (including, without limitation, by telegraphic, telex, facsimile or cable communication) notice (or such shorter period as may be agreed upon in writing by such Issuing Bank and the Lead Borrower) specifying the date on which the proposed Letter of Credit is to be issued, amended, renewed or extended (which shall be a Business Day), the Stated Amount of the Letter of Credit so requested, the expiration date of such Letter of Credit, the name and address of the beneficiary thereof, and the provisions thereof. If requested by the applicable Issuing Bank, the Lead Borrower shall also submit documentation on such Issuing Bank's standard form in connection with any request for the issuance, amendment, renewal or extension of a Letter of Credit, *provided* that in the event of a conflict or inconsistency between the terms of such documentation and this Agreement, the terms of

this Agreement shall supersede any inconsistent or contrary terms in such documentation and this Agreement shall control.

(i) Subject to the limitations set forth below, the obligations of the Borrowers to reimburse the Issuing Banks for any Letter of Credit Disbursement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation (it being understood that any such payment by the Borrowers shall be without prejudice to, and shall not constitute a waiver of, any rights the Borrowers might have or might acquire hereunder as a result of the payment by the applicable Issuing Bank of any draft or the reimbursement by the Borrowers thereof): (i) any lack of validity or enforceability of a Letter of Credit; (ii) the existence of any claim, setoff, defense or other right which a Borrower may have at any time against a beneficiary of any Letter of Credit or against any Issuing Bank or any of the Lenders, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; (iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged or fraudulent in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by any Issuing Bank of any Letter of Credit against presentation of a demand, draft or certificate or other document which does not strictly comply with the terms of such Letter of Credit; (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this SECTION 2.13, constitute a legal or equitable discharge of, or provide a right of setoff against, any Loan Party's obligations hereunder; or (vi) the fact that any Event of Default shall have occurred and be continuing; *provided* that the Borrowers shall have no obligation to reimburse any Issuing Bank to the extent that such payment was made in error due to the gross negligence, bad faith or willful misconduct of such Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction). No Credit Party shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or 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 (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank, *provided* that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by Applicable Law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of any Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its reasonable discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or 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.

(j) (i) If any Event of Default shall occur and be continuing or (ii) the Termination Date occurs, on the Business Day that the Lead Borrower receives written notice from the Administrative Agent (which notice may be given at the election of the Administrative Agent or at the direction of the Required Revolving Lenders) demanding the deposit of Cash Collateral pursuant to this paragraph, the applicable Loan Parties shall immediately deposit in the applicable Cash Collateral Account an amount in cash equal to 103% of the Letter of Credit Outstandings owing by such Loan Parties as of such date, plus

any accrued and unpaid interest thereon. Each such deposit shall be held by the Collateral Agent for the payment and performance of the Revolving Obligations. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such Cash Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and in the sole discretion of the Administrative Agent (at the request of the Lead Borrower and at the Borrowers' risk and expense), such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such Cash Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Banks for payments on account of drawings under Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Letter of Credit Outstandings at such time or, if the maturity of the Revolving Credit Loans has been accelerated, shall be applied to satisfy the other respective Revolving Obligations of the applicable Borrower.

(k) Unless otherwise expressly agreed by the Issuing Bank and the Lead Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each Commercial Letter of Credit.

SECTION 2.14 Increased Costs.

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

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

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition affecting LIBOR 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 in any material amount in excess of those incurred by similarly situated lenders to such Lender of making or maintaining any LIBOR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost in any material amount in excess of those incurred by similarly situated lenders to such Lender or any Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount in any material respect of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If any Lender or any Issuing Bank determines that any Change in Law regarding capital requirements or liquidity has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Revolving Credit Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company would have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such

Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement*. A certificate of a Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this SECTION 2.14 and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Lead Borrower and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within fifteen (15) Business Days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this SECTION 2.14 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation, *provided* that the Borrowers shall not be required to compensate a Lender or any Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor, and *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) *Survival*. Each Borrower's obligations under this SECTION 2.14 shall survive the replacement of a Lender or any Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

SECTION 2.15 Termination or Reduction of Commitments.

(a) *Termination or Reduction of Tranche A Commitments*. Upon at least two (2) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may, at any time, in whole permanently terminate, or from time to time in part permanently reduce, the Tranche A Commitments. Each such reduction shall be in the principal amount of $5,000,000 or any integral multiple thereof. Each such reduction or termination shall (i) be applied ratably to the Tranche A Commitments of each Lender and (ii) be irrevocable at the effective time of any such termination or reduction. The Borrowers shall pay to the Administrative Agent for application as provided herein (i) at the effective time of any such termination (but not any partial reduction), all earned and unpaid fees under each Fee Letter and all Unused Fees accrued on the Tranche A Commitments so terminated, and (ii) at the effective time of any such reduction or termination, all Breakage Costs incurred in connection therewith and any amount by which the sum of the (x) the Pre-Petition Tranche A Credit Extensions *plus* (y) Tranche A Credit Extensions to the Borrowers outstanding on such date exceed the amount to which the Tranche A Commitments are to be reduced effective on such date.

(b) *Termination of ABL Term Commitments*. The ABL Term Loan Commitment of each ABL Term Lender shall be automatically and permanently reduced to $0 upon the funding, or deemed funding, of such ABL Term Loan to be made by pursuant to SECTION 2.01(c).

(c) *Termination or Reduction of FILO Commitments after Closing Date*. Upon at least two (2) Business Days' prior written notice to the Administrative Agent, the Lead Borrower may reduce or terminate the FILO Commitments at any time following the Closing Date, *provided* that the Tranche A Commitments have been, or contemporaneously therewith, permanently terminated and reduced to zero.

Each reduction of the FILO Commitments shall be in the principal amount of $3,000,000 or any integral multiple thereof. The Borrowers shall pay to the Administrative Agent for application as provided herein (i) at the effective time of any such termination (but not any partial reduction), all Unused Fees accrued on the FILO Commitments so terminated, and (ii) at the effective time of any such reduction or termination, all Breakage Costs incurred in connection therewith and any amount by which the sum of the (x) the Pre-Petition FILO Credit Extensions *plus* (y) FILO Credit Extensions to the Borrowers outstanding on such date exceed the amount to which the FILO Commitments are to be reduced effective on such date.

(d) *Termination of FILO Commitments Contemporaneously With Termination of Tranche A Commitments*. Notwithstanding the foregoing, in the event that all of the Tranche A Commitments are terminated, the FILO Commitments shall be terminated contemporaneously therewith, without further action by the Administrative Agent, the Lead Borrower or any other Person.

(e) *Termination Date*. Upon the Termination Date with respect to the Revolving Obligations, (i) the Commitments of the Revolving Credit Lenders shall be terminated in full, and (ii) subject to the other provisions of this Agreement (including, without limitation, SECTION 2.18 and SECTION 2.27), the Borrowers shall pay, in full and in cash, all outstanding Revolving Credit Loans and all other outstanding Revolving Obligations then owing by them to the Revolving Secured Parties (including, without limitation, all Breakage Costs incurred in connection therewith) and deliver Cash Collateral for Letter of Credit Outstandings. Upon the Termination Date with respect to the ABL Term Obligations, subject to the other provisions of this Agreement (including, without limitation, SECTION 2.18 and SECTION 2.27), the Borrowers shall pay, in full and in cash, all outstanding ABL Term Loans and all other outstanding ABL Term Obligations and then owing by them to the ABL Term Secured Parties (including, without limitation, all Breakage Costs incurred in connection therewith).

SECTION 2.16 Optional Prepayment of Revolving Credit Loans; Reimbursement of Lenders.

(a) Subject to the provisions of SECTION 2.16(b), the Borrowers shall have the right at any time and from time to time to prepay without premium or penalty (but subject to payment of Breakage Costs as provided herein) outstanding Revolving Credit Loans (without a reduction in the aggregate Commitments) in whole or in part, (x) with respect to LIBOR Loans, upon at least two (2) Business Days' prior written, telex or facsimile notice to the Administrative Agent, prior to 1:00 p.m., and (y) with respect to Prime Rate Loans, on the same Business Day as such notice is furnished to the Administrative Agent, prior to 1:00 p.m., subject in each case to the following limitations:

(i) Subject to SECTION 2.17, all prepayments of any Class or Classes of Revolving Credit Loans shall be paid to the Administrative Agent for application, first, to the prepayment of outstanding Swingline Loans, second, to the prepayment of other outstanding Tranche A Loans (other than Swingline Loans) ratably in accordance with each Tranche A Lender's Tranche A Commitment Percentage of such Class(es) of Commitments, third, to the prepayment of other outstanding FILO Loans ratably in accordance with each FILO Lender's FILO Commitment Percentage of such Class(es) of Commitments and fourth, if an Event of Default then exists, to the funding of a Cash Collateral deposit in the Cash Collateral Account in an amount equal to 103% of all Letter of Credit Outstandings;

(ii) Subject to the foregoing, outstanding Prime Rate Loans of the Borrowers shall be prepaid before outstanding LIBOR Loans of the Borrowers are prepaid (except as otherwise directed by the Lead Borrower). Each partial prepayment of LIBOR Loans shall be in an integral multiple of $1,000,000 (but in no event less than $5,000,000). No prepayment of LIBOR Loans shall be permitted pursuant to this SECTION 2.16 prior to the last day of an Interest Period applicable thereto, unless the

Borrowers reimburse the Lenders for all Breakage Costs associated therewith within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such Borrowing being less than $5,000,000 (unless all such outstanding LIBOR Loans are being prepaid in full); and

(iii) Each notice of prepayment shall specify the prepayment date, the principal amount, Class(es) and Type of the Loans to be prepaid and, in the case of LIBOR Loans, the Borrowing or Borrowings pursuant to which such Loans were made. Each notice of prepayment shall be revocable, *provided* that, within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail, the Borrowers shall reimburse the Lenders for all Breakage Costs associated with the revocation of any notice of prepayment. The Administrative Agent shall, promptly after receiving notice from the Lead Borrower hereunder, notify each applicable Lender of the principal amount and Type of the Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment.

(b) Notwithstanding the provisions of SECTION 2.16(a) which generally permit voluntary prepayments of the Revolving Credit Loans, except as provided in SECTION 2.15(c) or SECTION 2.17, only if all Tranche A Loans are repaid in full may the Borrowers repay or prepay amounts owed with respect to the FILO Loans, *provided*, *however*, that any such repayment or prepayment shall not reduce or terminate the FILO Commitments except to the extent provided in SECTION 2.15. In addition, the Borrowers shall also repay the FILO Loans as required (i) under SECTION 2.17 hereof, and (ii) upon any reduction or termination of the FILO Commitments in accordance with the provisions of SECTION 2.15(d) hereof.

(c) The Borrowers shall reimburse each Lender as set forth below for any loss incurred or to be incurred by the Lenders in the reemployment of the funds (i) resulting from any prepayment (for any reason whatsoever, including, without limitation, conversion to Prime Rate Loans or acceleration by virtue of, and after, the occurrence and during the continuance of an Event of Default) of any LIBOR Loan required or permitted under this Agreement, if such Loan is prepaid prior to the last day of the Interest Period for such Loan or (ii) in the event that after the Lead Borrower delivers a notice of borrowing under SECTION 2.04 in respect of LIBOR Loans, such Loans are not made on the first day of the Interest Period specified in such notice of borrowing for any reason other than a breach by such Lender of its obligations hereunder or the delivery of any notice pursuant to SECTION 2.09, SECTION 2.10 or SECTION 2.11, or (iii) in the event that after a Borrower delivers a notice of commitment reduction under SECTION 2.15 or a notice of prepayment under SECTION 2.16 in respect of LIBOR Loans, such commitment reductions or such prepayments are not made on the day specified in such notice of reduction or prepayment. Such loss shall be the amount (herein, collectively, "Breakage Costs") as reasonably determined by such Lender as the excess, if any, of (A) the amount of interest which would have accrued to such Lender on the amount so paid, not prepaid or not borrowed at a rate of interest equal to the Adjusted LIBOR Rate for such Loan (but specifically excluding any Applicable Margin), for the period from the date of such payment or failure to borrow or failure to prepay to the last day (x) in the case of a payment or refinancing of a LIBOR Loan with Prime Rate Loans prior to the last day of the Interest Period for such Loan or the failure to prepay a LIBOR Loan, of the then current Interest Period for such Loan or (y) in the case of such failure to borrow, of the Interest Period for such LIBOR Loan which would have commenced on the date of such failure to borrow, over (B) the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market. Any Lender demanding reimbursement for such loss shall deliver to the Lead Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail

the manner in which such amount was determined and such amounts shall be due within ten (10) Business Days after the receipt of such notice.

(d) Whenever any partial prepayment of Loans are to be applied to LIBOR Loans, such LIBOR Loans shall be prepaid in the chronological order of their Interest Payment Dates or as the Lead Borrower may otherwise designate in writing.

(e) The principal amount of the ABL Term Loans and Pre-Petition ABL Term Loans may not be prepaid or repaid prior to the Termination Date (it being understood that the refinancing of the Pre-Petition ABL Term Loans pursuant to SECTION 2.01(c) with the ABL Term Loans shall not be deemed to violate this SECTION 2.16(e)).

SECTION 2.17 Mandatory Prepayments.

The outstanding Obligations shall be subject to mandatory prepayment as follows:

(a) If at any time the sum of (i) the amount of the Tranche A Credit Extensions by the Tranche A Lenders *plus* (ii) amount of the Pre-Petition Tranche A Credit Extensions exceeds the lesser of the aggregate Tranche A Commitments or the Tranche A Borrowing Base, the Borrowers will, immediately upon notice from the Administrative Agent: (x) prepay, first, the Pre-Petition Tranche A Credit Extensions and, second, the Tranche A Loans (including Swingline Loans) in an amount necessary to eliminate such deficiency; and (y) if, after giving effect to the prepayment in full of all Pre-Petition Tranche A Credit Extensions and outstanding Tranche A Loans such deficiency has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 103% of the Letter of Credit Outstandings.

(b) If at any time the amount of the Revolving Credit Extensions *plus* amount of the Pre-Petition Revolving Credit Extensions causes Availability to be less than zero or causes the Borrowers to not be in compliance in SECTION 6.15, the Borrowers will, immediately upon notice from the Administrative Agent: (x) prepay, first, the Pre-Petition Tranche A Credit Extensions and, then, prepay the Tranche A Loans in an amount necessary to eliminate such deficiency; and (y) if, after giving effect to the prepayment described in clause (x) such deficiency has not been eliminated, prepay the Pre-Petition FILO Credit Extensions and FILO Loans in an amount necessary to eliminate such deficiency, and (z) if, after giving effect to the prepayment as described in clauses (x) and (y) above, such deficiency has not been eliminated, deposit cash into the Cash Collateral Account in an amount equal to 103% of the Letter of Credit Outstandings.

(c) The Revolving Credit Loans shall be repaid daily in accordance with the provisions of SECTION 2.18 and SECTION 2.27. Notwithstanding anything to the contrary herein, during the period between the Closing Date and payment in full of all Pre-Petition Obligations (including all accrued and unpaid interest thereon and fees but excluding all contingent indemnification obligations and other contingent obligations relating to the Pre-Petition Obligations), Cash Receipts and other amounts may be applied to the Pre-Petition Obligations in accordance with the foregoing sentence and in a manner satisfactory to the Administrative Agent.

(d) At the time of the delivery of each Borrowing Base Certificate, Tranche A Loans shall be made by the Tranche A Lenders (without regard to minimum or integral amounts for such Loans) to repay the FILO Credit Extensions to extent the sum of (x) the FILO Credit Extensions *plus* (y) the Pre-Petition FILO Loans exceed the lesser of the FILO Commitments or Incremental Availability as reflected in such Borrowing Base Certificate.

(e) [Reserved].

(f) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBOR Loans are prepaid. No prepayment of LIBOR Loans shall be permitted pursuant to this SECTION 2.17 prior to the last day of an Interest Period applicable thereto, unless the Borrowers reimburse the Lenders for all Breakage Costs associated therewith within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such Borrowing being less than $5,000,000. A prepayment of the Revolving Credit Loans pursuant to SECTION 2.16 or SECTION 2.17 shall not permanently reduce the Commitments.

(g) Notwithstanding the forgoing, the Borrowers shall repay the Obligations as required pursuant to SECTION 2.15(e).

SECTION 2.18 Cash Management.

(a) The Loan Parties, upon the request of the Administrative Agent, shall deliver to the Administrative Agent a schedule of all DDAs or other deposit account or securities accounts, that to the knowledge of the Responsible Officers of the Loan Parties, are maintained by the Loan Parties, which schedule includes, with respect to each depository (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

(b) Annexed hereto as Schedule 2.18(b) is a list describing, as of the Closing Date, (i) all arrangements to which any Loan Party is a party with respect to the payment to such Loan Party of the proceeds of all credit card and debit card charges for sales by such Loan Party and (ii) the information described in SECTION 2.18(a).

(c) Each Loan Party shall:

(i) deliver to the Collateral Agent notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of such Loan Party and addressed to such Loan Party's credit card and debit card clearinghouses and processors listed on Schedule 2.18(b); and

(ii) enter into a blocked account agreement (each, a "Blocked Account Agreement"), reasonably satisfactory to the Administrative Agent, with any Blocked Account Bank with respect to the DDAs in which material amounts (as reasonably determined by the Administrative Agent) of funds of any of the Loan Parties from one or more DDAs are concentrated (excluding, for the avoidance of doubt, Excluded Accounts) (including those existing as of the Closing Date and listed on Schedule 2.18(b)) (collectively, the "Material DDAs" and, to the extent, subject to a Blocked Account Agreement, collectively, the "Blocked Accounts"); *provided* that in the event that any DDA listed on Schedule 2.18(b) is not subject to a Blocked Account Agreement on or prior to Closing Date or such later date as the Administrative Agent shall agree in writing, in its sole discretion, the Loan Parties shall cause any DDA which is not a Blocked Account to be closed and have all funds therein transferred to a Blocked Account, and all future deposits made to, a Blocked Account with the Collateral Agent.

(d) Each Credit Card Notification and Blocked Account Agreement entered into by a Loan Party shall require the ACH or wire transfer on each Business Day (and whether or not there is then an outstanding balance in the Loan Account) of all available cash receipts and collections set forth below

(the "Cash Receipts") (other than amounts in Excluded Accounts) to the concentration account maintained by the Administrative Agent at Bank of America (the "Concentration Account"), from:

(i) the sale of Inventory and other Collateral (but excluding, any Term Priority Collateral deposited into the Term Loan Priority Account and the DIP Term Loan Specified Accounts);

(ii) all proceeds of collections of Accounts;

(iii) all Net Proceeds on account of any Specified Event (other than, until the Pre-Petition Term Loan Facility and the DIP Term Loan Facility is repaid in full, a Specified Event arising in connection with the Term Priority Collateral);

(iv) each Blocked Account (including all cash deposited therein from each DDA, net of any minimum balance as may be required to be kept in such DDA by the institution at which such DDA is maintained to the extent set forth in the applicable Blocked Account Agreement); and

(v) the cash proceeds of all credit card and debit card charges.

If any cash or Cash Equivalents owned by any Loan Party (other than amounts in Excluded Accounts) are deposited to any account, or held or invested in any manner, other than in a Blocked Account (or a DDA which is swept daily to a Blocked Account), then (a) the Borrowers shall cause all funds in such accounts or so held or so invested to be transferred with such frequency as may be reasonably required by the Administrative Agent to a Blocked Account (or a DDA which is swept daily to a Blocked Account) and (b) the Collateral Agent may require the applicable Loan Party to close such account and have all funds therein transferred to a Blocked Account, and all future deposits made to a Blocked Account. In addition to the foregoing, the Loan Parties shall provide the Collateral Agent with an accounting of the contents of the Blocked Accounts, which shall identify, to the reasonable satisfaction of the Collateral Agent, the function and details of all DDAs or other deposit account or securities accounts. The Borrowers may also maintain the Disbursement Account to be used by the Borrowers solely for disbursements and payments (including payroll) in the ordinary course of business. The DIP Term Loan Funding Account shall contain solely the proceeds of the "Initial Loans" and the "Final Loans" made in accordance with the DIP Term Loan Agreement. The DIP Term Loan Operating Account shall contain solely the proceeds of "Withdrawals" of funds from the DIP Term Loan Funding Account made in accordance with the DIP Term Loan Agreement. The DIP Term Loan Specified Accounts shall not at any time contain any Cash Receipts.

(e) The Loan Parties shall not open or close any DDAs or other deposit accounts or securities accounts without the prior written consent of the Collateral Agent. Unless consented to in writing by the Collateral Agent, the Borrowers shall not enter into any agreements with credit card or debit card processors other than the ones expressly contemplated herein unless contemporaneously therewith, a Credit Card Notification, is executed and delivered to the Collateral Agent.

(f) The Loan Parties shall establish and maintain cash management arrangements and procedures, including Blocked Accounts, reasonably satisfactory to the Administrative Agent.

(g) The Concentration Account shall at all times be under the sole dominion and control of the Collateral Agent. Each Loan Party hereby acknowledges and agrees that (i) such Loan Party has no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times continue to be collateral security for all of the Obligations, and (iii) the funds on deposit in the Concentration Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this SECTION 2.18, any Loan Party receives or otherwise has

dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Collateral 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 promptly be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Collateral Agent.

(h) The following shall apply to deposits and payments under and pursuant to this Agreement:

(i) Funds shall be deemed to have been deposited to the Concentration Account on the Business Day on which deposited, *provided* that such deposit is available to the Administrative Agent by 4:00 p.m. on that Business Day (except that if the Revolving Obligations are being paid in full, by 2:00 p.m. Boston time, on that Business Day);

(ii) Funds paid to the Administrative Agent, other than by deposit to the Concentration Account, shall be deemed to have been received on the Business Day when they are good and collected funds, *provided* that such payment is available to the Administrative Agent by 4:00 p.m. on that Business Day (except that if the Revolving Obligations are being paid in full, by 2:00 p.m. Boston time, on that Business Day);

(iii) If a deposit to the Concentration Account or payment is not available to the Administrative Agent until after 4:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the then next Business Day;

(iv) If any item deposited to the Concentration Account and credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the applicable Loan Account and the Loan Parties shall indemnify the Secured Parties against all out-of-pocket claims and losses resulting from such dishonor or return;

(v) All amounts received under this SECTION 2.18 shall be applied in the manner set forth in SECTION 2.27.

SECTION 2.19 Fees.

(a) The Borrowers shall pay to the Administrative Agent and MLPFS for their respective accounts, the fees set forth in the Fee Letter as and when payment of such fees is due as therein set forth.

(b) The Borrowers shall pay the Administrative Agent, for the account of the Revolving Credit Lenders, an aggregate fee (the "Unused Fee") equal to the Applicable Unused Fee Rate per annum (on the basis of actual days elapsed in a year of 360 days) of the average daily balance of the Revolving Credit Lenders' respective Unused Commitment during the month just ended (or relevant period with respect to the payment being made on the Termination Date). The Unused Fee shall be paid in arrears, on the first Business Day of each calendar month and on the Termination Date. The Administrative Agent shall pay the Unused Fee to the Revolving Credit Lenders upon the Administrative Agent's receipt of the Unused Fee based upon each Revolving Credit Lender's pro rata share of the average daily balance of the Lenders' Unused Commitment.

(c) The Borrowers shall pay the Administrative Agent, for the account of the Revolving Credit Lenders who are then participating in the Letters of Credit, on the first Business Day of each calendar month and on demand after the Termination Date, in arrears, a fee calculated on the basis of a

360 day year, as applicable and actual days elapsed (each, a "Letter of Credit Fee"), equal to the following per annum percentages of the average face amount of the following categories of Letters of Credit outstanding during the monthly period then ended:

(i) Standby Letters of Credit: for the account of each Lender in accordance with its Tranche A Commitment Percentage, at a per annum rate equal to the then Applicable Margin for Tranche A Loans that are LIBOR Loans;

(ii) Commercial Letters of Credit: for the account of each Lender in accordance with its Tranche A Commitment Percentage, at a per annum rate equal to fifty percent (50%) of the then Applicable Margin for Tranche A Loans that are LIBOR Loans;

(iii) After the occurrence and during the continuance of an Event of Default, at any time that the Administrative Agent is not holding in the Cash Collateral Account an amount in Cash Collateral equal to 103% of the Letter of Credit Outstandings, as of such date, plus accrued and unpaid interest on any unreimbursed drawings of such Letter of Credit Outstandings, effective upon written notice from the Administrative Agent (which notice may be given at the election of the Administrative Agent or at the direction of the Required Revolving Lenders after the occurrence of any Event of Default), the Letter of Credit Fees set forth in clauses (i) and (ii) of this SECTION 2.19(c) shall be increased by an amount equal to two percent (2%) per annum.

(d) The Borrowers shall pay to each Issuing Bank, in addition to all Letter of Credit Fees otherwise provided for herein, (i) the reasonable and customary fees and charges of such Issuing Bank in connection with the negotiation, settlement and amendment of each Letter of Credit issued by such Issuing Bank, and (ii) a fronting fee (each, a "Fronting Fee") equal to one-eighth of one percent (0.125%) on the aggregate Stated Amount of all Letters of Credit. Each such Fronting Fee shall be payable on the first day of each calendar month and on demand after the Termination Date, in arrears. In addition, the Borrowers shall pay directly to each Issuing Bank for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect.

(e) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for the account of the Administrative Agent and the applicable Credit Parties as provided herein. Once due, all fees and other amounts under this Agreement, the other Loan Documents and the transactions contemplated thereby shall be payable and fully earned and shall not be refundable under any circumstances.

(f) The Borrowers shall pay to the ABL Term Loan Agent, the fees set forth in the ABL Term Loan Fee Letter as and when payment of such fees is due as therein set forth and for the account of the parties specified therein.

SECTION 2.20 Maintenance of Loan Account.

(a) The Administrative Agent shall maintain an account on its books in the name of the Borrowers (each, the "Loan Account") which will reflect (i) all Loans and other advances made by the Lenders to the Borrowers or for the Borrowers' account, (ii) all Letter of Credit Disbursements, fees and interest that have become payable as herein set forth, and (iii) any and all other monetary Obligations that have become payable.

SECTION 2.21 Payments.

(a) The Borrowers shall make each payment required to be made hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of drawings under Letters of Credit, of amounts payable under SECTION 2.14, SECTION 2.15(e), SECTION 2.16(c), SECTION 2.23, SECTION 9.04, SECTION 9.05 or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 100 Federal Street, Boston, Massachusetts (or such other place as the Administrative Agent may direct), except payments to be made directly to each Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to SECTION 2.14, SECTION 2.15(e), SECTION 2.16(c), SECTION 2.23, SECTION 9.04, SECTION 9.05 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. For the avoidance of doubt, all payments of principal in respect of the ABL Term Loans shall be made to the Administrative Agent for application to the ABL Term Loans in accordance with the terms of this Agreement. Subject to SECTION 2.22, the Administrative Agent shall distribute any such payments to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, except with respect to LIBOR Borrowings, the date for payment shall be extended to the next succeeding Business Day, and, if any payment due with respect to LIBOR Borrowings shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event, the date of such payment shall be on the last Business Day of subject calendar month, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(b) All funds received by and available to the Administrative Agent to pay principal, unreimbursed drawings under Letters of Credit, interest, fees and other amounts then due hereunder, shall be applied in accordance with the provisions of SECTION 2.27 ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed drawings under Letters of Credit, interest, fees and other amounts then due to such respective parties. For purposes of calculating interest due to a Lender, that Lender shall be entitled to receive interest on the actual amount contributed by that Lender towards the principal balance of the Revolving Credit Loans outstanding during the applicable period covered by the interest payment made by the Borrowers. Any net principal reductions to the Revolving Credit Loans received by the Administrative Agent in accordance with the Loan Documents during such period shall not reduce such actual amount so contributed, for purposes of calculation of interest due to that Lender, until the Administrative Agent has distributed to the applicable Lender its Commitment Percentage thereof. All credits against the Obligations shall be conditioned upon final payment to the Administrative Agent of the items giving rise to such credits. If any item credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the Loan Account and the Borrowers shall indemnify the Secured Parties against all claims and losses resulting from such dishonor or return.

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

excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) In accordance with the provisions of SECTION 8.16, if any Lender shall fail to make any payment required to be made by it pursuant to this Agreement, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section.

SECTION 2.22 Settlement Amongst Lenders.

(a) The Swingline Lender may, at any time (but, in any event shall weekly, as provided in SECTION 2.22(b)), on behalf of the Borrowers (which hereby authorize the Swingline Lender to act on their behalf in that regard) request the Administrative Agent to cause the Tranche A Lenders to make a Tranche A Loan (which shall be a Prime Rate Loan) in an amount equal to such Lender's Tranche A Commitment Percentage of the outstanding amount of Swingline Loans made in accordance with SECTION 2.06, which request may be made regardless of whether the conditions set forth in Article IV have been satisfied but subject to the last sentence of this SECTION 2.22(a). Upon such request, each Tranche A Lender shall make available to the Administrative Agent the proceeds of such Tranche A Loan for the account of the Swingline Lender. If the Swingline Lender requires a Tranche A Loan to be made by the Tranche A Lenders and the request therefor 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 the request therefor is received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each such Tranche A Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Tranche A Lender shall not have so made its transfer to the Administrative Agent, such Tranche A Lender agrees to pay to the Administrative 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 Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. In the event that the Borrowers have not borrowed the full amount of the lesser of the FILO Commitments or Incremental Availability, the Administrative Agent may (notwithstanding any contrary provision of this Agreement but subject to SECTION 2.22(b)) require a settlement of any Swingline Loan: *first*, from the making of FILO Loans, and thereupon the settlement provisions of this SECTION 2.22(a) shall apply to such settlement by FILO Lenders, *mutatis mutandis*, and *second*, from the making of Tranche A Revolving Credit Loans. If for any reason any Swingline Loan cannot be refinanced by a Tranche A Loan in accordance with this SECTION 2.22(a) (including because the conditions set forth in Article IV have not been satisfied), the request submitted by the Swingline Lender as set forth above shall be deemed to be a request by the Swingline Lender that each of the Tranche A Lenders fund its risk participation in the relevant Swingline Loan and each Tranche A Lender's payment to the Administrative Agent for the account of the Swingline Lender described above shall be deemed payment in respect of such participation.

(b) The amount of each Revolving Credit Lender's Tranche A Commitment Percentage or FILO Commitment Percentage of outstanding Revolving Credit Loans (including outstanding Swingline Loans) shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Credit Loans (including Swingline Loans) and repayments of Revolving Credit Loans (including Swingline Loans) received by the Administrative 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 Administrative Agent.

(c) The Administrative Agent shall deliver to each of the Revolving Credit Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Credit Loans (including Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Tranche A Lender or FILO Lender, as applicable, its Tranche A Commitment Percentage or FILO Commitment Percentage of repayments, and (ii) each Revolving Credit Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Revolving Credit Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Credit Loans made by each Tranche A Lender or FILO Lender, as applicable, with respect to Revolving Credit Loans to the Borrowers (including Swingline Loans) shall be equal to such Tranche A Lender's Tranche A Commitment Percentage, or FILO Lender's FILO Commitment Percentage of Revolving Credit Loans, as applicable (including Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Credit 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 Credit Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Credit Lender shall not have so made its transfer to the Administrative Agent, such Revolving Credit Lender agrees to pay to the Administrative 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 Administrative Agent, at the Federal Funds Effective Rate.

SECTION 2.23 Taxes.

(a) Except as otherwise expressly provided in this SECTION 2.23, any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; *provided, however*, that if a Loan Party or an Agent shall be required to deduct, withhold or remit any such Taxes from such payments, then (i) in the case of any Indemnified Taxes or Other Taxes, the sum payable shall be increased as necessary so that after making all required deductions, withholdings, or remittances for such Taxes (including deductions or withholdings applicable to additional sums payable under this SECTION 2.23) the applicable Credit Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall make such deductions or withholdings, (iii) the applicable withholding agent shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), if a Borrower or any Facility Guarantor is the applicable withholding agent, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law, excluding, in each case, such amounts that result from a Lender's assignment, grant of a participation, transfer or assignment to or designation of a new applicable New Lending Office or other office for receiving payments under any Loan Document (collectively, "Assignment Taxes"), except for Assignment Taxes resulting from assignment or participation that is requested or required in writing by the Borrower.

(c) (i)The Loan Parties shall indemnify each Credit Party, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid or payable by such Credit Party on or with respect to any payment by or on account of any obligation of the Loan Parties

hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this SECTION 2.23) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto; *provided* that if any Loan Party reasonably believes that such Taxes were not correctly or legally asserted, each Lender will use reasonable efforts to cooperate with such Loan Party to obtain a refund of such Taxes so long as such efforts would not, in the sole determination of such Lender, result in any unreimbursed additional costs, expenses or risks or be otherwise disadvantageous to it; *provided further*, that the Loan Parties shall not be required to compensate any Lender pursuant to this SECTION 2.23 for any amounts incurred in any Fiscal Year for which such Lender is claiming compensation if such Lender does not furnish notice of such claim within six (6) months from the end of such Fiscal Year; *provided further*, that if the circumstances giving rise to such claim have a retroactive effect, then the beginning of such six (6) month period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Credit Party, or by the Administrative Agent on its own behalf or on behalf of any other Credit Party, setting forth in reasonable detail the manner in which such amount was determined, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the Issuing Bank shall, and does hereby, indemnify each Loan Party and each Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Excluded Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for such Loan Party or such Agent) incurred by or asserted against such Loan Party or such Agent by any Governmental Authority. Each Lender and the Issuing Bank hereby authorizes each Agent and Loan Party to set off and apply any and all amounts at any time owing to such Lender or the Issuing Bank, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this SECTION 2.23(e)(ii). The agreements in this SECTION 2.23(e)(ii) shall survive the resignation and/or replacement of any Agent, any assignment of rights by, or the replacement of, a Lender or the Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, the Lead Borrower shall deliver to the Administrative 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 Administrative Agent.

(e) (i) Each Lender (with respect to the relevant lending office) and Agent shall, if reasonably requested by a Loan Party, deliver such documentation prescribed by Applicable Law or as reasonably requested by such Loan Party, as will enable such Loan Party to determine whether such Lender (with respect to the relevant lending office) is subject to withholding under Applicable Law, is entitled to an exemption from such withholding or is eligible for a reduced rate of withholding with respect to payments to be made to such Lender under the Loan Documents. In addition, each Lender (with respect to the relevant lending office) and Agent shall deliver updated or appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) promptly upon the obsolescence or invalidity of any documentation previously delivered by such party or promptly notify the Borrower. In addition, each Lender (with respect to the relevant lending office) shall deliver to the Borrowers and the Administrative Agent such other tax forms or other documents as shall be prescribed by Applicable Law, to the extent applicable, (x) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FACTA and to demonstrate that payments to such Lender (with respect to the relevant lending office) under this Agreement and the other Loan Documents are exempt from any United States federal withholding tax imposed pursuant to FATCA or (y) to allow the Borrower and the Administrative Agent to determine the amount to deduct or withhold

under FATCA from a payment hereunder. Solely for purposes of the preceding sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Without limiting the foregoing:

(ii) Any Foreign Lender (with respect to the relevant lending office) and other Credit Party shall deliver to the Lead Borrower and the Administrative Agent two (2) originals of (i) either United States Internal Revenue Service Form W-8BEN or W-8BEN-E (claiming a treaty benefit) or Form W-8ECI, in each case, together with such other documentation as is required under the Code, or any subsequent versions thereof or successors thereto, (ii) in the case of a Foreign Lender (with respect to the relevant lending office) claiming exemption from or reduction in U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest" a (A) an appropriate Form W-8, or any subsequent versions thereof or successors thereto and (B) a certificate in the form attached hereto as Exhibit L, representing that such Foreign Lender (with respect to the relevant lending office) or Credit Party (1) is not a bank for purposes of Section 881(c) of the Code, (2) is not a 10 percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Loan Party and (3) is not a controlled foreign corporation related to the Loan Parties (within the meaning of Section 864(d)(4) of the Code)) or, (C) to the extent a Foreign Lender is not the beneficial owner, executed copies of United States Internal Revenue Service Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a certificate in the form attached hereto as Exhibit L, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable (provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate in the form attached hereto as Exhibit L on behalf of each such direct or indirect partner), in all cases, properly completed and duly executed by such Foreign Lender or Credit Party claiming, as applicable, complete exemption from or reduced rate of, U.S. federal withholding tax on payments by the Loan Parties under this Agreement and the other Loan Documents. Such forms shall be delivered by each Foreign Lender (with respect to the relevant lending office) on or before the date it becomes a party to this Agreement and on or before the date, if any, a Foreign Lender changes its applicable lending office or uses an office not previously used to fund a Revolving Credit Loan under this Agreement by designating a different lending office (a "New Lending Office"). In addition, each such party shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by it. Notwithstanding any other provision of this SECTION 2.23(e), a Lender shall not be required to deliver any form pursuant to this SECTION 2.23(e) that such Lender is not legally able to deliver.

(iii) Each Lender and other Credit Party that is a "United States person" as defined under Section 7701(a)(30) of the Code (a "U.S. Lender") shall deliver to the Lead Borrower and the Administrative Agent such form or forms, certificates or documentation, including two original copies of United States Internal Revenue Service Form W-9, as reasonably requested by any Borrower to confirm or establish that such Credit Party is not subject to deduction, withholding, or backup withholding of United States federal income Tax with respect to any payments to such Credit Party. Such forms shall be delivered by each Credit Party to the Borrower on or before the date such Credit Party becomes a party to this Agreement.

(f) [Reserved].

(g) If any Loan Party shall be required pursuant to this SECTION 2.23 to pay any additional amount to, or to indemnify, any Credit Party, such Credit Party shall use reasonable efforts to avoid or minimize any amounts which might otherwise be payable pursuant to this SECTION 2.23(g); *provided, however*, that such efforts shall not include the taking of any actions by such Credit Party that would result in any Tax, costs or other expense to such Credit Party (other than a Tax, cost or other expense for which such Credit Party shall have been reimbursed or indemnified by the Loan Parties pursuant to this

Agreement or otherwise) or any action which would or might in the reasonable opinion of such Credit Party have an adverse effect upon its business, operations or financial condition or otherwise be disadvantageous to such Credit Party.

(h) [Reserved].

(i) If any Credit Party reasonably determines that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by the Loan Parties pursuant to subsection (a), (b) or (c) above in respect of payments under the Loan Documents (which refund, deduction or credit is provided by the jurisdiction imposing such Taxes), a current monetary benefit that it would otherwise not have obtained and that would result in the total payments under this SECTION 2.23 exceeding the amount needed to make such Credit Party whole, such Credit Party shall pay to the Lead Borrower, with reasonable promptness following the date upon which it actually realizes such benefit, an amount equal to the amount of such refund, deduction or credit, net of all out of pocket expenses incurred in securing such refund, deduction or credit. This SECTION 2.23(i) shall not be construed to require any Credit Party to make available its Tax returns (or any other confidential information relating to its Taxes) to any Loan Party.

(j) Each party's obligations under this SECTION 2.23 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or any Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

SECTION 2.24 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under SECTION 2.14 or cannot make Loans under SECTION 2.11, 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 2.23, 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 reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to SECTION 2.14 or SECTION 2.23, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; *provided, however*, that the Borrowers shall not be liable for such costs and expenses of a Lender requesting compensation if (i) such Lender becomes a party to this Agreement on a date after the Closing Date and (ii) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto.

(b) (i) If any Lender requests compensation under SECTION 2.14 or cannot make Loans under SECTION 2.11 for thirty (30) consecutive days, or (ii) if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to SECTION 2.23, or (iii) if any Lender becomes a Delinquent Lender or otherwise defaults in its obligation to fund Loans hereunder, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in SECTION 9.07), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided, however*, that (i) the Lead Borrower shall have received the prior written consent of the Administrative Agent, the Issuing Banks and the Swingline Lender, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in unreimbursed drawings under Letters of Credit

and Swingline Loans, if any, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under SECTION 2.14 or payments required to be made pursuant to SECTION 2.23, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 2.25 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 Loans and Letters of Credit, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to the Administrative Agent and each Lender on account of Loans so made and Letters of Credit so issued as if made directly by the Lenders to such Borrower, notwithstanding the manner by which such Loans and Letters of Credit are recorded on the books and records of the Lead Borrower and of any other Borrower.

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

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

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

SECTION 2.26 Super Priority Nature of Obligations and Collateral Agent's Liens; Payment of Obligations.

(a) The priority of the Collateral Agent's Liens on the Collateral, claims and other interests shall be as set forth in the Interim Order and the Final Order.

(b) Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, Agents and Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

SECTION 2.27 Application of Proceeds.

(a) Pre-Default Application of Proceeds. At all times when SECTION 2.27(b) does not apply, and except as otherwise expressly provided herein, all Net Proceeds, Cash Receipts and other payments received by the Administrative Agent and all proceeds of the Collateral received by the Administrative Agent or any other Secured Party and all proceeds realized from the Loan Parties on account of the Collateral shall be applied in the following order:

(i) FIRST, ratably to pay the Obligations in respect of any Credit Party Expenses, indemnities and other amounts then due and payable to the Administrative Agent, the Collateral Agent and the ABL Term Loan Agent until paid in full;

(ii) SECOND, ratably to pay the Pre-Petition Obligations in respect of any Credit Party Expenses and indemnities (including expenses and indemnities accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) to the Pre-Petition Revolving Credit Lenders, if any, and to pay any fees (including fees accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due to the Pre-Petition Revolving Credit Lenders (other than any fees owed to Pre-Petition FILO Lenders), if any, until paid in full;

(iii) THIRD, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Pre-Petition Obligations (other than the Pre-Petition FILO Loans or the Pre-Petition ABL Term Loans), if any, until paid in full;

(iv) FOURTH, to pay principal due in respect of the Pre-Petition Swingline Loans, if any, until paid in full;

(v) FIFTH, ratably to pay principal due in respect of the Pre-Petition Revolving Credit Loans (other than Pre-Petition FILO Loans), if any, until paid in full;

(vi) SIXTH, ratably to pay any fees (including fees accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due and payable to the Pre-Petition FILO Lenders, if any, until paid in full;

(vii) SEVENTH, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Pre-Petition FILO Loans, if any, until paid in full;

(viii) EIGHTH, ratably to pay principal due in respect of Pre-Petition FILO Loans, if any, until paid in full;

(ix) NINTH, ratably to pay the Obligations in respect of any Credit Party Expenses and indemnities to the Revolving Credit Lenders, and to pay any fees then due to the Revolving Credit Lenders (other than any fees owed to FILO Lenders) until paid in full;

(x) TENTH, ratably to pay interest accrued in respect of the Obligations (other than the FILO Loans or the ABL Term Loans) until paid in full;

(xi) ELEVENTH, to pay principal due in respect of the Swingline Loans until paid in full (without a corresponding commitment reduction);

(xii) TWELFTH, ratably to pay principal due in respect of the Revolving Credit Loans (other than FILO Loans) until paid in full (without a corresponding commitment reduction);

(xiii) THIRTEENTH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Issuing Banks and the Tranche A Lenders as Cash Collateral in an amount up to 103% of the then Stated Amount of Letters of Credit (other than those in which the FILO Lenders participate) until paid in full;

(xiv) FOURTEENTH, ratably to pay any fees then due to the FILO Lenders until paid in full;

(xv) FIFTEENTH, ratably to pay interest accrued in respect of the FILO Loans until paid in full;

(xvi) SIXTEENTH, ratably to pay principal due in respect of FILO Loans until paid in full;

(xvii) SEVENTEENTH, ratably to pay any other outstanding Revolving Obligations then due to the Revolving Secured Parties until paid in full (without a corresponding commitment reduction);

(xviii) EIGHTEENTH, to fund the Pre-Petition Indemnity Account, if applicable;

(xix) NINETEENTH, to the Lead Borrower or such other Person entitled thereto under Applicable Law.

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Excluded Swap Obligations with respect to any Loan Party shall not be paid with proceeds received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to proceeds received from other Loan Parties to preserve the allocations to the Obligations owing to the Revolving Secured Parties otherwise set forth in this SECTION 2.27(a). This Section 2.27(a) is not for the benefit of or enforceable by any Loan Party.

(b) Post-Default Application of Proceeds. Notwithstanding anything herein to the contrary, (i) at the election of the Administrative Agent (in its discretion) or at the direction of the Required Lenders or the Required Revolving Lenders, after the occurrence and during the continuance of any Event of Default, all Net Proceeds or (ii) the exercise of remedies provided for in SECTION 7.02, Cash Receipts and other payments received by the Administrative Agent and all proceeds of the Collateral received by the Administrative Agent or any other Secured Party and all proceeds realized from the Loan Parties on account of the Collateral shall be applied in the following order:

(i) FIRST, ratably to pay the Obligations in respect of any Credit Party Expenses, indemnities and other amounts (including expenses, indemnities and other amounts accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due and payable to the Administrative Agent, the Collateral Agent and the ABL Term Loan Agent under the Loan Documents until paid in full;

(ii) SECOND, ratably to pay the Pre-Petition Obligations in respect of any Credit Party Expenses and indemnities (including expenses and indemnities accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) to the Pre-Petition Revolving Credit Lenders, if any, and to pay any fees (including fees accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due to the Pre-Petition Revolving Credit Lenders (other than any fees owed to Pre-Petition FILO Lenders), if any, until paid in full;

(iii) THIRD, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Pre-Petition Obligations (other than the Pre-Petition FILO Loans or the Pre-Petition ABL Term Loans), if any, until paid in full;

(iv) FOURTH, to pay principal due in respect of the Pre-Petition Swingline Loans, if any, until paid in full;

(v) FIFTH, ratably to pay principal due in respect of the Pre-Petition Revolving Credit Loans (other than Pre-Petition FILO Loans), if any, until paid in full;

(vi) SIXTH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Pre-Petition Issuing Banks and the Pre-Petition Tranche A Lenders as Cash Collateral in an amount up to 103% of the then Stated Amount of Letters of Credit (other than those in which the Pre-Petition FILO Lenders participate) which are not otherwise deemed "Letters of Credit" hereunder, until paid in full;

(vii) SEVENTH, ratably to pay any fees (including fees accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due and payable to the Pre-Petition FILO Lenders, if any, until paid in full;

(viii) EIGHTH, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Pre-Petition FILO Loans, if any, until paid in full;

(ix) NINTH, ratably to pay principal due in respect of Pre-Petition FILO Loans, if any, until paid in full;

(x) TENTH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Pre-Petition Issuing Banks and the Pre-Petition FILO Lenders, as Cash Collateral in an amount up to 103% of the then Stated Amount of Letters of Credit in which the Pre-Petition FILO Lenders participate which are not otherwise deemed "Letters of Credit" hereunder, until paid in full;

(xi) ELEVENTH, to fund the Pre-Petition Indemnity Account, if applicable;

(xii) TWELFTH, ratably to pay the Obligations in respect of any Credit Party Expenses and indemnities (including expenses and indemnities accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) to the Revolving Credit Lenders, and to pay any fees (including fees accrued after the

commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due to the Revolving Credit Lenders (other than any fees owed to FILO Lenders) until paid in full;

(xiii) THIRTEENTH, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Obligations (other than the FILO Loans or the ABL Term Loans) until paid in full;

(xiv) FOURTEENTH, to pay principal due in respect of the Swingline Loans until paid in full (without a corresponding commitment reduction);

(xv) FIFTEENTH, ratably to pay principal due in respect of the Revolving Credit Loans (other than FILO Loans) until paid in full (without a corresponding commitment reduction);

(xvi) SIXTEENTH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Issuing Banks and the Tranche A Lenders as Cash Collateral in an amount up to 103% of the then Stated Amount of Letters of Credit (other than those in which the FILO Lenders participate) until paid in full;

(xvii) SEVENTEENTH, ratably to pay any fees (including fees accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) then due to the FILO Lenders until paid in full;

(xviii) EIGHTEENTH, ratably to pay interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the FILO Loans until paid in full;

(xix) NINETEENTH, ratably to pay principal due in respect of FILO Loans until paid in full;

(xx) TWENTIETH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Issuing Banks and the FILO Lenders, as Cash Collateral in an amount up to 103% of the then Stated Amount of Letters of Credit in which the FILO Lenders participate until paid in full;

(xxi) TWENTY-FIRST, ratably to pay that portion of the Pre-Petition Obligations arising from (i) "Cash Management Services" (as defined in the Pre-Petition Credit Agreement) under sections (a), (b) and (e) of such definition, in proportion to the respective amounts held by them, (ii) other "Cash Management Services" (as defined in the Pre-Petition Credit Agreement) for which a reserve has been implemented under the Pre-Petition Credit Agreement and is in effect on the Petition Date, in proportion to the respective amounts held by them and (iii) "Bank Products" (as defined in the Pre-Petition Credit Agreement) for which a reserve has been implemented under the Pre-Petition Credit Agreement and is in effect on the Petition Date, in proportion to the respective amounts held by them;

(xxii) TWENTY-SECOND, ratably to pay that portion of the Obligations arising from (i) Cash Management Services under sections (a), (b) or (e) of such definition, in proportion to the respective amounts held by them, (ii) Cash Management Services under sections (c), (d) and (f) of such definition for which a Cash Management Reserve has been implemented and is in effect, in proportion to

the respective amounts held by them and (iii) Bank Products for a which a Bank Products Reserve has been implemented and is in effect, in proportion to the respective amounts held by them;

(xxiii) TWENTY-THIRD, ratably to pay any Pre-Petition Credit Party Expenses and indemnities to the Pre-Petition ABL Term Lenders and to pay any fees then due to the Pre-Petition ABL Term Lenders until paid in full;

(xxiv) TWENTY-FOURTH, ratably to pay outstanding interest (including default interest and specifically including interest accrued after the commencement of any proceeding under any Debtor Relief Laws, whether or not allowed in such proceeding under any Debtor Relief Laws) accrued in respect of the Pre-Petition ABL Term Loans until paid in full;

(xxv) TWENTY-FIFTH, ratably to pay outstanding principal due in respect of the Pre-Petition ABL Term Loans until paid in full;

(xxvi) TWENTY-SIXTH, ratably to pay any Credit Party Expenses and indemnities to the ABL Term Lenders and to pay any fees then due to the ABL Term Lenders until paid in full;

(xxvii) TWENTY-SEVENTH, ratably to pay outstanding interest (including default interest) accrued in respect of the ABL Term Loans until paid in full;

(xxviii) TWENTY-EIGHTH, ratably to pay outstanding principal due in respect of the ABL Term Loans until paid in full;

(xxix) TWENTY-NINTH, ratably to pay any other outstanding Pre-Petition Obligations (including any Pre-Petition Bank Products for which no Bank Product Reserves were taken under the Pre-Petition Credit Agreement and Cash Management Services under sections (c), (d) and (f) for which no Cash Management Reserves were taken under the Pre-Petition Credit Agreement and other outstanding Other Liabilities under the Pre-Petition Credit Agreement) then due to the Pre-Petition Revolving Secured Parties until paid in full;

(xxx) THIRTIETH, ratably to pay any other outstanding Obligations (including any Bank Products for which no Bank Product Reserves were taken and Cash Management Services under sections (c), (d) and (f) for which no Cash Management Reserves were taken and other outstanding Other Liabilities) then due to the Revolving Secured Parties until paid in full;

(xxxi) THIRTY-FIRST, ratably to pay any other outstanding Pre-Petition ABL Term Obligations then due to the Pre-Petition ABL Term Secured Parties until paid in full;

(xxxii) THIRTY-SECOND, ratably to pay any other outstanding ABL Term Obligations then due to the ABL Term Secured Parties until paid in full;

(xxxiii) THIRTY-THIRD, to the Lead Borrower or such other Person entitled thereto under Applicable Law.

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied on a pro rata basis among the Obligations in the category. Excluded Swap Obligations with respect to any Loan Party shall not be paid with proceeds received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to proceeds received from other Loan Parties to preserve the

allocations to the Obligations owing to the Revolving Secured Parties otherwise set forth in this SECTION 2.27(b). This Section 2.27(b) is not for the benefit of or enforceable by any Loan Party.

Whether or not it is held that the Revolving Obligations and the ABL Term Obligations together constitute only one secured claim (rather than separate classes of secured claims), the parties hereto agree that in any proceeding under any Debtor Relief Laws of any Loan Party, all payments and distributions shall applied as if the Revolving Obligations and the ABL Term Obligations were separate classes of secured claims against the Loan Parties in respect of the Collateral with the effect that the holders of the Revolving Obligations shall be entitled to receive payment in full of all amounts owing to them (whether or not allowed in such proceeding under any Debtor Relief Laws, and including in respect of post-petition interest and expenses) that would be owing to them as if the holders of the Revolving Obligations were so classified as a separate claim and secured by a separate Lien, with the holders of the ABL Term Obligations hereby acknowledging and agreeing to turn over to the holders of the Revolving Obligations payments or proceeds of Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence. In the event that, notwithstanding the foregoing provisions of this SECTION 2.27(b), payments or proceeds of Collateral shall be received by any Lender in violation of the priorities set forth herein, such payments or proceeds of Collateral shall be held in trust for the benefit of and shall be paid over to or delivered to the Administrative Agent upon the Administrative Agent's or the Required Revolving Lenders' written demand.

SECTION 2.28 Obligations of the Lenders Several.

The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to hereunder are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment hereunder on any date required under this Agreement shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment hereunder.

SECTION 2.29 Cash Collateral Generally.

For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant Issuing Bank and/or the Lenders, as collateral for the Letter of Credit Outstandings or other amounts required to be cash collateralized hereunder, cash or deposit account balances ("Cash Collateral") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent (which documents are hereby consented to by the relevant Issuing Bank and/or the Lenders). Derivatives of such term have corresponding meanings. All Cash Collateral required to be maintained pursuant to SECTION 2.13, SECTION 2.16, SECTION 2.17, or SECTION 7.02 with respect to Letters of Credit, or pursuant to SECTION 8.16 with respect to a Delinquent Lender (other than credit support not constituting funds subject to deposit), or otherwise under this Agreement, shall be maintained the Cash Collateral Account as described in SECTION 2.13(j). Each of the Loan Parties, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Banks and the Lenders (including the Swingline Lender), and agrees to maintain, a first priority security interest in all such cash, such deposit account, the Cash Collateral Account and all balances therein, and all other property so provided as collateral, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied. If at any time the Administrative Agent determines that such Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable obligations secured thereby, the Loan Parties or the relevant Delinquent Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an

amount sufficient to eliminate such deficiency. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under hereunder in respect of Letters of Credit or Swingline Loans shall be held and applied to the satisfaction of the specific obligations to fund participations in Letters of Credit or Swingline Loans (including, as to Cash Collateral provided by a Delinquent Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

ARTICLE III

Representations and Warranties

To induce the Credit Parties to make the Loans (including Swingline Loans) and to issue Letters of Credit, the Loan Parties, jointly and severally, make the following representations and warranties to each Credit Party with respect to each Loan Party:

SECTION 3.01 Existence, Qualification and Power; EEA Financial Institutions.

Each Loan Party and each of its Subsidiaries (a) is a Person duly organized or formed, validly existing and in good standing under the Applicable Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority (i) to own or lease its assets and, subject to entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court and to the further approval of the Bankruptcy Court for transactions outside of the ordinary course of business, to carry on its business and (ii) subject to entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, to execute, deliver and perform its obligations under the Loan Documents to which it is a party (including, with respect to the Borrowers, to borrow money and request Letters of Credit hereunder), (c) is duly qualified and in good standing under the Applicable Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except with respect to this clause (c), to the extent that failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Schedule 3.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's legal 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. Neither the Lead Borrower nor any Loan Party is an EEA Financial Institution.

SECTION 3.02 Authorization; No Contravention.

Upon entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court and subject to its terms, the execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party (a) will be within such Loan Party's corporate or other powers and will have been duly authorized by all necessary corporate or other organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or requirement to create) any Lien (other than Liens permitted under SECTION 6.01) under or require any payment to be made under (x) any contractual obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Applicable Law.

SECTION 3.03 Governmental Authorization; Other Consents.

Except for the entry by the Bankruptcy Court of, or pursuant to the terms of, the Interim Order (or the Final Order, when 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 in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Security Documents, (c) the perfection or maintenance of the Liens created under the Security Documents (including the priority thereof) or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of their rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04 Binding Effect.

Upon entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), and subject to the terms thereof, this Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto, and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by general principles of equity.

SECTION 3.05 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 in all material respects the financial condition of the Lead Borrower and its Subsidiaries on a Consolidated basis as of the date thereof and their results of operations, cash flows and changes in shareholders' equity 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 on a Consolidated basis as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(b) The Unaudited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Lead Borrower and its Subsidiaries on a Consolidated basis as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) The initial Approved Budget attached hereto as Annex A, which was furnished to the Administrative Agent and the ABL Term Loan Agent on or prior to the Closing Date, and each subsequent Approved Budget delivered in accordance with SECTION 5.18, has been prepared in good faith based upon assumptions the Borrowers believed to be reasonable assumptions on the date of delivery of the then-applicable Approved Budget. To the knowledge of the Borrowers, no facts exist that (individually or in

the aggregate) would result in any material change in the Approved Budget. The Lead Borrower shall hereafter deliver to the Administrative Agent and the ABL Term Loan Agent updates to the Approved Budget in accordance with SECTION 5.18.

(d) Since the Petition Date, other than those events or circumstances customarily resulting from the commencement of the Chapter 11 Cases, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect.

SECTION 3.06 Litigation.

Except for the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Lead Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) involve any of the Loan Documents or the transactions contemplated thereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.07 No Default.

No Default or Event of Default has occurred or is continuing. Other than defaults arising solely as a result of the commencement of the Chapter 11 Cases, neither Holdings, the Lead Borrower nor any Subsidiary is in default under or with respect to any post-petition contractual obligation, including, without limitation, any Material Indebtedness, that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.08 Ownership of Property; Liens.

(a) Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business and each Loan Party and each of its Subsidiaries has good title to, valid leasehold interests in, or valid licenses or service agreements for all personal property necessary in the ordinary conduct of its business, in each case, free and clear of all Liens, except for (i) minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes, (ii) Liens permitted by SECTION 6.01 and (iii) where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Schedule 3.08(b)(i) sets forth the address (including county) of all Real Estate that is owned by the Loan Parties as of the Closing Date. Schedule 3.08(b)(ii) sets forth the address of all Real Estate that is leased by the Loan Parties as of the Closing Date. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each such Lease of Real Estate is enforceable (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by general principles of equity) against the lessor thereof in accordance with its terms and is in full force and effect and, other than for defaults arising solely as a result of the commencement of the Chapter 11 Cases, the Loan Parties are not in default in any material respect of the terms of any such Lease of Real Estate; *provided* that the representation set forth in this sentence shall not apply to any Lease for a Store location that is the subject to the Specified Store Closing Sales after the effective date for the rejection of the applicable Lease in the Chapter 11 Cases.

(c) As of the Closing Date, except as otherwise disclosed in writing to the Collateral Agent, (i) no Loan Party has received any notice of, nor has any knowledge of, the occurrence (and still pending as of the Closing Date) or pendency or contemplation of any Casualty Event affecting all or any portion of a Mortgaged Property, and (ii) no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

SECTION 3.09 Environmental Compliance.

(a) There are no claims, actions, suits, or proceedings alleging potential liability or responsibility for violation of, or otherwise relating to, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as specifically disclosed in Schedule 3.09(b) or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) none of the properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state, provincial or local list or is adjacent to any such property; (ii) to the knowledge of the Loan Parties, there are no, and never have been, any underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed of on any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries or, to its knowledge, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material, the renewal or remediation of which is required by any Environmental Law, on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and (iv) to the knowledge of the Loan Parties, Hazardous Materials have not been released, discharged or disposed of by any Person on any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries and Hazardous Materials have not otherwise been released, discharged or disposed of by any of the Loan Parties and their Subsidiaries at any other location.

(c) The properties owned, leased or operated by the Loan Parties and their Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require remedial action under, or (iii) could give rise to liability under, Environmental Laws, which violations, remedial actions and liabilities, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) Except as specifically disclosed in Schedule 3.09(d), neither any Loan Party nor any of their Subsidiaries is undertaking, or has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law except for such investigation or assessment or remedial or response action that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(e) All Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result, individually or in the aggregate, in a Material Adverse Effect.

(f) Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, none of the Loan Parties and their Subsidiaries has contractually assumed any liability or obligation under or relating to any Environmental Law.

(g) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any applicable Environmental Law, except for any requirement the noncompliance with which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) As of the Closing Date, the Lead Borrower has made available to the Administrative Agent and the Lenders all material documents, studies, and reports in the possession, custody or control of the Loan Parties concerning compliance with or liability under Environmental Law, including those concerning the actual or suspected existence of Hazardous Material at Real Estate or facilities currently or formerly owned, operated, leased or used by the Loan Parties which could reasonably be expected to have a Material Adverse Effect.

SECTION 3.10 Taxes.

Except as set forth in Schedule 3.10 and except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings, the Lead Borrower and its Subsidiaries have timely filed all federal, state, provincial and other tax returns and reports required to be filed, and have timely paid all federal, state, provincial and other 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 being contested in good faith by appropriate actions diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

SECTION 3.11 ERISA; Plan Compliance.

(a) Except as set forth in Schedule 3.11 or as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each Plan is in compliance in with the applicable provisions of ERISA, the Code and other federal or state Applicable Laws (and the regulations and published interpretations thereunder) and (ii) no ERISA Event has occurred or is reasonably expected to occur with respect to any Plan.

(b) (i) As of the Closing Date, no Plan is a Multiemployer Plan; nor is any Plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code; and (ii) as of the Closing Date, neither any Loan Party nor any ERISA Affiliate nor any predecessor thereof has in the past six years (A) sponsored, maintained or contributed to, any Plan subject to Title IV of ERISA or (B) contributed to any Multiemployer Plan.

(c) (i) No Plan has failed to satisfy the minimum funding standard (as defined in Section 412 of the Code), whether or not waived; (ii) 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 Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) 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 (iv) 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, except, with respect to each of the foregoing clauses of this SECTION 3.11(c), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) The Loan Parties are in compliance with the applicable provisions of ERISA, the Code, and other federal or state Applicable Laws with respect to each Plan, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect. No fact or situation that may reasonably be expected to result in a Material Adverse Effect exists in connection with any Plan.

SECTION 3.12 Subsidiaries; Equity Interests.

(a) As of the Closing Date, neither the Lead Borrower nor any Loan Party has any Subsidiaries other than those specifically disclosed in Schedule 3.12, and all of the outstanding Capital Stock in their respective Subsidiaries has been validly issued, is fully paid and nonassessable and all Capital Stock owned by the Lead Borrower or a Loan Party is owned free and clear of all Liens except (i) Liens permitted by SECTION 6.01(a) and (ii) Liens permitted by SECTION 6.01(r) subject to the terms of such SECTION 6.01(r), (iii) any nonconsensual Lien that is permitted under SECTION 6.01 and (iv) the Carve-Out.

(b) As of the Closing Date, Schedule 3.12 sets forth (a) the legal name and jurisdiction of organization of each Subsidiary, and (b) the ownership interest of the Lead Borrower and any other Subsidiary in each Subsidiary, including the percentage of such ownership.

SECTION 3.13 Margin Regulations; Investment Company Act.

(a) No Loan Party or Subsidiary is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock and no proceeds of any Loan (including Swingline Loans) or drawings under any Letter of Credit will be used for the purpose of purchasing or carrying Margin Stock, or any other purpose that violates Regulation U. The value of the Margin Stock at any time owned by the Loan Parties and their Subsidiaries at any time a Credit Extension constitutes a "purpose credit" (within the meaning of Regulation U) does not exceed twenty-five percent (25%) of the value of the assets of the Loan Parties and their Subsidiaries taken as a whole.

(b) None of Holdings, the Lead Borrower or any Subsidiary is or is required to be registered as an "investment company", or is subject to regulation (with respect to which it is not otherwise exempt), under the Investment Company Act of 1940.

SECTION 3.14 Disclosure.

No report, financial statement, confidential information, memorandum, certificate or other written information furnished by or on behalf of any Loan Party (other than information of a general economic nature) to any Credit Party in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or will be made, not materially misleading; *provided* that with respect to projected financial information and pro forma financial information, each of Holdings and the Lead Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

SECTION 3.15 Intellectual Property; Licenses, Etc.

Schedule 3.15 sets forth, as of the Closing Date, with respect to each Loan Party a list of all of the registered Intellectual Property owned by such Loan Party and all applications for the registrations or issuance thereof. Each such registration and application that is reasonably necessary to the business of such Loan Party is subsisting. Each of the Loan Parties and their Subsidiaries own, license or possess the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses as currently conducted, and, without conflict with the rights of any Person, except to the extent that such conflicts, or the failure to own, license or possess the right to use such IP Rights, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No IP Rights, advertising, product, process, method, substance, part or other material used by any Loan Party or any Subsidiary in the operation of their respective businesses as currently conducted infringes upon any rights held by any Person except for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights, is pending or, to the knowledge of the Lead Borrower, threatened against any Loan Party or Subsidiary, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.16 Labor Matters.

Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect or as disclosed in the Audited Financial Statements: (a) there are no strikes or other labor disputes against any of Holdings, the Lead Borrower or its Subsidiaries pending or, to the knowledge of the Lead Borrower, threatened; (b) hours worked by and payment made to employees of each of Holdings, the Lead Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other Applicable Laws dealing with such matters; (c) all payments due from any of Holdings, the Lead Borrower or its Subsidiaries on account of wages and employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party; and (d) each Loan Party has withheld all employee withholdings and has made all employer contributions to be withheld and made by it pursuant to Applicable Law on account of any employee benefit plans, employment insurance and employee income taxes. Except as disclosed in the Audited Financial Statements, as of the Closing Date no Loan Party is a party to or bound by any collective bargaining agreement or any similar agreement. As of the Closing Date, there are no representation proceedings pending or, to the actual knowledge of any Responsible Officer of any Loan Party, threatened to be filed with the National Labor Relations Board or other applicable Governmental Authority, and no labor organization or group of employees of any Loan Party has made a pending demand in writing for recognition. As of Closing Date, 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 is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.

SECTION 3.17 Compliance with Laws.

Subject to specific representations regarding ERISA, Environmental Laws, tax and other laws contained in this ARTICLE III, each Loan Party and each of its Subsidiaries is in compliance with all Applicable Laws, orders, writs, injunctions and orders, except where the failure to comply, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Without limiting the generality of the foregoing, each Loan Party and each of its Subsidiaries has obtained all permits, licenses, consents, approvals and authorizations which are required with respect to the ownership

and operations of its business, except where the failure to obtain such permits, licenses or other authorizations, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and each of its Subsidiaries is in compliance with all terms and conditions of all such permits, licenses, orders and authorizations, except where the failure to comply with such terms or conditions, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.18 Security Documents.

Subject to the entry of the Order by the Bankruptcy Court, the Security Documents, together with the Order, shall be effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and the proceeds thereof. Upon entry of the Order, the Order together with other actions taken on or prior to the date hereof (including (i) in the case of the "Pledged Collateral" described in the Security Agreement, delivery of certificates or promissory notes, as applicable, representing such "Pledged Collateral" to the Collateral Agent (subject to the Intercreditor Agreement), and (ii) in the case of the other Collateral described in the Security Documents, upon the filing of financing statements and the obtaining of "control", in each case, as applicable, with respect to the relevant Collateral as required under the applicable Uniform Commercial Code), confer upon the Collateral Agent, for the ratable benefit of the Secured Parties, a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof as security for the Obligations, with the priority set forth in the Order.

SECTION 3.19 Patriot Act; FCPA; OFAC.

(a) Each of the Loan Parties and their Subsidiaries are in compliance, in all material respects, with the PATRIOT Act. The proceeds of the Credit Extensions will not be used by the Loan Parties and their Subsidiaries in violation of the PATRIOT Act in any material respect.

(b) To the extent applicable, each of the Loan Parties and their Subsidiaries are in compliance, in all material respects, with the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto.

(c) No part of the proceeds of any Credit Extension will be used by any Loan Party or any of their Subsidiaries, directly or, to the knowledge of the Borrowers, 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.

(d) Neither any Loan Party, nor any of their Subsidiaries, nor, to the knowledge of the Borrowers and their Subsidiaries, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) included on OFAC's list of *"Specially Designated Nationals and Blocked Persons"* or (ii) currently the subject of any Sanctions; and the Borrowers will not directly or, to the knowledge of the Borrowers, indirectly use the proceeds of any Credit Extension, or otherwise knowingly make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any Sanctions.

SECTION 3.20 Chapter 11 Cases.

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

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(l) of the Bankruptcy Code, subject to (i) the Priority Carve-Out and (ii) the priorities set forth in the Interim Order or Final Order, as applicable.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final 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 (i) the Priority Carve-Out, (ii) the Liens pursuant to SECTION 6.01(r) subject to the terms of such SECTION 6.01(r) and (iii) to the extent set forth in the Interim Order or the Final Order.

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, appealed or otherwise challenged (or subject to any pending or threatened, challenge or proceeding) or, without the Administrative Agent's and the ABL Term Loan Agent's consent, modified or amended modified. The Loan Parties are in compliance in all material respects with the Order.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Termination Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent, the Collateral Agent, ABL Term Loan Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under Applicable Law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

ARTICLE IV

Conditions

SECTION 4.01 Conditions of Effectiveness of Credit Agreement.

The effectiveness of this Agreement on the Closing Date is subject to the satisfaction by the Loan Parties or the waiver of each of the following conditions precedent;

(a) *Loan Documents*. The Administrative Agent and the ABL Term Loan Agent (or their respective counsel) shall have received from each Loan Party, each Lender and each other party thereto, as applicable, all of the agreements, documents, instruments and other items set forth on the Closing Checklist attached hereto as Exhibit M, together with executed counterparts of this Agreement, a Note in favor of each Lender requesting a Note, the Facility Guarantee, the Security Documents, the Intercreditor

Acknowledgment, the Fee Letter (provided such document shall be delivered to the Administrative Agent only), the ABL Term Loan Fee Letter and a reaffirmation of certain Pre-Petition Loan Documents, in each case, signed on behalf of each party thereto and in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent. All schedules, exhibits, annexes and other attachments to each of the Agreement and the other Loan Documents will be in form and substance mutually agreeable to the Borrowers, on the one hand, and the Administrative Agent and the ABL Term Loan Agent on the other hand.

(b) *Legal Opinions*. The Administrative Agent and the ABL Term Loan Agent shall have received a written opinion (addressed to the Administrative Agent, the Collateral Agent and the Lenders and dated the Closing Date) of Kirkland & Ellis LLP, counsel for the Loan Parties (and each local counsel to the Loan Parties as requested by the Administrative Agent), addressing corporate authority matters, entry of the Interim Order, and other customary matters reasonably requested by Administrative Agent. The Loan Parties hereby request such counsel to deliver such opinions.

(c) *Secretary's Certificate; Corporate Authority*. The Administrative Agent and the ABL Term Loan Agent shall have received (i) a copy of the certificate or articles of incorporation or organization (or similar organizational document), including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing (where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrowers, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or organization (or similar organization document) of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party; and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(d) *Searches and Collateral Matters*.

(i) The Collateral Agent shall be satisfied that, subject to the Order and terms thereof, the Loan Documents shall be effective to create in favor of the Collateral Agent a legal, valid and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Order and the terms thereof.

(ii) The Administrative Agent and the ABL Term Loan Agent shall have received the results of (x) searches of the Uniform Commercial Code filings (or equivalent filings) and (y) judgment and tax lien searches, made with respect to the Loan Parties in the states or other jurisdictions of formation of such Person and with respect to such other locations and names disclosed by the Loan Parties to the Administrative Agent and the ABL Term Loan Agent, together with copies of the financing statements (or similar documents) disclosed by such search.

(iii) The Collateral Agent or the collateral agent under the DIP Term Loan Facility (pursuant to the Intercreditor Agreement) shall have received certificates or instruments, if any, representing the Pledged Collateral (as defined in the Security Agreement) of the Loan Parties accompanied by undated transfer powers executed in blank.

(e) *Borrowing Base Certificate; Combined Availability; Availability*.

(i) The Administrative Agent and the ABL Term Loan Agent shall have received a Borrowing Base Certificate, dated as of the Closing Date, executed by a Financial Officer of the Lead Borrower and calculating each of the Tranche A Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base as of the Saturday immediately preceding the Closing Date.

(ii) The Administrative Agent and the ABL Term Loan Agent shall both be satisfied that, both before and after giving effect to all borrowings to be made on the Closing Date, Combined Availability shall not be less than $[30,000,000], and Availability (as determined pursuant to clause (x) of the definition of "Availability") shall not be less than $[50,000,000].

(f) *Approved Budget*. The Administrative Agent and the ABL Term Loan Agent shall have received the initial Approved Budget.

(g) *Financial Statements*. The Arranger shall have received the Audited Financial Statements and the Unaudited Financial Statements.

(h) *Officer's Certificate.* The Administrative Agent and the ABL Term Loan Agent shall have received a certificate of a Responsible Officer of the Lead Borrower (i) certifying that the conditions specified in this SECTION 4.01 and SECTION 4.02 have been satisfied, including specific certifications as to the satisfaction of non-documentary conditions (other than, to the extent any such condition is subject to the satisfaction of the Administrative Agent or the ABL Term Loan Agent, such Person's satisfaction), (ii) attaching true, correct and complete copies of (A) the DIP Term Loan Agreement and each other material "Loan Document" (as defined in the DIP Term Loan Agreement), together with all exhibits, schedules, amendments, supplements and modifications thereto, which documents shall be in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent and (B) to the extent available on the Closing Date, the Specified Liquidation Agreement and all material documents relating thereto, together with all exhibits, schedules, amendments, supplements and modifications thereto, and (C) the Restructuring Support Agreement and all material documents relating thereto, together with all exhibits, schedules, amendments, supplements and modifications thereto, and (iii) certifying that all of the documents delivered pursuant to clause (ii) above are in full force and effect.

(i) *No Default or Event of Default*. No Default or Event of Default shall have occurred and be continuing or shall arise hereunder immediately after giving effect to this Agreement and the transactions contemplated hereby.

(j) *Representations and Warranties*. The representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Closing Date.

(k) *No Material Adverse Effect*. Since the Petition Date, other than those events or circumstances customarily resulting from the commencement of the Chapter 11 Cases and changes contemplated in the Borrowers' business plan delivered to the Administrative Agent and the ABL Term

Loan Agent, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect.

(l) *No Orders or Injunctions*. No orders, injunctions or pending litigation exists which could reasonably be expected to have a Material Adverse Effect or which challenges this Agreement or the Loan Documents or the transactions contemplated hereby or thereby.

(m) *Assets and Liabilities*. Since the Petition Date, there has been no material increase in the liabilities, liquidated or contingent, of the Loan Parties taken as a whole or material decrease in the assets of the Loan Parties taken as a whole.

(n) *Enforceability*. Since the Petition Date, other than those changes resulting from the commencement of the Chapter 11 Cases, there shall have been no adverse change in the ability of the Administrative Agent and the Lenders to enforce the Loan Documents and the Obligations of the Loan Parties hereunder.

(o) *Bankruptcy Matters*.

(i) *Entry of Interim Order*. The Bankruptcy Court shall have approved and entered the Interim Order by no later than five (5) Business Days after the Petition Date, substantially in the form attached hereto as Exhibit K and otherwise in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent.

(ii) *Cash Management*. The Loan Parties shall have established or shall maintain the cash management systems described in SECTION 2.18, and the Loan Parties shall have taken all steps necessary to comply with the Cash Management Order.

(iii) *First Day Pleadings*. The Administrative Agent and the ABL Term Loan Agent shall have received drafts of the "first day" pleadings for the Chapter 11 Cases, in each case, in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent not later than a reasonable time in advance of the Petition Date in order for the Administrative Agent's and the ABL Term Loan Agent's counsel to review and analyze the same.

(iv) *First Day Orders*. All motions, orders (including the "first day" orders) and other documents to be filed with and submitted to the Bankruptcy Court on the Petition Date shall be in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, and the Bankruptcy Court shall have approved and entered all "first day" orders, including, without limitation, the Cash Management Order and an order approving the Specified Store Closing Sales.

(p) *DIP Term Loan Facility, Etc*. The Administrative Agent and the ABL Term Loan Agent shall have received evidence, in form and substance satisfactory to the Administrative Agent and the ABL Term Loan Agent that, prior to or concurrently with the effectiveness of this Agreement, (i) the DIP Term Loan Facility shall be in full force and effect, (ii) the Lead Borrower has received gross proceeds under the DIP Term Loan Facility of not less than $13,284,217 to the DIP Term Loan Funding Account, and (iii) the Lead Borrower shall have received all remaining net proceeds realized from the disposition of Play & Music, in an amount not less than $13,500,000 and such amount shall be deposited into the Disbursement Account.

(q) *KYC; PATRIOT Act*. The Administrative Agent and the Lenders shall have received all documentation and other information about the Loan Parties required under applicable "know your

customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

(r) *Fees, Costs and Expenses*. The Administrative Agent, the ABL Term Loan Agent, the Arranger and the Lenders shall have received all applicable fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document and the fees described in the Fee Letters and the ABL Term Loan Fee Letter.

Without limiting the generality of the provisions of the last paragraph of SECTION 8.06, 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 Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Conditions Precedent to Each Loan and Each Letter of Credit.

The obligation of the Lenders to make each Loan and of the Issuing Banks to issue each Letter of Credit is subject to the satisfaction by the Loan Parties or the waiver of each of the following conditions precedent:

(a) The Administrative Agent and/or the ABL Term Loan Agent, as applicable, shall have received a notice with respect to such Borrowing or issuance, as the case may be, as required by ARTICLE II, and in the case of the issuance of a Letter of Credit, the applicable Issuing Bank shall have received notice with respect thereto in accordance with SECTION 2.13.

(b) After giving effect to the Loans or Letters of Credit requested to be made or issued, the aggregate amount of the sum of (i) the Credit Extensions *plus* (ii) Pre-Petition Credit Extensions would not (x) cause Availability to be less than zero or (y) as of the initial borrowing in each calendar week, exceed the aggregate amount of the sum of (I) the Credit Extensions *plus* (II) Pre-Petition Credit Extensions projected to be outstanding in the Approved Budget as of the end of the immediate prior week, subject to permitted variance of 10%.

(c) The representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of each Borrowing or the issuance of each Letter of Credit hereunder with the same effect as if made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), and except that for purposes of this SECTION 4.02(c), the representations and warranties contained in SECTIONS 3.05(a) and (b) shall be deemed to refer, in the case of SECTION 3.05(a), to the most recent financial statements furnished pursuant to SECTION 5.01(a) or, in the case of SECTION 3.05(b), to the most recent financial statements furnished pursuant to SECTION 5.01(b) or SECTION 5.01(c).

(d) Both before and after giving effect to each Borrowing or issuance of each Letter of Credit hereunder, no Default or Event of Default shall have occurred and be continuing.

(e) (i) (x) Except in the issuance of a Letter of Credit, the Borrowers shall have, or shall project in good faith that it shall have as of the proposed Borrowing date, less than $1,000,000 in cash (which, for this purpose, shall include all amounts in Disbursement Account and each of the DIP Term Loan Specified Accounts) and (y) the Borrowers shall have paid the balance of all fees and expenses then due and payable and (ii) the conditions set forth in SECTION 5.21 shall be satisfied.

(f) (i) The Final Order shall have been entered following the expiration of the Interim Order; (ii) the Interim Order or the Final Order, as applicable, shall not have been vacated, stayed, reversed, modified, or amended without the Administrative Agent's consent and shall otherwise be in full force and effect; (iii) no motion for reconsideration of the Interim Order or the Final Order, as applicable, shall have been timely filed by any Debtor or any of their Subsidiaries or Affiliates; and (iv) no appeal of the Interim Order or the Final Order, as applicable, shall have been timely filed.

The request by the Lead Borrower for, and the acceptance by any Borrower of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Loan Parties that the conditions specified in this SECTION 4.02 have been satisfied at that time and that after giving effect to such extension of credit the Borrowers shall continue to be in compliance with the then FILO Borrowing Base and the ABL Term Borrowing Base. The conditions set forth in this SECTION 4.02 are for the sole benefit of the Administrative Agent and each other Credit Party and may be waived by the Administrative Agent, in whole or in part, without prejudice to the rights of the Administrative Agent or any other Credit Party. Notwithstanding the immediately preceding sentence, other than in connection with Permitted Overadvances that satisfy the requirements contained in clauses (a), (b), (c), (d)(ii) and (e) of the definition thereof, the Administrative Agent will not waive any condition in this SECTION 4.02 if it knows that the Loan Parties would breach SECTION 6.15 after giving effect to the applicable extension of credit.

ARTICLE V

Affirmative Covenants

Until (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan (including Swingline Loans), all fees and other Obligations (other than contingent indemnity obligations with respect to then unasserted claims and the Other Liabilities) and all Pre-Petition Obligations shall have been paid in full, (iii) all Letters of Credit shall have expired or terminated (or been Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank) and (iv) all Letter of Credit Outstandings have been reduced to zero (or Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank), the Lead Borrower shall and shall (except in the case of the covenants set forth in SECTION 5.01, SECTION 5.02, SECTION 5.03, SECTION 5.14 and SECTION 5.15) cause each of its Subsidiaries to:

SECTION 5.01 Financial Statements.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Lead Borrower (commencing with the Fiscal Year ending on or about February 3rd, 2018), a Consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, stockholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Deloitte & Touche LLP or any other independent registered public accounting firm of

nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards, *provided* that the within forty-five (45) days after July 29, 2017, the Lead Borrower shall deliver a consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related Consolidated statements of income or operations, stockholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in a manner consistent with the management prepared monthly financial statements delivered to the Administrative Agent under the Pre-Petition Credit Agreement and certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries in accordance with GAAP;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Lead Borrower, a Consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Quarter, and the related (A) Consolidated statements of income or operations for such Fiscal Quarter and for the portion of the Fiscal Year then ended and (B) Consolidated statements of cash flows for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail and certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event within thirty-five (35) days after the end of each of the first two (2) Fiscal Months of each Fiscal Quarter of the Lead Borrower, a consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Month, and the related (i) consolidated statements of income or operations for such Fiscal Month and for the portion of the Fiscal Year then ended and (ii) consolidated statements of cash flows for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for the corresponding Fiscal Month of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail and certified by a Responsible Officer of the Lead Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Lead Borrower and its Subsidiaries;

(d) contemporaneously with delivery of each Borrowing Base Certificate as set forth in SECTION 5.01(e) (or as otherwise set forth below), the Lead Borrower shall furnish to the Administrative Agent and the ABL Term Loan Agent, in each case, in the form attached hereto as Exhibit I or as otherwise satisfactory to the Administrative Agent and the ABL Term Loan Agent the following:

(i) calculations of Inventory itemizing separately in-transit Inventory, Inventory located at Stores to be closed pursuant to Specified Store Closing Sales (as determined by the Lead Borrower as of the date of such Borrowing Base Certificate), Inventory located at non-closing Stores, and Inventory located in warehouse locations, together with back-up information for each in-transit Inventory category and (ii) an Inventory and Accounts roll forward;

(ii) monthly, together with the second Borrowing Base Certificate delivered in each calendar month (or with respect to the first two months following the Closing Date only, the third Borrowing Base Certificate delivered in each such calendar month), an accounts payable and accrual report as of the end of the most recently ended fiscal month, in each case, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent or the ABL Term Loan Agent in their sole discretion;

(iii) a summary of Inventory by location and type, accompanied by such supporting documentation (including a supporting perpetual Inventory report) as shall be requested by the Administrative Agent or the ABL Term Loan Agent in their reasonable discretion;

(iv) a report setting forth any opening of a new Store, office, or place of business where ABL Priority Collateral will be located; and

(v) any information that the Administrative Agent or the ABL Term Loan Agent may reasonably request regarding the determination and calculation of the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base, including correct and complete copies of any invoices, underlying agreements, instruments or other documents and the identity of all Account Debtors in respect of Accounts referred to therein;

(e) on or before 5:00 p.m. (San Francisco, California time) on Thursday of each calendar week, a certificate in the form of Exhibit I (a "Borrowing Base Certificate") showing the Tranche A Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base as of the close of business on the immediately preceding Saturday, each such Borrowing Base Certificate to be certified as complete and correct in all material respects on behalf of the Lead Borrower by a Responsible Officer of the Lead Borrower;

(f) promptly upon receipt thereof, copies of all management letters from the Lead Borrower's independent certified public accountants submitted by such accountants to management in connection with their annual audit (i) commenting on any material weakness in the Lead Borrower's internal controls and (ii) subject to the consent of such accountants (which consent the Lead Borrower shall in good faith seek to obtain), commenting on any other matters relating to the Lead Borrower's internal controls.

Notwithstanding the foregoing, the obligations in paragraphs (a), (b) and (c) of this SECTION 5.01 may be satisfied with respect to financial information of the Lead Borrower and its Subsidiaries by furnishing (A) the Consolidated financial statements of Holdings, the Lead Borrower, or (B) the Lead Borrower's or Holdings', as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC, *provided* that to the extent that such information relates to Holdings, such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (and its Subsidiaries, on the one hand, and the Lead Borrower and its Subsidiaries on the other hand, and to the extent such information is in lieu of information required to be provided under SECTION 5.01(a), such materials are accompanied by a report and opinion of Deloitte & Touche LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards.

SECTION 5.02 Certificates; Other Information.

Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) [Reserved]

(b) contemporaneously with the delivery of the financial statements referred to in SECTION 5.01(a), SECTION 5.01(b) and SECTION 5.01(c), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower in the form of Exhibit H hereto (a "Compliance Certificate") (A) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (B) detailing all Store openings and Store closings during the immediately preceding fiscal

period, and stating the aggregate number of the Loan Parties' Stores as of the first day of the current fiscal period, (C) setting forth in reasonable detail the status of rental payments for each of the Loan Parties' (1) warehouses and distribution centers, and (2) other leased locations in the Landlord Lien States designated by the Administrative Agent in its commercially reasonable judgment, and (D) stating whether any change in GAAP or in the application thereof has occurred since the date of the Lead Borrower's most recent audited financial statements and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate;

(c) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Lead Borrower or Holdings files with the SEC or with any Governmental Authority that may be substituted therefor, exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any material requests or material notices received by the Lead Borrower or any of its Subsidiaries (other than in the ordinary course of business) or material statements or material reports (other than in connection with any board observer rights) furnished to any holder of Material Indebtedness of the Lead Borrower or of any of its Subsidiaries, including pursuant to the terms of the Senior Notes, the Pre-Petition Term Loan Facility, the DIP Term Loan Facility or any refinancing of any of thereof, and not otherwise required to be furnished to the Lenders pursuant to any other clause of this SECTION 5.02;

(e) together with the delivery of each Compliance Certificate pursuant to SECTION 5.02(b), a report setting forth the information required by SECTION 4.02(e) of the Security Agreement or confirming that there has been no change in such information since the Closing Date or the date of the last such report;

(f) the financial and collateral reports described on Schedule 5.02(f) hereto, at the times set forth in such Schedule 5.02(f); and

(g) a detailed summary of all Net Proceeds received from any Specified Event, in each case within five (5) Business Days after receipt of such Net Proceeds other than from sales of Inventory in the ordinary course of business; and

(h) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to SECTION 5.01(a), SECTION 5.01(b), SECTION 5.01(c) or SECTION 5.01(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 5.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) upon written request by the Administrative Agent, the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Lead Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and

provide to the Administrative 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 5.02(b) to the Administrative Agent. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Lead Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Banks 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 (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Holdings (or any parent thereof), the Lead Borrower or any of their respective Subsidiaries, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Lead Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders 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 Lead Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Lead Borrower or its 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 9.08); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger 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 Side Information." Notwithstanding the foregoing, the Lead Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

SECTION 5.03 Notices.

Promptly after obtaining knowledge thereof, notify the Administrative Agent in writing (for prompt distribution to the Lenders):

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

(b) (i) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including arising out of or resulting from (A) breach or non-performance of, or any default or event of default under, a contractual obligation of any Loan Party or any Subsidiary, (B) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority, (C) the commencement of, or any material development in, any litigation or proceeding (i) against any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws or in respect of IP Rights or the assertion or occurrence of any noncompliance by any Loan Party or any of its Subsidiaries with, or liability under, any Environmental Law or permit, or (ii) with respect to any Loan Document, or (D) any strikes, lockouts or slowdowns against any Loan Party;

(c) (i) as soon as practicable in advance of filing with the Bankruptcy Court or delivering to the Committee appointed in a Chapter 11 Case, if any, or to the U.S. Trustee, as the case may be, (I) the Final Order and (II) all other material proposed orders and pleadings that are (A) adverse to the interests of the ABL Term Loan Lenders, the ABL Term Loan Agent, the Revolving Credit Lenders or the Agents

(or any of them) or (B) inconsistent with the Approved Budget or terms of the Loan Documents, in each case, relating to any of (w) the Chapter 11 Cases, (x) the Pre-Petition Credit Agreement and this Agreement and the credit facilities contemplated thereby and hereby, (y) the DIP Term Loan Facility, or (z) any sale contemplated in accordance with the Required Milestones, any Plan of Reorganization or any disclosure statement related thereto, each of which material proposed orders or pleadings must be in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, (ii) substantially simultaneously with the filing with the Bankruptcy Court or delivering to the Committee appointed in any Chapter 11 Case, if any, or to the U.S. Trustee, as the case may be, monthly operating reports and all other notices, filings, motions, pleadings or other information concerning the financial condition of the Loan Parties or their Subsidiaries or the Chapter 11 Cases that may be filed with the Bankruptcy Court or delivered to the Committee appointed in any Chapter 11 Case, if any, or to the U.S. Trustee, and (iii) each report, notice or certificate required to be delivered to any of the lenders or agents under the DIP Term Loan Agreement;

(d) (i) the occurrence of any ERISA Event or (ii) if any Loan Party or any ERISA Affiliate enters into any agreement or takes any other corporate action that will result in its becoming a sponsor of, beginning to maintain or becoming obligated to contribute to, a Plan or a Multiemployer Plan, in each case, reasonably likely to result in material liability to any Loan Party or any of their ERISA Affiliates;

(e) any strikes, lockouts or slowdowns against any Loan Party which continues for five (5) days;

(f) any material change in any Loan Party's financial reporting practices;

(g) the filing of any Lien for unpaid Taxes against any Loan Party in excess of $750,000;

(h) the discharge by any Loan Party of its present independent accountants or any withdrawal or resignation by such independent accountants;

(i) any casualty or other insured damage to any portion of the Collateral included in the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base in excess of $500,000, or the commencement of any action or proceeding for the taking of any interest in a portion of the Collateral included in the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base in excess of $500,000 or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding, and

(j) the receipt of any notice of default by a Loan Party under, or notice of termination of, any Lease for any of the Loan Parties' distribution centers or warehouses.

Each notice pursuant to this Section shall be accompanied by a written statement of a Responsible Officer of the Lead Borrower (x) that such notice is being delivered pursuant to this SECTION 5.03, and (y) 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.

SECTION 5.04 Payment of Taxes, Etc.

Subject to the Order and the terms thereof, pay, discharge or otherwise satisfy as the same shall become due and payable, (a) all its Indebtedness and other obligations, in each case, incurred after the Petition Date in accordance with their terms but subject to the Approved Budget (and the permitted variances provided for therein with respect to amounts included in the Actual Disbursement Amount for any period) in all respects or except to the extent that failure to do so could not reasonably be expected to

have, individually or in the aggregate, a Material Adverse Effect and (b) all its obligations and liabilities in respect of material Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property incurred after the Petition Date, except in the case of clause (b), in each case, where the validity or amount thereof is being contested in good faith by appropriate actions and the Lead Borrower or its Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation.

SECTION 5.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by SECTION 6.04 or SECTION 6.05, and (b) take all reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except pursuant to a transaction permitted by SECTION 6.04 or SECTION 6.05.

SECTION 5.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order, repair and condition, in each case, in all material respects, ordinary wear and tear and obligations of landlords under leases excepted and casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice in all material respects.

SECTION 5.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies, insurance with respect to their properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Lead Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons. The Lead Borrower shall furnish to the Administrative Agent, upon written request, full information as to the insurance carried.

(b) Use commercially reasonable efforts to obtain (to the extent not already obtained), and maintain endorsements or amendments to all casualty, loss, fire and extended coverage policies maintained with respect to any Collateral to include (i) a non-contributing mortgage clause (regarding improvements to real property) and a lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Administrative 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 Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties (in their capacity as such) or any other Affiliate of a Loan Party shall be a co-insurer (the foregoing not being deemed to limit the amount of self-insured retention or deductibles under such policies, which self-insured retention or deductibles shall be reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Lead Borrower and its Subsidiaries and satisfactory to the Administrative Agent), and (iii) such other provisions as the Administrative Agent may require from time to time to protect the interests of the Credit Parties. Commercial general liability policies shall be endorsed to name the Administrative Agent as an additional insured (or, in the event that the Administrative Agent is already named as such, shall continue to name the Administrative Agent as an additional insured). To the extent such endorsement can be obtained through the commercially

reasonable efforts of the Lead Borrower and its Subsidiaries, each endorsement to such casualty or liability policy referred to in this SECTION 5.07(b) shall also provide that it shall not be canceled, modified in any manner that would cause this SECTION 5.07 to be violated, 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 Administrative Agent (giving the Administrative 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 Administrative Agent. The Lead Borrower shall deliver to the Administrative Agent, prior to any cancellation, any material modification or any 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 Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

(c) The Administrative Agent acknowledges that the insurance policies described on Schedule 5.07 are satisfactory to it as of the Closing Date and are in compliance with the provisions of this SECTION 5.07.

(d) With respect to each Mortgaged Property, if at any time the area in which any building or other improvement is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such amount and with such deductible as is required to ensure compliance with the Flood Laws. Following the Closing Date, the Lead Borrower shall deliver to the Collateral Agent annual renewals of the flood insurance policy or annual renewals of a force-placed flood insurance policy upon request. In connection with any amendment to this Agreement pursuant to which any increase or renewal of Loans or Commitments is contemplated, the Lead Borrower shall cause to be delivered to the Collateral Agent for any Mortgaged Property, a Flood Determination Form, Borrower Notice and Evidence of Flood Insurance, as applicable.

SECTION 5.08 Compliance with Laws.

Comply with (a) the requirements of all Applicable Laws applicable to it or to its business or property, except where the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect or such compliance is stayed by the Chapter 11 Cases and (b) under the Bankruptcy Code, the Bankruptcy Rules, the Orders, and any other order of the Bankruptcy Court, in each case, in all material respects.

SECTION 5.09 Books and Records.

Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Lead Borrower or its Subsidiaries, as the case may be and shall cause financial statements to be prepared in conformity with GAAP.

SECTION 5.10 Inspection Rights.

(a) Permit the Administrative Agent, each Lender and any representatives designated by the Administrative Agent, and the ABL Term Loan Agent, upon reasonable prior notice, to visit and inspect its properties, to discuss its affairs, finances and condition with its officers and to examine and make extracts from its books and records, all 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* that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent, on behalf of the Lenders, and the ABL Term Loan Agent may exercise the rights

of the Administrative Agent, the ABL Term Loan Agent and the Lenders under this SECTION 5.10(a); *provided, further*, that the Administrative Agent, ABL Term Loan Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Lead Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent, the ABL Term Loan Agent and the Lenders shall give the Lead Borrower the opportunity to participate in any discussions with the Lead Borrower's independent public accountants. Nothing contained in this SECTION 5.10(a) shall be deemed to limit or modify the rights of the Administrative Agent under SECTION 5.10(b) hereof.

(b) From time to time upon the reasonable request of the Administrative Agent, permit the Administrative Agent or professionals (including Agent's Advisors) retained by the Administrative Agent, on reasonable prior notice and during normal business hours, to conduct appraisals and commercial finance examinations, including, without limitation, of (i) the Borrowers' practices in the computation of the then FILO Borrowing Base and the ABL Term Borrowing Base, and (ii) the assets included in the then FILO Borrowing Base and the ABL Term Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Administrative Agent shall promptly deliver copies of the final appraisals and commercial finance examinations to the ABL Term Loan Agent. The Loan Parties shall pay all reasonable out-of-pocket fees and expenses of the Administrative Agent or the Agent's Advisors with respect to such evaluations, appraisals, commercial finance examinations and inventory appraisals that the Administrative Agent determines are necessary or appropriate.

(c) At all times retain independent certified public accountants of national standing and shall instruct such accountants to cooperate with, and be available to, the Administrative Agent or its representatives to discuss the annual audited statements, the financial performance, financial condition, operating results, controls of the Lead Borrower and its Subsidiaries, and such other matters, within the scope of the retention of such accountants for such audited statements, as may be raised by the Administrative Agent, provided that a representative of the Lead Borrower shall be given the opportunity to be present for such discussion.

SECTION 5.11 Covenant to Become a Loan Party and Give Security.

At the Lead Borrower's expense, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (*provided* that prior to any such formation or acquisition, such Loan Party shall have received the written consent of the Administrative Agent and the Collateral Agent) by any Loan Party:

(i) as soon as practicable, but in any event within 30 days after such formation, acquisition, designation or other event, or such longer period as the Administrative Agent may agree in writing in its sole discretion:

(A) cause each such Domestic Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) a joinder to this Agreement as a Borrower (*provided*, *however*, that if the Administrative Agent shall determine that causing such Subsidiary to become a Borrower hereunder is not practicable or desirable, the Lead Borrower shall cause such Subsidiary to duly execute and deliver to the Administrative Agent a joinder to the Facility Guaranty) security agreement supplements, intellectual property security agreements and other security agreements and documents, as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent, in each case granting Liens on all of such Subsidiaries' Collateral;

(B) cause each such Domestic Subsidiary (and the parent of each such Domestic Subsidiary that is a Loan Party) to deliver to the Collateral Agent (subject to the Intercreditor Agreement) any and all certificates representing Capital Stock (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged under the Loan Documents, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Subsidiary and each direct or indirect parent of such Subsidiary to take whatever action (including, if requested by the Administrative Agent, (x) the filing of UCC financing statements and (y) delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens on all of such Subsidiaries' Collateral;

(ii) if reasonably requested by the Administrative Agent or the Collateral Agent, deliver to the Administrative Agent within thirty (30) days of such request a signed copy of an opinion, addressed to the Administrative Agent, the Collateral Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such customary matters set forth in this SECTION 5.11(a) as the Administrative Agent may reasonably request;

(iii) as promptly as practicable after the request therefor by the Administrative Agent or the Collateral Agent, deliver to the Collateral Agent with respect to each Material Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided, however*, that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Lead Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Lead Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if requested by the Administrative Agent or the Collateral Agent, deliver to the Collateral Agent, as soon as available but in any event within thirty (30) days, any other items necessary from time to time to provide a valid, perfected, existing and priority of security interests with respect to property of any Borrower or Facility Guarantor acquired after the Closing Date, but not specifically covered by the preceding clauses (i), (ii) or (iii).

(b) Always ensuring that the Obligations are secured by a perfected security interest in all the Capital Stock of each of the Borrowers and the Subsidiary Facility Guarantors.

SECTION 5.12 Compliance with Environmental Laws.

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Loan Parties shall comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and permits; obtain and renew all permits necessary for its operations and properties; and, in each case to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws.

SECTION 5.13 Further Assurances.

(a) Promptly upon reasonable request by the Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Security Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral Agent's Lien to be and remain perfected on all assets of the Loan Parties that are intended to constitute Collateral. Without limiting the foregoing, the Loan Parties shall use commercially reasonable efforts to obtain a Collateral Access Agreement from any Person from whom a Loan Party enters into a Lease after the Closing Date for a warehouse or distribution center prior to entering into such Lease.

(b) Use commercially reasonable efforts to cause each of its customs brokers or freight forwarder or carrier to deliver an agreement (including, without limitation, a Customs Broker Agreement) to the Collateral Agent covering such matters and in such form as the Collateral Agent may reasonably require. Notwithstanding anything to the contrary contained in any Loan Document, unless the Administrative Agent shall otherwise agree in its Permitted Discretion, in the event Inventory is in the possession or control of a customs broker or freight forwarder or carrier that has not delivered an agreement as required by the preceding sentence, such Inventory shall not be considered Eligible In-Transit Inventory hereunder.

SECTION 5.14 Lender Calls. The Loan Parties shall host the following telephonic conference calls with the Agents, the ABL Term Loan Agent, the Lenders and the Agent Advisors, if requested by the Administrative Agent:

(a) Promptly following the delivery of each Approved Budget Variance Report, a call with AlixPartners to discuss the contents of such variance report;

(b) No less frequently than once every two (2) weeks, a call with A&G Realty Partners to discuss the status of landlord negotiations; and

(c) No less frequently than once every two (2) weeks, a call with the Specified Liquidation Agent to discuss store liquidation status.

SECTION 5.15 Information Regarding Collateral.

The Lead Borrower will furnish to the Administrative Agent written notice, not less than twenty (20) days in advance (or other notice period approved by the Administrative Agent in writing), of any change in: (a) any Loan Party's name; (b) the location of any Loan Party's chief executive office or its principal place of business; (c) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (d) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state or province of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings, publications and registrations, have been made under the UCC or other Applicable Law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest to the extent required under the Security Documents (subject only to Permitted Encumbrances having priority under Applicable Law) in all the Collateral for its own benefit and the benefit of the other Secured Parties.

SECTION 5.16 Physical Inventories.

The Loan Parties, at their own expense, shall cause not less than one (1) physical count of Inventory to be undertaken prior to September 15, 2017, as such date may be extended by the Administrative Agent in its sole discretion (and up to one (1) additional physical counts of Inventory if requested by Administrative Agent during the term of this Agreement) and periodic cycle counts consistent with historical practice, conducted following such methodology as is consistent with the methodology used in the immediately preceding Inventory (or cycle count) and satisfactory to the Administrative Agent. Following the completion of such Inventory count, and in any event by the next date required for the delivery of a Borrowing Base Certificate hereunder, the Borrowers shall (x) deliver the results of such physical inventory to the Administrative Agent and (x) post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

SECTION 5.17 Use of Proceeds.

The proceeds of Loans made hereunder and of Letters of Credit issued hereunder will be used by the Borrowers solely on or after the Closing Date, to fund the Chapter 11 Cases in accordance with the Approved Budget (subject to variances permitted under SECTION 5.18(b)) and for the financing of the Lead Borrower's and its Subsidiaries' ordinary working capital, letters of credit and other general corporate needs including certain fees and expenses of professionals retained by the Loan Parties, subject to the Carve-Out, and for certain other Pre-Petition and pre-filing expenses that are approved by the Bankruptcy Court and permitted by the Approved Budget and to pay the Pre-Petition Obligations, including as provided in SECTION 2.27. The Loan Parties shall not be permitted to use the proceeds of the Loans, Letters of Credit or any Cash Collateral in contravention of the provisions of the applicable Order or the applicable Insolvency Laws, including any restrictions or limitations on the use of proceeds contained therein. Nothing in this Agreement, including this SECTION 5.17, shall prohibit the Post-Petition payment of Pre-Petition Obligations, including principal, interest, fees, penalties or recoverable costs, due and payable in connection with the Pre-Petition Credit Agreement with the proceeds of the Collateral (as defined herein) or Collateral (as defined in the Pre-Petition Credit Agreement). No part of the proceeds of any Loan or other Credit Extension will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the FRB, including Regulations U and X.

SECTION 5.18 Approved Budget.

(a) The use of Loans and other extensions of credit to the Loan Parties under this Agreement and the other Loan Documents and the use of Cash Collateral shall be limited in accordance with the Approved Budget (subject to variances permitted under SECTION 5.18(b)) and SECTION 5.17. The initial Approved Budget shall depict, on a weekly and line item basis, (x) (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Loan Parties' professionals and advisors), asset sales and any other fees and expenses relating to the Loan Documents), (iii) net cash flow, (iv) projected inventory receipts and levels, (v) projected Tranche A Borrowing Base, FILO Borrowing Base, ABL Term Borrowing Base, Availability (as determined pursuant to clause (x) of the definition thereof) and Combined Availability, (vi) total available liquidity, and (vii) professional fees and disbursements with respect to the Loan Parties' professionals, (y) a report listing the Stores subject to Specified Store Closing Sales and the other remaining Stores, and (z) the other items set forth therein and other information requested by the Administrative Agent or the ABL Term Loan Agent (which shall include a breakdown of Stores being closed or proposed to be closed, which information with respect to such Stores shall be limited to pro rata collections of such Stores collected from the point of sale systems during the relevant period which correspond to cash collections described in, and determined in a manner consistent with, the Approved Budget), for the first thirteen (13) week period from the Closing Date and such initial Approved Budget shall be approved by, and in form and substance satisfactory to, the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in their sole discretion (it being acknowledged and agreed that the

initial Approved Budget attached hereto as Annex A is approved by and satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders). The Approved Budget shall be updated, modified or supplemented by the Lead Borrower with the written consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, and upon the joint request of the Administrative Agent and the ABL Term Loan Agent from time to time (which request may, without limitation, be made in connection with any Transaction or the commencement, or during the continuation, of the Specified Stores Closing Sales), but in any event the Approved Budget shall be updated by the Lead Borrower not less than one time in each four (4) consecutive week period), and each such updated, modified or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance reasonably satisfactory to, the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in each of their sole discretion and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget; *provided*, *however*, that in the event the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, on the one hand, and the Loan Parties, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default once the period covered by the prior Approved Budget has terminated. Each Approved Budget delivered to the Administrative Agent and the ABL Term Loan Agent shall be accompanied by such supporting documentation as reasonably requested by the Administrative Agent or the ABL Term Loan Agent. Each Approved Budget shall be prepared in good faith based upon assumptions which the Loan Parties believe to be reasonable.

(b) Commencing with the third full calendar week following the Petition Date and for each calendar week thereafter, the Borrowers shall not permit (i) Actual Inventory Levels as at the end of any week to be less than 85% of Budgeted Inventory Levels for set forth in the Approved Budget as at the end of such week, (ii) the Actual Cash Receipts for any Cumulative Four Week Period to be less than 90% of the Budgeted Cash Receipts for any such Cumulative Four Week Period or (iii) the Actual Disbursement Amount for any Cumulative Four Week Period to exceed 110% of the Budgeted Disbursement Amount for any such Cumulative Four Week Period.

(c) The Lead Borrower shall deliver to the Administrative Agent and the ABL Term Loan Agent, on or before 5:00 p.m. (San Francisco, California time) on Thursday of each calendar week, a Compliance Certificate, in the form attached hereto as Exhibit H, and such Compliance Certificate shall include such detail as is reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, signed by a Responsible Officer of the Lead Borrower certifying that (i) the Loan Parties are in compliance with the covenants contained in this SECTION 5.18 and (ii) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, together with (A) comparison for the Prior Week of the Actual Cash Receipts, the Actual Disbursement Amount and the Actual Inventory Levels for such Prior Week to the Budgeted Cash Receipts, the Budgeted Disbursement Amount and the Budgeted Inventory Levels for such Prior Week, (B) a cumulative comparison for the Cumulative Four Week Period of the Actual Cash Receipts and the Actual Disbursement Amount for such Cumulative Four Week Period to the Budgeted Cash Receipts and the Budgeted Disbursement Amount for such Cumulative Four Week Period, (C) a cumulative comparison for the Cumulative Period of the Actual Cash Receipts and the Actual Disbursement Amount for such Cumulative Period to the Budgeted Cash Receipts and the Budgeted Disbursement Amount for such Cumulative Period, and (D) an Approved Budget Variance Report, each of which shall be prepared by the Lead Borrower through the last day of the Prior Week, the Cumulative Four Week Period or the Cumulative Period, as applicable.

(d) The Administrative Agent, the ABL Term Loan Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid

expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent, the ABL Term Loan Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents and the applicable Order regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget (including any estimates of a loan balance in excess of borrowing base restrictions) shall constitute an amendment or other modification of any Loan Document or any of the borrowing base restrictions or other lending limits set forth therein.

SECTION 5.19 Required Milestones.

The Loan Parties shall comply with each of the covenants on Schedule 5.19 upon the terms and at the times provided for therein.

SECTION 5.20 Pension Plans.

Cause each of its Plans to be duly qualified and administered in all respects in compliance with all Applicable Laws, and the terms of the Plans and any agreements relating thereto, except for such non-compliance as would not reasonably be expected to have a Material Adverse Effect. The Lead Borrower and each of its Subsidiaries shall ensure that it, except where failure to do so would not reasonably be expected to have a Material Adverse Effect: (a) has no Unfunded Pension Liability in respect of any Plan, including any Plan to be established and administered by it or them; and (b) does not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that could reasonably be expected to result in liability.

SECTION 5.21 DIP Term Loan Facility; Requests for Loans Under DIP Term Loan Facility.

(a) The Lead Borrower shall receive in the DIP Term Loan Funding Account initial gross proceeds of not less than $13,284,217 under the DIP Term Loan Facility on the Closing Date (which amount may be reduced by certain fees and expenses consistent with the Approved Budget).

(b) The Lead Borrower shall receive in the DIP Term Loan Funding Account additional gross proceeds of not less than $6,715,738 under the DIP Term Loan Facility not later than the "Second Interim Funding Date" (as such term is defined in the DIP Term Loan Agreement) (which amount may be reduced by certain fees and expenses consistent with the Approved Budget).

(c) If, at any time, Availability is less than $5,000,000 in excess of the minimum amount of (x) Combined Availability required to be maintained pursuant to SECTION 6.15(a) or (y) Availability required to be maintained pursuant to SECTION 6.15(b) on or after the date the Final Order is entered, the Lead Borrower shall request and receive into the DIP Term Loan Funding Account additional gross proceeds of not less than $15,000,000 under the DIP Term Loan Facility (which amount shall be reduced by certain fees and expenses).

(d) The Borrowers shall request (in accordance with terms of the DIP Term Loan Agreement) (i) all "Interim Loans" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility, (ii) all "Final Loans" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility, and (iii) all weekly "Withdrawals" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility.

SECTION 5.22 Collateral Updates.

At the reasonable request of the Administrative Agent from time to time (including on a weekly basis, if requested, but not more frequently than weekly), promptly deliver to and shall cooperate with the Agent's Advisors and their designees to obtain the following (and shall cause any liquidation agent of the Loan Parties to deliver and cooperate, as applicable), in each case, in form reasonably satisfactory to the Administrative Agent:

(a) Collateral valuation updates from the Specified Liquidation Agent, including, without limitation, the value of the ABL Priority Collateral for the purposes of a "stalking horse" bid in connection with a Store Liquidation;

(b) An updated collateral appraisal from the Specified Liquidation Agent, including reviews of inventory levels and mix, it being understood that the Specified Liquidation Agent shall grant access to records, and cooperate in all respects with, the Administrative Agent and the Agent's Advisors, and shall provide all information that such parties may reasonably request in a timely manner in connection with monitoring and valuing the Collateral; and

(c) Delivery of any information reasonably request by any Agent's Advisors in connection with appraisals, collateral audits, valuations of the Collateral for the purposes of a "stalking horse" bid, other Collateral reporting, or otherwise.

SECTION 5.23 Loan Parties' Advisors.

Continue to retain (in each case other than a ten Business Day period in which the Lead Borrower does not retain such advisor but uses commercially reasonable efforts to retain a replacement advisor) (i) the Restructuring Advisor, (ii) the Financial Advisor and (iii) the Specified Liquidation Agent (to the extent the Specified Store Closing Sales have not been completed) on terms and conditions reasonably satisfactory to the Administrative Agent. The Loan Parties and their representatives will fully cooperate with any such advisors and consultants (including the Restructuring Advisor, the Financial Advisor and the Specified Liquidation Agent) and grant them reasonable access to the books and records of the Loan Parties.

SECTION 5.24 Administrative Agent's Advisors.

Pay all reasonable fees and expenses of each Agent's Advisor and all such reasonable fees and expenses shall constitute Obligations and be secured by the Collateral. The Administrative Agent, on behalf of itself and the Lenders, shall be entitled to retain or continue to retain (either directly or through counsel) any Agent's Advisors the Administrative Agent may deem necessary to provide advice, analysis and reporting for the benefit of the Administrative Agent and the Lenders. The Loan Parties and their advisors, including the Restructuring Advisor and the Financial Advisor, shall grant access to, and cooperate in all respects with, the Administrative Agent, the Collateral Agent, the Lenders, Agent's Advisors, and any other representatives of the foregoing and provide all information that such parties may reasonably request in a timely manner.

SECTION 5.25 Status of Specified Store Closing Sales; Transaction.

Promptly upon the Administrative Agent's or the ABL Term Loan Agent's request, each Loan Party shall provide the Administrative Agent or the ABL Term Loans with copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and

updated information related to the Specified Store Closing Sales or any other Transaction and copies of any such bids and any updates, modifications or supplements to such information and materials.

ARTICLE VI

Negative Covenants

Until (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan (including Swingline Loans), all fees and other Obligations (other than contingent indemnity obligations with respect to then unasserted claims and the Other Liabilities) and all Pre-Petition Obligations shall have been paid in full, (iii) all Letters of Credit shall have expired or terminated (or been Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank) and (iv) all Letter of Credit Outstandings have been reduced to zero (or Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank):

SECTION 6.01 Liens.

The Lead Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (each a "Permitted Encumbrance"):

(a) Liens granted by the Orders and created pursuant to the Loan Documents securing any Obligations;

(b) Liens existing on the Closing Date and listed on Schedule 6.01;

(c) Liens for taxes, assessments or governmental charges arising Post-Petition which are not required to be paid pursuant to SECTION 5.04(b) or which are not yet due and payable;

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens imposed by Applicable Law or other customary Liens (other than Liens in respect of Indebtedness) in favor of landlords, in each case, arising in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP and such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(e) subject to the Order and the terms thereof, (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Lead Borrower or any Subsidiary;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions, encroachments, servitudes, rights of way, licenses, protrusions, site plan agreements, development agreements, contract zoning agreements and other similar encumbrances, rights, agreements and minor title defects affecting real property which, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Lead Borrower or any Subsidiary taken as a whole;

(h) Liens on assets which do not constitute Collateral securing judgment for the payment of money not constituting an Event of Default under Section 7.01(g) in an amount not to exceed $500,000 for the term of this Agreement;

(i) Liens on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.02(m) and expressly contemplated by the Approved Budget, to be applied against the purchase price for such Investment;

(j) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business and consistent with the Approved Budget which do not (i) interfere in any material respect with the business of Holdings, the Lead Borrower or any Subsidiary, taken as a whole, or (ii) secure any Indebtedness;

(k) Liens (i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) in respect of letters of credit issued to support customs obligations not to exceed $250,000, in each case, which payments are not overdue for a period of more than thirty (30) days and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP and such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(l) Liens (i) arising by operation of law under Article 4 of the UCC in connection with collection of items provided for therein, and (ii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and which are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions;

(m) Liens on insurance proceeds incurred in the ordinary course of business in connection with the financing of insurance premiums and consistent with past practice;

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a licensor, sublicensor, lessor or sublessor under licenses and leases entered into by the Lead Borrower or any of its Subsidiaries in the ordinary course of business prior to the Petition Date, *provided* that no such lease or sublease shall constitute a Capitalized Lease;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Lead Borrower or any of its Subsidiaries in the ordinary course of business and otherwise permitted by this Agreement;

(p) Liens encumbering reasonable customary initial deposits and similar Liens attaching to brokerage accounts, incurred in the ordinary course of business and not for speculative purposes;

(q) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Lead Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Lead Borrower and its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Lead Borrower or any Subsidiary in the ordinary course of business;

(r) Liens in respect of (i) the Indebtedness incurred pursuant to SECTION 6.03(j)(i); *provided* that such Liens are at all times subject to the Intercreditor Agreement and the Orders and (ii) the Indebtedness incurred pursuant to SECTION 6.03(j)(ii); *provided* that such Liens are at all times subject to the Intercreditor Agreement and the Orders;

(s) Liens arising from precautionary UCC filings prior to the Petition Date regarding "true" operating leases or the consignment of goods to a Loan Party;

(t) ground leases in respect of real property on which facilities owned or leased by the Lead Borrower or any of its Subsidiaries are located;

(u) Liens securing Indebtedness in respect of Capitalized Leases permitted under SECTION 6.03(m), *provided that* such Liens encumber only the assets subject to such Capitalized Leases;

(v) [Reserved];

(w) [Reserved];

(x) Liens arising by operation of law in the United States under Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods that are not ABL Priority Collateral;

(y) [Reserved];

(z) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Lead Borrower and its Subsidiaries, taken as a whole;

(aa) Liens securing the Pre-Petition Obligations;

(bb) the (i) Adequate Protection Liens and (ii) Adequate Protection Superpriority Claims; and

(cc) Without duplication of, or aggregation with, any other Lien permitted under any other clause of this SECTION 6.01, other Liens (not covering Collateral) and not securing Indebtedness for borrowed money, which secure liabilities in an amount not to exceed $500,000 at any time.

Notwithstanding the foregoing, Liens permitted under this SECTION 6.01, other than the Liens securing the DIP Term Loan Facility and the Pre-Petition Term Loan Facility on Term Priority Collateral (solely to the extent set forth in the Order) shall at all times be junior and subordinate to the Liens under the Loan Documents and the Order securing the Obligations. The prohibition provided for in this Section 6.01 specifically includes any effort by any Debtor, any official committee in any Chapter 11 Case or any other party in interest in the Chapter 11 Cases, as applicable, to prime or create *pari passu* to any claims, Liens or interests of (i) the Agents and the Lenders or (ii) for so long as the Pre-Petition Obligations have

not been indefeasibly paid in full in cash, the Pre-Petition Agent and the Pre-Petition Lenders, any Lien, in each case, other than as set forth in the applicable Orders and irrespective of whether such claims, Liens or interests may be "adequately protected." The designation of a Lien as a Permitted Encumbrance shall not limit or restrict the ability of the Administrative Agent to establish any Reserve relating thereto.

SECTION 6.02 Investments.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, make or hold any Investments, except the following (each a "Permitted Investment"):

(a) Investments by the Lead Borrower or a Subsidiary in assets that were Cash Equivalents when such Investment was made;

(b) Investments (i) by the Lead Borrower or any Subsidiary in any Loan Party (other than Holdings) and (ii) by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party that are permitted by the Approved Budget and do not exceed $1,000,000 in the aggregate during the course of this Agreement;

(c) 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 and other credits to suppliers in the ordinary course of business;

(d) Investments consisting of Permitted Encumbrances, Permitted Indebtedness, fundamental changes, Permitted Dispositions, and Payments permitted under SECTION 6.01, SECTION 6.03 (other than SECTION 6.03(c) and (d)), SECTION 6.04 (other than SECTION 6.04(c)), SECTION 6.05 (other than SECTION 6.05(d) and (e)), and SECTION 6.06 (other than SECTION 6.06(c)), respectively, *provided* that no Investments made be made solely pursuant to this SECTION 6.02(d);

(e) Investments (i) existing on the Closing Date and set forth on Schedule 6.02 and (ii) existing on the Petition Date by any Loan Party in any other Loan Party;

(f) Investments in Swap Contracts permitted under SECTION 6.03(f);

(g) [Reserved];

(h) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(i) Investments (including debt obligations and Capital Stock) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(j) advances of payroll payments to employees in the ordinary course of business;

(k) Loans or advances to officers, directors and employees of the Lead Borrower and its Subsidiaries for reasonable and customary business related travel, entertainment, relocation and analogous ordinary business purposes in accordance with the Approved Budget;

(l) [Reserved];

(m) so long as immediately before and after giving effect to any such Investment, no Event of Default has occurred and is continuing, other Investments that do not exceed $1,000,000 in the aggregate at any time outstanding (valued at the time of making thereof, and determined without regard to any write-downs or write-offs thereof) and expressly contemplated by the Approved Budget.

SECTION 6.03 Indebtedness.

The Lead Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except the following (each "Permitted Indebtedness"):

(a) Indebtedness of the Lead Borrower and any of its Subsidiaries (i) under the Loan Documents or (ii) consisting of Pre-Petition Obligations;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 6.03;

(c) Guarantees by the Lead Borrower and its Subsidiaries in respect of Indebtedness of the Lead Borrower or any Subsidiary otherwise permitted hereunder; *provided* that (A) no Guarantee by any Subsidiary of the DIP Term Loan Facility, the Pre-Petition Term Loan Facility or the Senior Notes shall be permitted unless such Subsidiary shall have also provided a Guarantee of the Obligations satisfactory to the Administrative Agent and (B) such Guarantee shall be subordinated to the Facility Guarantee of the Obligations;

(d) Indebtedness representing deferred compensation to current or former employees of Holdings, the Lead Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(e) Unsecured Indebtedness of the Borrower or any Subsidiary owing to the Borrower or any other Subsidiary to the extent expressly contemplated by the Approved Budget and constituting an Investment permitted by SECTION 7.02(c); provided that all such Indebtedness of any Loan Party owed to any Person that is not, or ceases to be, a Loan Party shall be subject to the subordination terms set forth in the Security Agreement pursuant to an express written agreement by such Person for the benefit of the Administrative Agent;

(f) Indebtedness in respect of Swap Contracts designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(g) Obligations with respect to Cash Management Services and other Indebtedness in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts incurred in the ordinary course of business;

(h) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(i) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Lead Borrower or any of its Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and in accordance with the Approved Budget;

(j) Indebtedness (i) in respect of the Pre-Petition Term Loan Agreement in an aggregate principal amount at any time outstanding not to exceed $788,800,000, *provided* that Indebtedness under the Pre-Petition Term Loan Agreement is subject to the Intercreditor Agreement, and (ii) Indebtedness under the DIP Term Loan Agreement in an aggregate principal amount at any time outstanding not to exceed $105,000,000, and a Permitted Refinancing thereof, *provided* that Indebtedness under the DIP Term Loan Agreement is subject to the Order and the Intercreditor Agreement;

(k) Unsecured Indebtedness in respect of the Senior Notes in an aggregate principal amount not to exceed $171,000,000 at any time outstanding;

(l) Indebtedness incurred by the Lead Borrower or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business and consistent with past practice and in accordance with the Approved Budget, including in respect of customs, workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof; provided further that such Indebtedness shall not exceed $1,500,000 in the aggregate at any time outstanding; and

(m) Indebtedness in respect of Capitalized Leases; provided that such Indebtedness shall not exceed $1,500,000 in the aggregate for the term of this Agreement and any payments in respect of such Indebtedness shall be expressly contemplated by the Approved Budget.

Notwithstanding any of the foregoing, and except for the Priority Carve-Out , no Indebtedness permitted under this SECTION 6.03 shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the superpriority administrative expense claims of (i) the Administrative Agent and the Lenders and (ii) the Pre-Petition Agent and the Pre-Petition Lenders, in each case, as set forth herein and in the applicable Order, other than, solely with respect to Collateral that is not ABL Priority Collateral, (x) Indebtedness under the Pre-Petition Term Loan Agreement permitted under Section 6.03(j)(i) and (y) Indebtedness under the DIP Term Loan Agreement permitted under Section 6.03(j)(ii).

SECTION 6.04 Fundamental Changes.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, merge, amalgamate, dissolve, liquidate, wind up, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Subsidiary that is not a Loan Party may merge or amalgamate with (i) any Borrower; *provided* that such Borrower shall be the continuing or surviving Person and no Event of Default shall have occurred or resulted therefrom, or (ii) any other Loan Party (other than Holdings or a Borrower); *provided* that such Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party, (ii) any Loan Party may merge, amalgamate or consolidate with any other Loan Party, *provided* that if a Borrower is a party thereto, a Borrower shall be the continuing or surviving Person, and (iii) any Subsidiary that is not a Loan Party may liquidate or dissolve or change its legal form if the Lead Borrower determines in good faith that such action is in the best interests of the Lead Borrower and its Subsidiaries and if not materially disadvantageous to the

Lenders; *provided* that with respect to this clause (b)(iii), a certificate of a Responsible Officer shall be delivered to the Administrative Agent at least five (5) Business Days (or within such shorter period as the Administrative Agent shall agree in writing, in its sole discretion) prior to the liquidation, dissolution or change of legal form, together with a reasonably detailed description of the material terms and conditions thereof, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement;

(c) any Subsidiary of the Lead Borrower may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Lead Borrower or to any other Loan Party (other than Holdings), provided that if the transferor is a Borrower, then the transferee must be a Borrower.

SECTION 6.05 Dispositions.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, make any Disposition, except the following (each, a "Permitted Disposition"):

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and dispositions of property (other than ABL Priority Collateral) no longer used or useful in the conduct of the business of the Lead Borrower and its Subsidiaries (including the abandonment of or failure to maintain immaterial Intellectual Property in the ordinary course of business);

(b) Dispositions of Inventory in the ordinary course of business;

(c) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event;

(d) Dispositions of property to the Lead Borrower or to another Loan Party (other than Holdings);

(e) To the extent constituting Dispositions, transactions permitted by SECTION 6.01, SECTION 6.02 (other than SECTION 6.02(d)), SECTION 6.04 and SECTION 6.06 (other than SECTION 6.06(c));

(f) Dispositions or discounts without recourse of accounts receivable (which are not included in the determination of the Tranche A Borrowing Base, the FILO Borrowing Base or the ABL Term Loan Borrowing Base) in connection with the compromise or collection thereof in the ordinary course of business (and not in connection with any factoring or similar arrangement);

(g) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which (i) do not materially interfere with the business of the Lead Borrower and its Subsidiaries, or (ii) relate to closed Stores;

(h) Dispositions listed on Schedule 6.05;

(i) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business;

(j) the Specified Store Closing Sales;

(k) Dispositions of Cash Equivalents; and

(l) Dispositions of property not otherwise permitted under this SECTION 6.05 (other than ABL Priority Collateral), *provided* that (i) at the time of such Disposition, no Event of Default shall exist or would result from such Disposition, (ii) the aggregate book value of all property disposed of pursuant to this clause (l) shall not exceed $2,000,000 in the aggregate after the Closing Date;

provided that (1) any disposition of any property pursuant to this SECTION 6.05 (except for Dispositions pursuant to SECTION 6.05(e) and Dispositions from a Loan Party to another Loan Party), shall be for no less than the fair market value of such property at the time of such disposition, and (2) to the extent any Disposition consists in whole or in part of ABL Priority Collateral, consideration received in respect of the Disposition of such ABL Priority Collateral shall be solely in the form of cash.

SECTION 6.06 Restricted Payments.

The Lead Borrower shall not, nor shall it permit any Subsidiary to declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Subsidiary may make Restricted Payments to the Lead Borrower and to another Loan Party (other than Holdings);

(b) the Lead Borrower or any of its Subsidiaries may make payments in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant incurred by such person in their capacities as employee, director, manager or consultant of any Loan Party in accordance with the Approved Budget;

(c) to the extent constituting Restricted Payments, the Lead Borrower and its Subsidiaries may enter into and consummate transactions expressly permitted by any provision of SECTION 6.02 (other than SECTION 6.02(d)) or SECTION 6.04 or SECTION 6.08);

(d) The Lead Borrower may make Restricted Payments to Holdings in amounts required for Holdings to pay, in each case without duplication,

(i) franchise taxes and other fees, Taxes and expenses required to maintain Holdings' corporate existence;

(ii) to the extent provided for in the Approved Budget, for any taxable period in which the Lead Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Lead Borrower is the common parent (a "Tax Group"), the federal, foreign, state and local income taxes of such Tax Group that are attributable to the taxable income of the Lead Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Lead Borrower and its Subsidiaries would have been required to pay in respect of federal, foreign, state and local income taxes if such entities were corporations paying taxes as a stand-alone group (it being understood and agreed that if the Lead Borrower or any Subsidiary pays any such federal, foreign, state or local income taxes directly to such taxing authority, that a Restricted Payment in duplication of such amount shall not be permitted to be made pursuant to this clause (ii));

(iii) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Lead Borrower and its Subsidiaries and any reasonable and customary indemnification claims made by directors or officers of Holdings

attributable to the ownership or operations of the Lead Borrower and its Subsidiaries not to exceed $100,000 over the term of this Agreement and solely to the extent such amounts are included in the Approved Budget; and

(iv) customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Subsidiaries and solely to the extent such amounts are included in the Approved Budget.

SECTION 6.07 Change in Nature of Business.

(a) The Lead Borrower shall not, nor shall it permit any Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Lead Borrower and its Subsidiaries on the Closing Date.

(b) Holdings shall not conduct, transact or otherwise engage in any business or operations other than those incidental to (i) its ownership of the Capital Stock of the Lead Borrower, (ii) the maintenance of its legal existence, (iii) the performance of the Loan Documents and the Term Loan Facility and other Permitted Indebtedness incurred by it in accordance with SECTION 6.03, (iv) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Lead Borrower, (v) holding any cash or property (but not operate any property) and (vi) providing indemnification to officers and directors. Furthermore, notwithstanding anything to the contrary herein contained, Holdings shall not (i) own any material assets other than the Capital Stock of the Lead Borrower or (ii) grant any consensual Liens in any of its assets (other than Liens granted to the Collateral Agent, for the benefit of the Secured Parties, under the Loan Documents or in respect of the Pre-Petition Obligations or to secure obligations under the Term Loan Facility or the Pre-Petition Term Loan Facility).

SECTION 6.08 Transactions with Affiliates.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, enter into any transaction of any kind with any Affiliate of the Lead Borrower, whether or not in the ordinary course of business, other than (i) transactions among the Borrowers and any other Loan Party (other than Holdings), (ii) transactions among non-Loan Parties (other than transfers from Gymboree Canada/Delaware to any other non-Loan Party), (iii) transactions between the Loan Parties or Gymboree Canada/Delaware on the one hand and non-Loan Party Subsidiaries on the other hand, in each case on arm's length terms and with any payments in respect thereof expressly contemplated by the Approved Budget and (iv) Restricted Payments to Holdings permitted by Section 6.06(d).

SECTION 6.09 Burdensome Agreements.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, enter into or permit to exist any contractual obligation (including Material Indebtedness) (other than this Agreement or any other Loan Document) that limits the ability of (a) any Subsidiary of the Lead Borrower that is not a Borrower or a Facility Guarantor to make Restricted Payments to any Loan Party or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrowers or any Subsidiary Facility Guarantor or (b) the Lead Borrower or any other Loan Party to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations or under the Loan Documents; *provided* that the foregoing clauses (a) and (b) shall not apply to contractual obligations (including Material Indebtedness) which (i) exist on the Closing Date and (to the extent not otherwise permitted by this SECTION 6.09) are listed on Schedule 6.09 hereto; (ii)

represent Indebtedness of a Subsidiary of the Lead Borrower which is not a Loan Party which is permitted pursuant to SECTION 7.03, (iii) arise in connection with any Disposition permitted herein, (iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under SECTION 6.02 and applicable solely to such joint venture entered into in the ordinary course of business, (v) [reserved], (vi) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to SECTION 6.03(m) to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Lead Borrower or any Subsidiary, (ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (xi) are customary restrictions contained in the documentation relating to the Senior Notes, the Pre-Petition Term Loan Facility, the ABL Facility or the Pre-Petition ABL Credit Agreement, (xii) arise in connection with cash or other deposits permitted under SECTION 7.01 and SECTION 7.02 and limited to such cash or deposit, and (xiii) arise under applicable law or any applicable rule, regulation or order..

SECTION 6.10 Accounting Changes.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, make any change in their Fiscal Year.

SECTION 6.11 [Reserved].

SECTION 6.12 Equity Interests of the Lead Borrower and Subsidiaries.

The Lead Borrower shall not, nor shall it permit any Subsidiary to, permit any Subsidiary to be a non-wholly owned Subsidiary, except as disclosed on Schedule 6.12.

SECTION 6.13 Amendment of Material Documents.

(a) The Lead Borrower will not, nor shall it permit any Subsidiary to, amend, modify or waive any of its rights under (i) its Organization Documents, (ii) the Sponsor Management Agreement, or (iii) any Material Indebtedness other than, in each case, non-material amendments or modifications consented to in writing by the Administrative Agent and the ABL Term Loan Agent.

(b) The Lead Borrower shall not, and shall not permit any of its Subsidiaries to, designate any Indebtedness (or related interest obligations) as "Designated Senior Debt" or any similar term, in each case, except for the Obligations, the Pre-Petition Obligations, the Pre-Petition Term Loan Facility (and related obligations), the DIP Term Loan Facility (and related obligations) and the Senior Notes.

SECTION 6.14 Sanctions; Anti-Corruptions Laws.

Neither of the advance of the Loans or other Extensions of Credit 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 Loan Parties or their Subsidiaries (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) knowingly 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. Neither the advance of the Loans or other extensions of credit nor the use of the proceeds of any thereof will violate Sanctions.

Each Loan Party is in compliance, in all material respects, with the KYC Provisions and the Proceeds of Crime Act. No part of the proceeds of the Loans or any other Credit Extension 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, the UK Bribery Act or other similar anti-corruption legislation in other jurisdictions.

SECTION 6.15 Availability Covenants.

(a) *Minimum Combined Availability*. The Lead Borrower and its Subsidiaries shall maintain, at all times, Combined Availability in excess of the greater of (a) $17,500,000 and (b) ten percent (10%) of the ABL Term Borrowing Base.

(b) *Minimum Availability*. The Lead Borrower and its Subsidiaries shall maintain, at all times, Availability in excess of the greater of (a) $17,500,000 and (b) ten percent (10%) of the lesser of (i) the FILO Borrowing Base (or if the FILO Commitments have been terminated and all FILO Loans repaid, the Tranche A Borrowing Base) and (ii) the Revolving Credit Ceiling.

SECTION 6.16 Orders. Notwithstanding anything to the contrary herein, use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Approved Budget, for payments or purposes that would violate the terms of Paragraph 41 (*Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Ou*t) of the Interim Order, and the corresponding paragraph of the Final Order.

SECTION 6.17 Prepayments of Other Indebtedness. Other than pursuant to an order of the Bankruptcy Court (including any Order) and in accordance with the Approved Budget (subject to variances permitted under SECTION 5.18(b)), 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 Revolving Obligations, (ii) solely for the purpose of refinancing such obligations pursuant to the roll-up in accordance with the terms of this Agreement and the Order, the Pre-Petition Obligations, (iii) the roll-up of an aggregate principal amount of $70,000,000 of term loans under the Pre-Petition Term Loan Agreement into the DIP Term Loan Facility pursuant to the DIP Term Loan Agreement, (iv) payments approved in writing by the Administrative Agent and the ABL Term Loan Agent (including by email), each in their sole discretion, or (v) any payments in respect of accrued payroll and related expenses as of the commencement of the Chapter 11 Cases in accordance with the Approved Budget (subject to variances permitted under SECTION 5.18(b)).

SECTION 6.18 Repayment of Indebtedness. Without limiting any other provision hereof, except pursuant to the Approved Budget (subject to variances permitted under SECTION 5.18(b)), without the prior written consent of the Administrative Agent and pursuant to an order of the Bankruptcy Court (including any Order) after notice and a hearing, make any payment or transfer with respect to any

Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

SECTION 6.19 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 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)(1) 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 $1,000,000.

SECTION 6.20 Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is *pari passu* with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the Order and its terms or with the written consent of the Administrative Agent and the ABL Term Loan Agent.

SECTION 6.21 Bankruptcy Actions. Seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent and the ABL Term Loan Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Order or any of the other Loan Documents.

SECTION 6.22 Request for Loans under DIP Term Loan Facility. The Borrowers shall request (in accordance with terms of the DIP Term Loan Agreement) (i) all "Interim Loans" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility, (ii) all "Final Loans" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility, and (iii) all weekly "Withdrawals" (as defined in the DIP Term Loan Agreement) as and when available under the DIP Term Loan Facility prior to making any requests for Revolving Credit Loans under this Agreement (and for the avoidance of doubt, any Protective Advance made by the Administrative Agent to the Borrower shall not constitute a request by the Borrower for Revolving Credit Loans under this Agreement).

SECTION 6.23 Right of Subrogation. Assert any right of subrogation or contribution against any other Loan Party.

ARTICLE VII

Events of Default

SECTION 7.01 Events of Default.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of the Bankruptcy Court or any notice to any Loan Party, the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) *Non-Payment*. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan (including Swingline Loans), or any reimbursement obligation in respect of any Letter of Credit Disbursement, or (ii) within three (3) Business

Days after the same becomes due, any interest on any Loan (including Swingline Loans) or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Defaults*. Any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in (i) any of SECTION 2.16(e) (Voluntary Prepayments of ABL Term Loan), SECTION 2.18 (Cash Management), SECTION 5.01 (Financial Statements; Borrowing Base Certificates, Etc.), SECTION 5.02 (Certificates; Other Information), SECTION 5.03(a) (Notice of Event of Default), SECTION 5.03(b) through (h) (and any such Default shall continue unremedied for two (2) Business Days) (Other Notices), SECTION 5.05 (Maintenance of Existence), SECTION 5.06 (Maintenance of Properties), SECTION 5.07 (Insurance), SECTION 5.08(b) (Compliance with Laws), SECTION 5.10 (Inspection Rights), SECTION 5.11 (Covenant to Become a Loan Party and Give Security), SECTION 5.13 (Further Assurances), SECTION 5.17 (Use of Proceeds), SECTION 5.18 (Approved Budget), SECTION 5.19 (Required Milestones), SECTION 5.21 (DIP Term Loan Facility; Requests for Loans Under DIP Term Loan Facility), SECTION 5.22 (Collateral Updates), SECTION 5.23 (Loan Parties' Advisors), SECTION 5.24 (Agent's Advisors), SECTION 5.25 (Status of Specified Store Closing Sales; Transaction), or (ii) any Section of Article VI (Negative Covenants); or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in SECTION 7.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days after notice thereof by the Administrative Agent to the Lead Borrower; or

(d) *Representations and Warranties*. (i) Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Lead Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith (including any Approved Budget Variance Report, Borrowing Base Certificate or Compliance Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default*. Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party or any Subsidiary from complying or permits any Loan Party or any Subsidiary not to comply, any Loan Party or any Subsidiary (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of the DIP Term Loan Facility or any other Material Indebtedness (other than the Obligations), (ii) fails to observe or perform any other agreement or condition relating to the DIP Term Loan Facility or such other Material Indebtedness beyond the applicable grace period with respect thereto, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts), the effect of which default or other event is to cause, or to permit the holder or holders of the DIP Term Loan Facility or such other Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) after the expiration of the applicable grace period with respect thereto, to cause, with the giving of notice if required, the DIP Term Loan Facility or such other Material Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem the DIP Term Loan Facility or such other Material Indebtedness to be made, prior to its stated maturity, in each case, that has not been cured or waived under the DIP Term Loan Facility or such other Material Indebtedness prior to the acceleration of any of the Obligations; *provided* that this clause (e)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness, or (iii) any "Event of Default" (as

defined in the DIP Term Loan Agreement) occurs that has not been cured or waived under the DIP Term Loan Agreement prior to the acceleration of any of the Obligations; or

(f) *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 the Loan Parties, taken as a whole, and is not released, vacated or fully bonded within twenty (20) days after its issue or levy; or

(g) *Judgments*. (i) There is entered against any Loan Party or any Subsidiary any final judgment or order for the payment of money in an aggregate amount in excess of $2,000,000 (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage), and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of twenty (20) consecutive days or is not otherwise subject to the Automatic Stay, or (ii) there is entered against any Loan Party or any Subsidiary a non-monetary judgment or order that could reasonably be expected to cause a Material Adverse Effect, and such judgment or order shall not be subject to the Automatic Stay; or

(h) *ERISA*. (i)(A) An ERISA Event occurs with respect to a Plan subject to ERISA or Multiemployer Plan subject to ERISA which, together with any other ERISA Events that have occurred, has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA in an aggregate amount in excess of $7,500,000, or (B) any 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 $7,500,000; or (ii) except as could not reasonably be expected to result in a Material Adverse Effect, (A) the appointment by the appropriate Governmental Authority of a trustee for any Plan or (B) if any Plan shall be terminated or any such trustee shall be requested or appointed; or (iii) the PBGC or other appropriate Governmental Authority or any Multiemployer Plan imposes any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and the security interests granted under the Loan Documents or under the Pre-Petition Loan Documents or the Pre-Petition Term Loan Facility; or

(i) *Collateral; Invalidity of Loan Documents*. (i) Any material 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 (including as a result of a transaction permitted under SECTION 6.04 or SECTION 6.05), ceases to be in full force and effect; or any Loan Party contests in writing (or supports any other Person in contesting) the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke or rescind any Loan Document; (ii) any challenge by or on behalf of any Loan Party, receiver, trustee, custodian, conservator, monitor, liquidator, rehabilitator, administrator, administrative receiver or similar officer for any Loan Party or for all or any material part of its property to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto or (iii) the Order or any Security Documents shall for any reason (other than pursuant to the terms thereof, including as a result of a transaction permitted under SECTION 6.04 or SECTION 6.05, or by an action or inaction by any Agent) cease to create a valid and perfected or recorded Lien on and security interest in any portion of the Collateral purported to be covered thereby, or such Lien or other security interest shall cease to have the status and priority provided in the Order, in each case, subject to Permitted Encumbrances; or

(j) *Collateral; Invalidity of Pre-Petition Loan Documents.* (i) Any material provision of any Pre-Petition Loan Document, at any time after its execution and delivery and for any reason other than as

expressly permitted thereunder, ceases to be in full force and effect; or any Loan Party contests in writing (or supports any other Person in contesting) the validity or enforceability of any provision of any Pre-Petition Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Pre-Petition Loan Document, or purports in writing to revoke or rescind any Pre-Petition Loan Document; (ii) any challenge by or on behalf of any Loan Party, receiver, trustee, custodian, conservator, monitor, liquidator, rehabilitator, administrator, administrative receiver or similar officer for any Loan Party or for all or any material part of its property to the validity of any Pre-Petition Loan Document or the applicability or enforceability of any Pre-Petition Loan Document strictly in accordance with the subject Pre-Petition Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Pre-Petition Loan Document or any payment made pursuant thereto or (iii) the Order or any Security Document (as defined in the Pre-Petition Credit Agreement) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected or recorded Lien on and security interest in any portion of the Collateral (as defined in the Pre-Petition Credit Agreement) purported to be covered thereby, or such Lien or other security interest shall cease to have the status and priority provided in the Order; or

(k) *Change in Control*. There occurs any Change in Control; or

(l) *Intercreditor Agreement*. The provisions of the Intercreditor Agreement, as supplemented and modified by the Intercreditor Acknowledgment, shall for any reason be revoked or invalidated, in whole or in part, or otherwise cease to be in full force and effect, or any Loan Party, the Pre-Petition Term Loan Agent, any Pre-Petition Term Loan Lender, any agent with respect to the DIP Term Loan Facility or any DIP Term Loan Lender or any Affiliate of any of the foregoing shall have commenced a suit or an action, including any motion or adversary proceeding in the Chapter 11 Cases, contesting in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement, the Pre-Petition Credit Agreement or the Intercreditor Agreement, as supplemented and modified by the Intercreditor Acknowledgment;

(m) *Conduct of Business*. (i) Any Loan Party shall be enjoined, restrained or in any way prevented by the order of any Governmental Authority from conducting any material part of their business for 5 days or more or (ii) except as permitted under SECTION 6.05, the determination of the Loan Parties, whether by vote of the Loan Parties' board of directors (or equivalent governing body) or otherwise to (A) suspend the operation of the Loan Parties' business in the ordinary course, (B) liquidate all or substantially all of the Loan Parties' assets or Store locations, or (iii) unless permitted hereunder or otherwise consented to by the Administrative Agent, employ an agent or other third party to conduct any Store closings, Store liquidations or "Going-Out-Of-Business" sales with respect to any Stores (or any Loan Party shall take action in furtherance of the foregoing by vote of its board of directors (or equivalent governing body));

(n) *Specified Store Closing Sales*. The Loan Parties shall fail to comply in any material respect with the terms of any Approved Liquidation Agreement for the Specified Store Closing Sales or any Approved Liquidation Agreement for the Specified Store Closing Sales shall be amended or modified in a manner which is materially adverse to the Lenders without the Administrative Agent's and the ABL Term Loan Agent's consent; or

(o) *Loss of Collateral*. There occurs any uninsured loss of any portion of the ABL Priority Collateral with a market or book value in excess of $2,000,000; or

(p) *Termination of Guaranty*. The termination of the Facility Guaranty or any other guaranty of the Obligations (except for any release or termination permitted hereunder); or

(q) *Indictment*. The indictment of any Loan Party under any Applicable Law where the crime alleged would constitute a felony under Applicable Law and such indictment remains unquashed or such legal process remains undismissed for a period of thirty (30) days or more; or

(r) *DIP Term Loan Facility*. The DIP Term Loan Lenders fail to fund any loans or credit extensions under the DIP Term Loan Facility or the DIP Term Loan Agent fails to release any funds from the DIP Term Loan Funding Account, in each case, following a request therefor by the Lead Borrower, including, without limitation, any funding of "Interim Loans" (as such term is defined in the DIP Term Loan Agreement) or "Final Loans" (as such term is defined in the DIP Term Loan Agreement) or the funding of any "Withdrawal" (as such term is defined in the DIP Term Loan Agreement); or

(s) *Chapter 11 Cases*. The occurrence of any of the following in the Chapter 11 Cases:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties or any Subsidiary, or any Person claiming by or through any Loan Party or any Subsidiary, in the Chapter 11 Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement or that is not consented to by the Administrative Agent and the ABL Term Loan Agent; (B) to grant any Lien other than Liens permitted pursuant to SECTION 6.01 upon or affecting any Collateral; (C) except as provided in the Interim Order or Final Order, as the case may be, to use Cash Collateral of the Administrative Agent and the other Secured Parties or Pre-Petition Agent and Pre-Petition Lenders under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent and the ABL Term Loan Agent; or (D) any other action or actions adverse to (x) the Administrative Agent and Lenders or Pre-Petition Agent and Pre-Petition Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral or (y) Pre-Petition Agent and Pre-Petition Lenders or their rights under the Pre-Petition Credit Agreement or the other Pre-Petition Loan Documents or their interest in the Collateral (as defined in the Pre-Petition Credit Agreement); or

(ii) (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any amendment to such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement and the Pre-Petition Obligations or by any other Person to which the Administrative Agent and the ABL Term Loan Agent do not both consent, or any of the Loan Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (B) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, or (C) the expiration of any Loan Party's exclusive right to file a plan of reorganization; or

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan of reorganization that (A) is not reasonably acceptable to the Administrative Agent or the ABL Term Loan Agent, each in their sole discretion or (B) does not contain a provision for termination of the Commitments and indefeasible repayment in full in cash of all of the Obligations under this Agreement and the Pre-Petition Obligations on or before the effective date of such plan or plans; or

(iv) (x) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Interim Order, the Final Order or the Cash Management Order without the written consent of the Administrative Agent and the ABL Term Loan Agent or the filing of a motion for reconsideration with respect to the Interim Order or the Final Order or the Interim Order, the Final Order or the Cash Management Order shall otherwise not be in full force and effect or (y) any Loan Party or any Subsidiary shall fail to comply with the Order in any material respect; or

(v) (x) the Final Order is not entered immediately following the expiration of the Interim Order, and in any event within forty-five (45) days of the Petition Date and (y) the failure to obtain an extension of the general time period to accept/reject store leases from the permitted 120-day time period to not less than 210-days prior to, or concurrently with, the entry of the Final Order; or

(vi) the payment of, or application for authority to pay, any Pre-Petition claim without each of the Administrative Agent's and the ABL Term Loan Agent's prior written consent unless in accordance with the Approved Budget (subject to permitted variances) or in "first day" orders entered by the Bankruptcy Court on the Petition Date; or

(vii) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, any Lender or any of the Collateral or against the Pre-Petition Agent, any Pre-Petition Lender or any Collateral (as defined in the Pre-Petition Credit Agreement); or

(viii) (A) the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of a trustee receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties; or (B) the sale without the Administrative Agent's (and subject, to Specified Release Paragraph, the ABL Term Loan Agent's) consent of all or substantially all of the Debtors' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases or otherwise that does not result in payment in full in cash of all of the Obligations under this Agreement and all Pre-Petition Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable; or

(ix) the dismissal of any Chapter 11 Case, or the conversion of any Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Chapter 11 Cases to Chapter 7 of the Bankruptcy Code; or

(x) any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor (other than the Administrative Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by the Administrative Agent and the ABL Term Loan Agent with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim of $2,000,000 or more or (D) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole); or

(xi) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against either the Administrative Agent, the ABL Term Loan Agent or any Lender or the Pre-Petition Agent or any Pre-Petition Lender and, as to any suit or action brought by any Person other than a Loan Party or a Subsidiary, officer or employee of a Loan Party, the continuation thereof without dismissal for thirty (30) days after service thereof on either the Administrative Agent, the ABL Term Loan Agent or such Lender or Pre-Petition Agent or any Pre-Petition Lender, that asserts or seeks by or on behalf of a Loan Party, any state of federal environmental protection or health and safety agency, any official committee in any Chapter 11 Case or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of the Administrative Agent, the ABL

Term Loan Agent or any Lender under the Loan Documents or the Pre-Petition Obligations or Liens of the Pre-Petition Agent or Pre-Petition Lenders under the Pre-Petition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the Administrative Agent, the ABL Term Loan Agent or any Lender or Pre-Petition Agent or any Pre-Petition Lender under any Loan Document or the Pre-Petition Agent or Pre-Petition Lenders under the Pre-Petition Loan Documents or the collectability of all or any portion of the Obligations or the Pre-Petition Obligations; or

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

(xiii) the failure of any Loan Party to perform any of its obligations under any order of the Bankruptcy Court approving bidding procedures; or

(xiv) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of this Agreement and the other Loan Documents, the DIP Term Loan Facility, or as otherwise permitted under the applicable Loan Documents or permitted under the Orders and the terms thereof, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of the Administrative Agent and the Secured Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by the Bankruptcy Court (A) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code or (B) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the Order and the terms thereof then in effect (but only in the event specifically consented to by the Administrative Agent and the ABL Term Loan Agent), whichever is in effect; or

(xv) the Order and the terms thereof shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Administrative Agent and the ABL Term Loan Agent; or

(xvi) an order in the Chapter 11 Cases shall be entered (A) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent and the Secured Parties or (B) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date, or the commencement of other actions that is materially adverse to the Administrative Agent and the other Secured Parties or their respective rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents; or

(xvii) if the Final Order does not include a waiver, in form and substance satisfactory to the Administrative Agent, of (A) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (B) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date; or

(xviii) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties; or

(xix) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Obligations or the Pre-Petition Agent or the Pre-Petition Lenders with respect to the Pre-Petition Obligations, or without the consent of the Administrative Agent and the ABL Term Loan Agent, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent or lender that is inconsistent with the Order; or

(xx) [reserved]; or

(xxi) any Loan Party or any person on behalf of any Loan Party shall file any motion seeking authority to consummate a sale of assets of the Loan Parties or the Collateral to the extent having a value in excess of $1,000,000 outside the ordinary course of business and not otherwise permitted hereunder; or

(xxii) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition Indebtedness or payables other than payments (A) in respect of accrued payroll and related expenses as of the commencement of the Chapter 11 Cases, (B) in respect of certain creditors and (C) permitted under this Agreement, in each case, to the extent authorized by one or more "first day" or "second day" orders (or other orders with the consent of each of the Administrative Agent and the ABL Term Loan Agent) and consistent with the Approved Budget (including permitted variances); or

(xxiii) if, unless otherwise approved by both the Administrative Agent and the ABL Term Loan Agent, an order of the Bankruptcy Court shall be entered providing for a change of venue with respect to any of Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days; or

(xxiv) any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking: (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Order), whether senior, equal or subordinate to the Administrative Agent's or the DIP Term Loan Agent's liens and security interests; or (B) to modify or affect any of the rights of the Administrative Agent, the ABL Term Loan Agent, the Lenders, the DIP Term Loan Agent or the DIP Term Loan Lenders under the Orders, the Loan Documents, or the DIP Term Loan Facility and related documents by any plan of reorganization confirmed in the Chapter 11 Cases or subsequent order entered in the Chapter 11 Cases; or

(xxv) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this SECTION 7.01(q) or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal; or

(t) *Restructuring Support Agreement*. (i) Any breach by any Loan Party of its obligations under Section 5.03 of the Restructuring Support Agreement or (ii) the Restructuring Support Agreement is terminated for any reason.

SECTION 7.02 Remedies Upon Event of Default.

(a) Subject to the Order and the terms thereof, if any Event of Default has occurred and is continuing, notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of the Bankruptcy Court, the Administrative Agent may

and, at the request of the Required Lenders or the Required Revolving Lenders, shall take any or all of the following actions:

(i) declare the Commitment of each Revolving Credit Lender to make Revolving Credit Loans (including Swingline Loans) and any obligation of the Issuing Banks to issue Letters of Credit to be terminated, whereupon such Commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans (including Swingline Loans), all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document 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 Borrowers;

(iii) require that the Borrowers Cash Collateralize the amount of the Letter of Credit Outstandings (in an amount equal to 103% of the then Stated Amount of outstanding Letters of Credit plus 103% of the then unreimbursed amounts due to the Issuing Banks), which Cash Collateral shall not be subject to the Carve-Out;

(iv) terminate, reduce or restrict any right or ability of the Loan Parties to use any Cash Collateral;

(v) declare that the application of the Carve-Out has occurred through the delivery of a Carve-Out Trigger Notice (as defined in the Order);

(vi) subject to the Remedies Notice Period, direct any or all of the Loan Parties to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Administrative Agent pursuant to Section 363, Section 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Loan Party to assume and assign any lease or executory contract included in the Collateral to the Administrative Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code); and/or

(vii) subject to the Remedies Notice Period, (A) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under this Agreement, the other Loan Documents or Applicable Law or (B) take any and all actions described in the Order, including, without limitation, those actions specified in the Order after the occurrence of any Specified Sale Process Default.

(b) Subject to the Order and the terms thereof, if any ABL Term Loan Event of Default occurs and is continuing (unless the ABL Term Loan Agent has waived such ABL Term Loan Event of Default) and the ABL Term Loan Standstill Period has expired, the Administrative Agent, at the written request of the ABL Term Loan Agent, shall, within a reasonable time after receipt of such request (but in any event within two (2) Business Days with respect to clause (i) below, only) take any or all of the following actions:

(i) declare the unpaid principal amount of the outstanding ABL Term Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the ABL Term Loan 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; or

(ii) subject to the Remedies Notice Period, whether or not the maturity of the ABL Term Loan shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise the rights

and remedies under this Agreement, any of the other Loan Documents or Applicable Law on behalf of the ABL Term Loan Agent and the ABL Term Lenders, all in such manner as the Administrative Agent may determine in its reasonable discretion; *provided, however*, that the ABL Term Loan Agent will not request or direct the Administrative Agent to commence or continue the exercise of any secured creditor remedies or direct or request the Administrative Agent to seek or continue any rights and remedies under this Agreement, any of the other Loan Documents or Applicable Law on behalf of the ABL Term Loan Agent and the ABL Term Lenders so long as the Administrative Agent is diligently pursuing in good faith the exercise of its rights and remedies against all or a material portion of the Collateral, including through actions taken by the Loan Parties with the consent of the Administrative Agent. For the avoidance of doubt, the Administrative Agent shall have no liability for a failure to follow any such request or direction.

(c) At any hearing before the Bankruptcy Court during the Remedies Notice Period to contest the enforcement of remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred, and the Loan Parties hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent that such relief would in way impair or restrict the rights and remedies of the Administrative Agent or the Secured Parties, as set forth in this Agreement or the other Loan Documents or in the Order.

(d) Subject to the Order and the terms thereof, the Automatic Stay shall be modified and vacated to permit the Administrative Agent and Lenders to exercise all rights and remedies under this Agreement, the other Loan Documents or Applicable Law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

SECTION 7.03 License; Access; Cooperation.

The Administrative Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, in each case, after the occurrence and during the continuance of an Event of Default. The Administrative Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent free right to use, any and all owned or leased locations (including, without limitation, warehouse locations, distribution centers and Store locations) for the purpose of arranging for and effecting the sale or disposition of Collateral, including the production, completion, packaging and other preparation of such Collateral for sale or disposition, and to engage in bulk sales of Collateral. It is further understood and agreed that the Administrative Agent and its representatives (and persons employed on their behalf) may continue to operate, service, maintain, process and sell the Collateral. Upon the occurrence and the continuance of an Event of Default and the exercise by the Administrative Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Loan Parties shall assist the Administrative Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Administrative Agent.

ARTICLE VIII

The Administrative Agent

SECTION 8.01 Appointment of Administrative Agent.

Each Secured Party hereby irrevocably designates Bank of America as Administrative Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Administrative Agent. Each Secured Party hereby (a) irrevocably authorizes the Administrative Agent (i) to enter into the Loan Documents to which it is a party, and (ii) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto, and (b) agrees and consents to all of the provisions of the Security Documents. Without limiting the generality of the foregoing, each Secured Party (other than the ABL Term Loan Agent) hereby authorizes the Administrative Agent to consent, on behalf of each Secured Party, to the Interim Order and the Final Order, each to be negotiated between the Debtors, the Agents, and the statutory committees appointed pursuant to Sections 327 and 1103 of the Bankruptcy Code. The Administrative Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Secured Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

SECTION 8.02 Appointment of Collateral Agent.

Each Secured Party hereby irrevocably designates Bank of America as Collateral Agent under this Agreement and the other Loan Documents. Each Secured Party hereby (i) irrevocably authorizes the Collateral Agent (x) to enter into the Loan Documents to which it is a party, and (y) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto, and (ii) agrees and consents to all of the provisions of the Security Documents. Without limiting the generality of the foregoing, each Secured Party (other than the ABL Term Loan Agent) hereby authorizes the Collateral Agent to consent, on behalf of each Secured Party, to the Interim Order and the Final Order, each to be negotiated between the Debtors, the Agents, and the statutory committees appointed pursuant to Sections 327 and 1103 of the Bankruptcy Code. All Collateral shall be held or administered by the Collateral Agent (or its duly-appointed agent) for its own benefit and for the ratable benefit of the other Secured Parties. Any proceeds received by the Collateral Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of the Security Documents or the other Loan Documents shall be paid over to the Administrative Agent for application as provided in SECTION 2.27(b) (if applicable) and, otherwise, in accordance with this Agreement and the other Loan Documents. The Collateral Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Secured Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Collateral Agent.

SECTION 8.03 Administrative 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 Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letters of Credit 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 Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation,

expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under SECTIONS 2.19, 9.04, and 9.05) 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 each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under SECTIONS 2.19, 9.04, and 9.05.

SECTION 8.04 Sharing of Excess Payments.

If at any time or times any Secured Party shall receive (i) by payment, foreclosure, setoff, banker's lien, counterclaim, or otherwise, or any payments with respect to the Obligations owing to such Secured Party arising under, or relating to, this Agreement or the other Loan Documents, or (ii) payments from the Administrative Agent in excess of such Secured Party's ratable portion of all such distributions by the Administrative Agent, such Secured Party shall promptly (1) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in same day funds, as applicable, for the account of all of the Secured Parties and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Secured Parties so that such excess payment received shall be applied ratably as among the Secured Parties in accordance with the provisions of SECTION 2.17 or SECTION 2.27, as applicable; *provided*, *however*, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment. In no event shall the provisions of this paragraph be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans or in drawings under Letters of Credit to any Eligible Assignee or participant, other than to the Borrowers (as to which the provisions of this paragraph shall apply).

SECTION 8.05 Agreement of Applicable Lenders.

Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Applicable Lenders, action shall be taken by each Agent for and on behalf or for the benefit of all Credit Parties upon the direction of the Applicable Lenders, and any such action shall be binding on all Credit Parties. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of SECTION 9.01.

SECTION 8.06 Liability of Agents.

(a) The Agents, when acting on behalf of the Secured Parties, may execute any of their respective duties under this Agreement or any of the other Loan Documents by or through any of their

respective officers, agents and employees, and none of the Agents nor any of their respective directors, officers, agents or employees shall be liable to any other Secured Party for any action taken or omitted to be taken in good faith, or be responsible to any other Secured Party for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of such Agent's own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). None of the Agents nor any of their respective directors, officers, agents and employees shall in any event be liable to any other Secured Party for any action taken or omitted to be taken by it pursuant to instructions received by it from the Applicable Lenders, or in reliance upon the advice of counsel selected by it. Without limiting the foregoing none of the Agents, nor any of their respective directors, officers, employees, or agents shall be: (i) responsible to any other Secured Party for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any other Loan Document or any related agreement, document or order; (ii) required to ascertain or to make any inquiry concerning the performance or observance by any Loan Party of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents or the occurrence of any Default; (iii) responsible to any other Secured Party for the state or condition of any properties of the Loan Parties or any other obligor hereunder constituting Collateral for the Obligations or any information contained in the books or records of the Loan Parties; (iv) responsible to any other Secured Party for the validity, enforceability, collectability, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; (v) responsible to any other Secured Party for the validity, priority or perfection of any Lien securing or purporting to secure the Obligations or for the value or sufficiency of any of the Collateral; 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 Administrative Agent

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

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

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

SECTION 8.07 Notice of Default.

No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has actual knowledge of the same or has received notice from a Secured Party or Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that an Agent obtains such actual knowledge or receives such a notice, such Agent shall give prompt notice thereof to each of the other Secured Parties. Upon the occurrence of an Event of Default, the Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Agents shall have received such direction, the Agents 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 they shall deem advisable in the best interest of the Secured Parties. In no event shall the Agents be required to comply with any such directions to the extent that the Agents believe that their compliance with such directions would be unlawful.

SECTION 8.08 Credit Decisions.

Each Secured Party (other than the Agents) acknowledges that it has, independently and without reliance upon the Agents or any other Secured Party, and based on the financial statements prepared by the Loan Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Loan Parties and has made its own decision to enter into this Agreement and the other Loan Documents. Each Secured Party (other than the Agents) also acknowledges that it will, independently and without reliance upon the Agents or any other Secured Party, and based on such documents and information as it shall deem appropriate at the time, continue to 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.

SECTION 8.09 Reimbursement and Indemnification.

(a) Each Secured Party (other than the Administrative Agent and the Collateral Agent) agrees to (i) reimburse the Administrative Agent and the Collateral Agent for such Secured Party's Pro Rata Percentage (or, in the case of any Lender that has assigned its Commitments pursuant to SECTION 9.07 hereof, where the applicable assignee has not ratably assumed such Lender's obligations under this SECTION 8.09(a) with respect to acts or omissions that occurred prior to such assignment, such assigning Lender's Pro Rata Percentage prior to such assignment) of (x) any expenses and fees incurred by such Agent for the benefit of Secured Parties under this Agreement and any of the other Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Secured Parties, and any other expense incurred in connection with the operation or enforcement thereof not reimbursed by the Loan Parties, and (y) any expenses of such Agent incurred for the benefit of the Secured Parties that the Loan Parties have agreed to reimburse pursuant to this Agreement or any other Loan Document and have failed to so reimburse, and (ii) indemnify and hold harmless such Agent and any of its directors, officers, employees, or agents, on demand, in the amount of such Secured Party's Pro Rata Percentage (or, in the case of any Lender that has assigned its Commitments pursuant to SECTION 9.07 hereof, where the applicable assignee has not ratably assumed such Lender's obligations under this SECTION 8.09(a) with respect to acts or omissions that occurred prior to such assignment, such assigning Lender's Pro Rata Percentage prior to such assignment), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent or any Secured Party in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by it or any of them under this Agreement or any of the other Loan Documents, to the extent not reimbursed by the Loan Parties, including, without limitation, costs of any suit initiated either by such Agent against any

Secured Party or against such Agent or Secured Party (except such as shall have been determined by a court of competent jurisdiction or another independent tribunal having jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent); *provided, however*, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Secured Party in its capacity as such.

(b) The provisions of this SECTION 8.09 shall survive the repayment or assignment of the Obligations and the termination of the Commitments and, in the case of any Lender that has assigned its Commitments and/or Loans pursuant to SECTION 9.07 hereof where the applicable assignee has not ratably assumed such Lender's obligations under this SECTION 8.09 with respect to acts or omissions that occurred prior to such assignment, with respect to events which have occurred prior to any such assignment.

SECTION 8.10 Rights of Agents.

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

SECTION 8.11 Notice of Transfer.

The Administrative Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in SECTION 9.07.

SECTION 8.12 Successor Agents.

Any Agent may resign at any time by giving thirty (30) Business Days' written notice thereof to the other Secured Parties and the Lead Borrower. Upon any such resignation of an Agent, the Required Lenders shall have the right to appoint a successor Agent; *provided* that neither the Sponsor nor any of its Affiliates may be appointed an Agent. If no successor Agent shall have been so appointed by the Required Lenders, and/or none shall have accepted such appointment within thirty (30) days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the other Secured Parties, appoint a successor Agent which shall be a commercial bank (or affiliate thereof) organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of a least $1,000,000,000, or capable of complying with all of the duties of such Agent hereunder (in the opinion of the retiring Agent and as certified to the other Secured Parties in writing by such successor Agent); *provided* that neither the Sponsor nor any of its Affiliates may be appointed an Agent. Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as such Agent, the provisions of this ARTICLE VIII shall inure to its benefit as to any actions taken or omitted to be taken by it (i) while it was such Agent under this Agreement and (ii) after such resignation for so long as it continues to act in any capacity hereunder or under the other Loan Documents, including (a) holding any collateral security on behalf of

any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency or Collateral to a successor Administrative Agent or Collateral Agent.

SECTION 8.13 Relation Among the Lenders.

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

SECTION 8.14 Reports and Financial Statements.

By signing this Agreement, each Lender (and with respect to clause (a), each Secured Party):

(a) agrees to furnish the Administrative Agent at its written request, and at such frequency as the Administrative Agent may reasonably request in writing, with a summary of all Other Liabilities due or to become due to such Lender or its Affiliates;

(b) is deemed to have requested that the Agents furnish such Lender, promptly after they become available, copies of (i) all financial statements and other information required to be delivered by the Lead Borrower under SECTION 5.01, and all commercial finance examinations and appraisals of the Collateral received by the Agents, (ii) the certificates and other information delivered by the Lead Borrower under SECTION 5.02 or SECTION 5.22, and (iii) the notices delivered by the Lead Borrower under SECTION 5.03 (collectively, the "Reports"), and the Agents agree to furnish any Reports promptly to the Lenders;

(c) expressly agrees and acknowledges that no Agent makes any 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 Agents 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 9.08; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold each 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 Swingline Loans and Letters of Credit, or the indemnifying Lender's purchase of, Loans of the Borrowers; and (ii) to pay and protect, and indemnify, defend, and hold each 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 Agents 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 in violation of the terms hereof.

SECTION 8.15 Agency for Perfection.

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

SECTION 8.16 Delinquent Lender.

(a) If for any reason any Lender (in each case, as determined by the Administrative Agent) (i) shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Administrative Agent its Commitment Percentage of any Revolving Credit Loans, expenses or setoff or purchase its Commitment Percentage of a participation interest in the Swingline Loans or Letter of Credit Outstandings and such failure is not cured within one (1) Business Day of receipt from the Administrative Agent of written notice thereof, (ii) shall fail, within three (3) Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its Commitments, (iii) has notified the Lead Borrower or the Administrative Agent or any other Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (iv) has, or has a direct or indirect parent that has, been deemed insolvent or become the subject of any proceeding under any Debtor Relief Law (or taken any action in furtherance of any such proceeding or appointment) or (v) become the subject of a Bail-In Action (each, a "Delinquent Lender"); *provided* that a Lender shall not be deemed a Delinquent Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority, then, in addition to the rights and remedies that may be available to the other Secured Parties, the Loan Parties or any other party at law or in equity, and not at limitation thereof, (i) such Delinquent Lender's right to participate in the administration of, or decision-making rights related to, the Revolving Credit Loans, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, (ii) a Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Loan Parties, whether on account of outstanding Revolving Credit Loans, interest, fees or otherwise, to the remaining non-Delinquent Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, as a result of application of such assigned payments the Lenders' respective Commitment Percentages of all outstanding Obligations (other than Other Liabilities) shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency, and (iii) at the option of the Administrative Agent, any amounts payable to such Delinquent Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Delinquent Lender, be retained by the Administrative Agent as Cash Collateral and may be utilized for future funding obligations of the Delinquent Lender in respect of any Revolving Credit Loan or existing or future participating interest in any Swingline Loan or Letter of Credit. The Delinquent Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Delinquent Lender of its Commitment Percentage of any Obligations (other than Other Liabilities), any participation obligation, or expenses as to which it is delinquent, together with interest thereon at the Revolving Default Rate from the date when originally due until the date upon which any such amounts are actually paid. Any payments, prepayments or other amounts paid or payable to a Delinquent Lender that are applied (or held) to pay amounts owed by a Delinquent Lender or to post Cash Collateral pursuant to this SECTION 8.16(a) shall be deemed paid to and redirected by that Delinquent Lender, and each Lender irrevocably consents hereto.

(b) The non-Delinquent 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 Delinquent Lender for no cash consideration (pro rata, based on the respective Commitments of those Lenders electing to exercise such right), the Delinquent Lender's Commitment to fund future Credit Extensions. Upon any such purchase of the Commitment Percentage of any Delinquent Lender, the Delinquent 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 Delinquent Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance. The Borrowers may, on ten (10) days' prior written notice to the Administrative Agent and such Delinquent Lender, replace such Delinquent Lender (in its capacity as a Lender) by causing such Delinquent Lender to (and such Delinquent Lender shall be obligated to) assign (with the assignment fee to be paid by the Borrowers in such instance) all of its rights and obligations under this Agreement to one or more Eligible Assignees.

(c) During any period in which there is a Delinquent Lender, for purposes of computing the amount of the obligation of each non-Delinquent Lender to acquire, refinance or fund participations in Letters of Credit or Swingline Loans under this Agreement, the Commitment Percentage of each applicable non-Delinquent Lender holding a Tranche A Commitment or a FILO Commitment (as applicable) shall be computed without giving effect to the Tranche A Commitment or a FILO Commitment (as applicable) of that Delinquent Lender; *provided* that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Delinquent Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Delinquent Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Tranche A Commitment or a FILO Commitment (as applicable) of that non-Delinquent Lender minus (2) the aggregate outstanding amount of the Credit Extensions of that Lender in respect of its Tranche A Commitment or FILO Commitment (as applicable).

(d) At any time that there shall exist a Delinquent Lender, immediately upon the request of the Administrative Agent, an Issuing Bank or the Swingline Lender, the Borrowers shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all fronting exposure of such Person in respect of such Delinquent Lender (after giving effect to SECTION 8.16(c) and any Cash Collateral provided by the Delinquent Lender).

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

SECTION 8.17 Collateral and Guaranty Matters.

(a) The Secured Parties hereby irrevocably authorize the Collateral Agent to release any Lien upon any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full of all Obligations (other than (A) contingent indemnification obligations for which no claim has been asserted and (B) Obligations in respect of obligations that may thereafter arise with respect to Other Liabilities not yet due and payable; unless the Administrative Agent has received written notice, at least two (2) Business Days prior to the proposed date of any such release of Liens, stating that arrangements reasonably satisfactory to the applicable provider thereof in respect of obligations and liabilities under Cash Management Services and Bank Products constituting Obligations have not been made), all Letters of Credit shall have expired or terminated (or been Cash Collateralized or backstopped in a manner

reasonably satisfactory to the applicable Issuing Bank) and all Letter of Credit Outstandings have been reduced to zero (or Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank), (ii) a Borrower or a Facility Guarantor upon the consummation of any transaction permitted by this Agreement as a result of which such Borrower or Facility Guarantor (as applicable) ceases to be a Borrower or a Facility Guarantor (*provided* that the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) shall have consented to such transaction (to the extent required by this Agreement) and the terms of such consent did not provide otherwise), (iii) constituting property being sold, transferred or disposed of in a Permitted Disposition (other than a Permitted Disposition to a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents), subject to the conditions thereof, (iv) upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral approved in in writing in accordance with SECTION 9.01 of this Agreement and (v) any mortgage in favor of the Administrative Agent or Collateral Agent of any Real Estate of the Loan Parties, including, without limitation, the leasehold mortgage of the leased Real Estate of the Loan Parties in Dixon, California. Except as provided above, the Collateral Agent will not release any of such Collateral Agent's Liens without the prior written authorization of the Applicable Lenders.

(b) The Secured Parties hereby irrevocably authorize the Agents (i) to release any Facility Guarantor from its obligations under the Facility Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, (ii) to release any Facility Guarantor from its obligations under the Facility Guarantee in connection with a transaction permitted under SECTION 6.04 of this Agreement, or (iii) to terminate this Agreement and the other Loan Documents upon the termination of the Commitments and payment and satisfaction in full of all Obligations (other than (A) contingent indemnification obligations and (B) Obligations in respect of obligations that may thereafter arise with respect to Other Liabilities not yet due and payable; unless the Administrative Agent has received written notice, at least two (2) Business Days prior to the proposed date of any such release of Liens, stating that arrangements reasonably satisfactory to the applicable provider thereof in respect of obligations and liabilities under Cash Management Services and Bank Products constituting Obligations have not been made), all Letters of Credit shall have expired or terminated (or been Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank) and all Letter of Credit Outstandings have been reduced to zero (or Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank).

(c) Upon request by either Agent at any time, the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) will confirm in writing any Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Facility Guarantor from its obligations under the Facility Guarantee pursuant to this SECTION 8.17. In each case as specified in this SECTION 8.17, the Agents will, at the Borrowers' 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 Facility Guarantor from its obligations under the Facility Guarantee, in each case in accordance with the terms of the Loan Documents and this SECTION 8.17; *provided* that the Lead Borrower shall have delivered to the Agents, at least five (5) Business Days prior to the date of the proposed execution of any document evidencing such release or subordination (or such shorter period as the Agents may agree in writing in their discretion), a written request therefor identifying the relevant Collateral or Loan Party, together with a certification by the Lead Borrower stating that such transaction is in compliance with this Agreement and the other Loan Documents and otherwise in form and substance satisfactory to the Administrative Agent. The Administrative Agent shall not be required to execute any such document on terms which, in its reasonable opinion, would, under Applicable Law, expose the

Administrative Agent to liability or create any obligation or entail any adverse consequence other than the release of such Liens without recourse or warranty, and such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including (without limitation) the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(d) The Agents shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.18 Additional Secured Parties.

The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not an Agent, a Lender or an Issuing Bank party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance reasonably acceptable to Agent) this ARTICLE VIII and SECTION 2.23, SECTION 9.08, SECTION 9.09, SECTION 9.18 and SECTION 9.20 and the Intercreditor Agreement, and the decisions and actions of any Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein)to the same extent a Lender is bound; *provided, however*, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by SECTION 8.09 only to the extent of liabilities, reimbursement obligations, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements with respect to or otherwise relating to the Liens and Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) each of Agents, the Lenders and the Issuing Banks party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein and in the other Loan Documents, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document. Notwithstanding any other provision of this ARTICLE VIII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, any Other Liabilities.

SECTION 8.19 Agents and Titles.

Notwithstanding the provisions of this Agreement or any of the other Loan Documents, the Arranger shall have no powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

SECTION 8.20 Intercreditor Agreements.

Each Lender that has signed this Agreement shall be deemed to have consented to and hereby irrevocably authorizes the Agents (or any of them) to enter into any Intercreditor Agreement (including the Intercreditor Acknowledgment and any and all other amendments, amendments and restatements,

modification, supplements and acknowledgements thereto) from time to time, and agree to be bound by the provisions thereof.

SECTION 8.21 Reserves.

(a) The Administrative Agent may, or at the direct of the ABL Term Loan Agent shall, from time to time, establish a Bank Product Reserve and a Cash Management Reserve with respect to Bank Products and with respect to Cash Management Services specified in clauses (c), (d) or (f) of the definition of Cash Management Services which are provided by any Revolving Credit Lender or its Affiliates. The amount of the applicable Bank Produce Reserve and Cash Management Reserve shall be determined by the Administrative Agent in good faith consistent with past practices for similarly situated borrowers and shall be reviewed and adjusted by the Administrative Agent periodically (but no less frequently than with the delivery of a Borrowing Base Certificate) to reflect any material changes in the credit exposure with respect to such Bank Products and with respect to such Cash Management Services for which the respective Bank Products Reserve and Cash Management Reserves have been established. The foregoing provisions are intended solely to establish circumstances in which the Administrative Agent must establish such Bank Product Reserves and Cash Management Reserves. The provisions of this SECTION 8.21(a) shall not limit the right of the Administrative Agent to establish additional Bank Product Reserves and Cash Management Reserves at such time and in such amounts as the Administrative Agent determines in its Permitted Discretion.

(b) Notwithstanding anything to the contrary contained in this Agreement, as long as the ABL Term Loan remains outstanding, the Administrative Agent shall maintain Reserves of the type existing on the Closing Date unless otherwise agreed to by the ABL Term Loan Agent, which Reserves shall be calculated using the same methodology used prior to the Closing Date; provided that (x) the Administrative Agent may eliminate any Reserve concurrent with, or after elimination of, the event or circumstance that gave rise to the establishment of such Reserve and (y) the Administrative Agent may in its Permitted Discretion change the methodology used to calculate any Reserve in accordance with the terms hereof if the effect of such change is to increase the amount of such Reserve. For clarity, the foregoing shall not limit the right of the Administrative Agent (i) to modify the amount of any of the Reserves based upon mathematical calculations (e.g., based on an increase or reduction in Customer Credit Liabilities at the time of calculation), including reducing the amount of any such Reserves to an amount less than those Reserves in effect on the Closing Date, or (ii) without regard to clause (i) hereof, to increase any Reserve from the level in effect at the time of the Closing Date and thereafter to reduce the amount of such Reserve to an amount not less than the amount thereof in effect on the Closing Date or (iii) add additional Reserves and thereafter to eliminate such Reserve as in effect on the Closing Date, in the case of each of clauses (i), (ii) and (iii), in a manner otherwise permitted by this Agreement.

SECTION 8.22 Resignation of ABL Term Loan Agent.

The ABL Term Loan Agent may resign at any time by giving thirty (30) Business Days' written notice thereof to the other Secured Parties, the Administrative Agent and the Lead Borrower. Upon any such resignation of the ABL Term Loan Agent, the Required Term Lenders shall have the right to appoint a successor ABL Term Loan Agent, which shall be reasonably satisfactory to the Administrative Agent, provided that neither the Sponsor nor any of its Affiliates may be appointed the ABL Term Loan Agent. If no successor ABL Term Loan Agent shall have been so appointed by the Required Term Lenders, and/or none shall have accepted such appointment within thirty (30) days after the retiring ABL Term Loan Agent's giving of notice of resignation, the retiring ABL Loan Term Agent may, on behalf of the other ABL Term Secured Parties, appoint a successor ABL Term Loan Agent which shall either be a commercial bank (or an affiliate thereof) or a commercial finance company specializing in providing financings comparable to the ABL Term Loan, in either such case, organized under the laws of the United

States of America or of any State thereof and having a combined capital and surplus of a least $1,000,000,000, or capable of complying with all of the duties of the ABL Term Loan Agent hereunder (in the opinion of the retiring ABL Term Loan Agent and as certified to the other ABL Term Secured Parties, the Administrative Agent and the Lead Borrower by the ABL Term Loan Agent in writing by such successor ABL Term Loan Agent) which, shall be reasonably satisfactory to the Administrative Agent, provided that neither the Sponsor nor any of its Affiliates may be appointed the ABL Term Loan Agent. Upon the acceptance of any appointment as ABL Term Loan Agent by a successor ABL Term Loan Agent, such successor ABL Term Loan Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring ABL Term Loan Agent and the retiring ABL Term Loan Agent shall be discharged from its duties and obligations under this Agreement. After any retiring ABL Term Loan Agent's resignation hereunder as ABL Term Loan Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it (i) while it was ABL Term Loan Agent under this Agreement and (ii) after such resignation for so long as it continues to act in any capacity hereunder or under the other Loan Documents.

ARTICLE IX

Miscellaneous

SECTION 9.01 Amendments, Etc.

Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Lead Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than with respect to any amendment, waiver or consent contemplated in SECTION 9.01(b) (as set forth in the proviso therein), (c) (as set forth in the proviso therein), and (d)(iii)) 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* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in SECTION 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal, interest, fees or other amounts payable under the Loan Documents or reduce the amount of, waive or excuse any such payment or postpone the expiration of the Commitments or the Maturity Date, without the prior written consent of all Lenders directly affected thereby *provided* that, (i) only the consent of the Required Revolving Lenders shall be necessary (x) to amend the definition of "Revolving Default Rate" to increase the Revolving Default Rate up to an additional two percent (2.0%) or (y) to waive any obligation of the Borrowers to pay interest at the Revolving Default Rate with respect to the Revolving Obligations and (ii) only the consent of the ABL Term Loan Agent shall be necessary to (x) amend the definition of "ABL Default Rate" to increase the ABL Default Rate up to an additional two percent (2.0%) and any amount over two percent (2.0%) shall require the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent or (y) to waive any obligation of the Borrowers to pay interest at the ABL Default Rate with respect to the ABL Term Obligations;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the prior written consent of all Lenders directly affected thereby; *provided* that, (i) only the consent of the Required Revolving

Lenders shall be necessary (x) to amend the definition of "Revolving Default Rate" to increase the Revolving Default Rate up to an additional two percent (2.0%) and any amount over two percent (2.0%) shall require the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent or (y) to waive any obligation of the Borrowers to pay interest at the Revolving Default Rate with respect to the Revolving Obligations and (ii) only the consent of the ABL Term Loan Agent shall be necessary (x) to amend the definition of "ABL Default Rate" to increase the ABL Default Rate up to an additional two percent (2.0%) and any amount over two percent (2.0%) shall require the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent or (y) to waive any obligation of the Borrowers to pay interest at the ABL Default Rate with respect to the ABL Term Obligations;

(d) (i) change any provision of this SECTION 9.01, or change the definition of "Required Lenders" without the prior written consent of all Lenders, (ii) change the definition of "Required Revolving Lenders", "Supermajority Consent of the Revolving Lenders", "Supermajority Consent of the FILO Lenders" without the prior written consent of all of the Revolving Credit Lenders, (iii) change the definition of "Required Term Lenders" without the prior written consent of all of the ABL Term Lenders, or (iv) change any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the prior written consent of all Lenders affected thereby;

(e) other than in a transaction permitted under SECTION 6.05, and subject to the Specified Release Paragraph, release all or substantially all of the Collateral in any transaction or series of related transactions, without the prior written consent of all Revolving Credit Lenders and the ABL Term Loan Agent;

(f) other than in connection with a transaction permitted under SECTION 6.04 or SECTION 6.05, and subject to the Specified Release Paragraph, release any Loan Party from its obligations under any Loan Document or limit its liability in respect of such Loan Document, without the prior written consent of all Revolving Credit Lenders and the ABL Term Loan Agent;

(g) increase any advance rate (x) under the "Tranche A Borrowing Base" or "FILO Borrowing Base" above the advance rates as in effect on the Closing Date, without the prior written consent of all the Revolving Credit Lenders and the ABL Term Loan Agent and (y) under the "ABL Term Borrowing Base" above the advance rates as in effect on the Closing Date, without the prior written consent of all of the Revolving Credit Lenders and the ABL Term Loan Agent;

(h) (1) without the prior written consent of the Supermajority Consent of the Revolving Lenders and the ABL Term Loan Agent, change the definitions of any of "Availability", "Tranche A Borrowing Base", "FILO Borrowing Base" or any component definition of any such terms, if as a result of any such change, the amounts available to be borrowed by the Borrowers would be increased, *provided* that in the event that the FILO Lenders are affected by any such change described under this clause (h)(1), the prior written Supermajority Consent of the FILO Lenders shall also be required or (2) without the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent, change the definitions of any of "Combined Availability", "ABL Term Borrowing Base" or any component definition of any such terms*; provided that* the foregoing provisions of this subsection (h) shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves;

(i) without the prior written Supermajority Consent of the Revolving Lenders and the ABL Term Loan Agent, modify the definition of "Permitted Overadvance" so as to increase the amount thereof, or, except as provided in such definition, the time period for a Permitted Overadvance, or the definition of "Inadvertent Overadvance";

(j) without the prior written consent of (i) all the Revolving Credit Lenders, change SECTION 2.16(a)(i) or SECTION 2.16(e), (ii) all the Revolving Credit Lenders and the ABL Term Loan Agent, change SECTION 2.18 and (iv) all the Lenders directly affected thereby, change SECTION 2.17, SECTION 2.27, or SECTION 8.04 or amend or modify the ratable requirement of SECTION 2.21(b);

(k) without the prior written consent of all Lenders directly affected thereby, (i) subordinate the Obligations hereunder to any other Indebtedness, or (ii) except as provided by operation of Applicable Law or in the Intercreditor Agreement, subordinate the Liens granted hereunder or under the other Loan Documents to any other Lien;

(l) without the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent, amend, modify or waive the definition of "ABL Term Loan Event of Default", "ABL Term Obligations", "ABL Term Loan Standstill Period", "Bank Products", "Bank Product Reserves", "Borrowing Base Certificates", "Cash Management Reserves", "Cash Management Services", or (except as provided in clause (i) above) "Permitted Overadvance";

(m) without the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent, amend or modify (t) SECTION 4.02, SECTION 5.01(e), SECTION 5.10, SECTION 7.01, or SECTION 7.02, (u) Article II (solely to the extent such amendment, modification or waiver being proposed would directly affect the Revolving Credit Loans, Swingline Loans and Overadvances, as applicable, made thereunder), (v) Article II (solely to the extent such amendment, modification or waiver being proposed would directly affect the Letters of Credit issued, extended or renewed thereunder), (w) the definitions of "Letter of Credit Sublimit", "Other Liabilities", "Overadvance", " Revolving Credit Ceiling" and "Swingline Loan Ceiling", (x) SECTION 5.01(a), SECTION 5.01(b), SECTION 5.01(c) or SECTION 6.06 in a manner that would be more favorable to the Borrowers, (y) SECTION 6.15(a) in a manner that would reduce the amount set forth in clause (a) thereof, or reduce the numerical percentage (or the calculation of what such percentage is being applied to) set forth clause (b) thereof, or otherwise be more favorable to the Borrowers or (z) SECTION 6.15(b) in a manner that would reduce the amount set forth in clause (a) thereof, or reduce the numerical percentage (or the calculation of what such percentage is being applied to) set forth clause (b) thereof or otherwise be more favorable to the Borrowers;

(n) without the prior written consent of the ABL Term Loan Agent (and, for certainty, the Required Lenders), amend, modify or waive, SECTION 2.19(f) or SECTION 8.21; or

(o) solely to the extent the ABL Term Loan Agent or the ABL Term Lenders do not have to provide their consent in order to effectuate such a change, increase the rates of interest set forth in the definition of "Applicable Margin" or of the "Revolving Default Rate" with respect to the Revolving Credit Loans or Letter of Credit Fees unless the rate of interest provided in SECTION 2.08(b) or the "ABL Default Rate", as the case may be, is increased by the same amount; provided that the foregoing shall not include any increase occurring because of fluctuations in underlying rate indices or the imposition of the "Revolving Default Rate";

and *provided further* that (i) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Bank in addition to the Lenders required above, affect the rights or duties of an Issuing Bank under this Agreement or any Letter of Credit application 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 Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent and the Collateral Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent or the Collateral Agent

under this Agreement or any other Loan Document, (iv) the Fee Letter and the ABL Term Loan Fee Letter, respectively, may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto, (v) modifications to SECTION 2.21 or any other provision requiring pro rata payments, shall only require approval (to the extent any such approval is otherwise required) of the Required Lenders, (vi) no Lender consent is required to effect any amendment or supplement to the Intercreditor Agreement (I) that is for the purposes of adding the holders of any Indebtedness constituting a permitted refinancing of the DIP Term Loan Facility (or any agent or trustee of such holders) as parties thereto, as expressly contemplated by the terms of the Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) and (II) that is expressly contemplated by Section 5.2(c) or the second paragraph of Section 7.4 of the Intercreditor Agreement. Notwithstanding anything to the contrary herein, no Delinquent 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 (it being understood that any Commitments or Loans held or deemed held by any Delinquent Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

Notwithstanding anything to the contrary contained in this SECTION 9.01, (a) in the event that the Lead Borrower shall request that this Agreement or any other Loan Document be modified, amended or waived in a manner which would require the consent of all Lenders directly affected thereby and such amendment is approved by the Required Lenders, the Required Revolving Lenders or the Required Term Lenders, as applicable, but not by all the Lenders, all the Revolving Credit Lenders or all the ABL Term Lenders, as applicable, directly affected thereby, the Lead Borrower and the Administrative Agent shall be permitted to amend this Agreement without the consent of the Lender or Lenders which did not agree to the modification or amendment requested by the Lead Borrower (such Lender or Lenders, collectively the "Minority Lenders") subject to their providing for (i) the termination of the Commitment of each of the Minority Lenders, (ii) the addition to this Agreement of one or more other financial institutions which would qualify as an Eligible Assignee, subject to the reasonable approval of the Administrative Agent, so that the aggregate Commitments after giving effect to such amendment shall be in the same amount as the aggregate Commitments immediately before giving effect to such amendment, (iii) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new Lenders, as the case may be, as may be necessary to repay in full the outstanding Loans (including principal, interest, fees and other amounts due and owing under the Loan Documents) of the Minority Lenders immediately before giving effect to such amendment and (iv) such other modifications to this Agreement or the Loan Documents as may be appropriate and incidental to the foregoing and (b) the Administrative Agent and the Lead Borrower may amend any Loan Document to correct administrative errors or omissions, or to effect administrative changes that are not adverse to any Lender and, notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

Notwithstanding SECTION 9.01 or anything else to the contrary in this Agreement or any other Loan Document, the ABL Term Loan Agent and each ABL Term Secured Party, agrees that neither it nor they will raise any objection to, or oppose, and shall be deemed to have consented to the release of any Loan Party from its obligations under any Loan Document or to any private or public sale or other disposition of all or any portion of the Collateral (and any post-petition or post-filing assets subject to adequate protection Liens or comparable Liens under any Debtor Relief Law in favor of the Administrative Agent) free and clear of any Liens and other claims at any time after the occurrence and during the continuance of an Event of Default under this Agreement and with the consent of the Administrative Agent or under Section 363 of the Bankruptcy Code (or other similar provision of any

Debtor Relief Law) if (x) the ABL Term Loan Agent has received at least five (5) Business Days prior written notice of such sale or disposition and the terms and conditions thereof, and (y) the Administrative Agent has consented to such release or such sale or other disposition of such Collateral, and in connection with any of the foregoing, each ABL Term Secured Party hereby irrevocably authorizes the Administrative Agent to release any Lien on any of the Collateral; *provided* that any Lien of the Administrative Agent on such Collateral attaches to the net proceeds of such sale or other disposition and all proceeds received by the Administrative Agent from such sale or disposition are applied in accordance with SECTION 2.27(b) hereof. This paragraph shall be referred to herein as the "Specified Release Paragraph".

If Administrative Agent shall notify the ABL Term Loan Agent of its intention to (by itself or at the direction of the Required Lenders) sell, lease or otherwise dispose of all or substantially all of the Collateral whether by private or public sale in accordance with the immediately preceding paragraph; *provided* that any notice from Administrative Agent to the ABL Term Loan Agent of the Administrative Agent's intention to conduct such a sale shall be delivered by the Administrative Agent to the ABL Term Loan Agent not less than five (5) Business Days prior to the commencement of any such sale (the foregoing event is referred to herein as a, "Purchase Option Event"), the ABL Term Lenders shall have the opportunity to purchase all (but not less than all) of the Revolving Obligations; *provided* that such option shall expire if the applicable ABL Term Lenders fail to deliver a written notice (a "Revolving Purchase Notice") to the Administrative Agent within five (5) Business Days following the first date the ABL Term Loan Agent obtains knowledge of the occurrence of a Purchase Option Event, which Revolving Purchase Notice shall (A) be signed by the applicable ABL Term Lenders committing to such purchase (the "Revolving Purchasing Creditors") and indicate the percentage of the Revolving Obligations to be purchased by each Revolving Purchasing Creditor (which aggregate commitments must add up to one hundred percent (100%) of the Revolving Obligations) and (B) confirm that the offer contained therein is irrevocable. Upon receipt of such Revolving Purchase Notice by the Administrative Agent, the Revolving Purchasing Creditors shall have from the date of delivery thereof to and including the date that is five (5) Business Days after the Revolving Purchase Notice was received by the Administrative Agent to purchase all (but not less than all) of the Revolving Obligations (the date of such purchase, the "Revolving Purchase Date").

On the Revolving Purchase Date, the Administrative Agent and the other Revolving Secured Parties shall, subject to any required approval of any Governmental Authority, if any, sell to the Revolving Purchasing Creditors all (but not less than all) of the Revolving Obligations. On such Revolving Purchase Date, the Revolving Purchasing Creditors shall (i) pay to the Administrative Agent, for the benefit of the Revolving Secured Parties, as directed by the Administrative Agent, in immediately available funds the full amount (at par) of all Revolving Obligations together with all accrued and unpaid interest and fees thereon, all in the amounts specified by the Administrative Agent and determined in good faith in accordance with the Loan Documents or other applicable documents, (ii) furnish such amount of Cash Collateral in immediately available funds as the Administrative Agent determines is reasonably necessary to secure the Revolving Secured Parties on terms reasonably satisfactory to the Administrative Agent in connection with any (x) asserted indemnification claims, and (y) all Revolving Obligations in respect of or relating to Letters of Credit but not in any event in an amount greater than 105% thereof, and (iii) agree to reimburse the Revolving Secured Parties for any loss, cost, damage or expense resulting from the granting of provisional credit for any checks, wire or ACH transfers that are reversed or not final or other payments provisionally credited to the Revolving Obligations and as to which the Administrative Agent and the other Revolving Secured Parties have not yet received final payment as of the Revolving Purchase Date. Such purchase price shall be remitted by wire transfer in immediately available funds to such bank account of the Administrative Agent (for the benefit of the applicable Revolving Secured Parties) as the Administrative Agent shall have specified in writing to the ABL Term Loan Agent. Interest and fees shall be calculated to but excluding the Revolving Purchase

Date if the amounts so paid by the applicable Revolving Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account prior to 11:00 a.m., and interest shall be calculated to and including such Revolving Purchase Date if the amounts so paid by the Revolving Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account after 11:00 a.m. Notwithstanding anything to the contrary contained in the Loan Documents, the Loan Parties hereby consent to and approve the assignment of the Revolving Obligations contemplated by this Section.

Any purchase pursuant to the purchase option described in this Section shall, except as provided below, be expressly made without representation or warranty of any kind by the Administrative Agent or the other Revolving Secured Parties as to the Revolving Obligations, the Collateral or otherwise, and without recourse to the Administrative Agent and the other Revolving Secured Parties as to the Revolving Obligations, the Collateral or otherwise, except that the Administrative Agent and each of the other Revolving Secured Parties, as to itself only, shall represent and warrant only as to (i) the principal amount of the Revolving Obligations being sold by it, (ii) that such Person has not created any Lien on, or sold any participation in, any Revolving Obligations being sold by it, and (iii) that such Person has the right to assign the Revolving Obligations being assigned by it.

In connection with any purchase of Revolving Obligations pursuant to this Section, each Revolving Secured Party agrees to enter into and deliver to the Revolving Purchasing Creditors on the Revolving Purchase Date, as a condition to closing, an assignment agreement substantially in the form of Exhibit A-1 or A-2 (as applicable) to this Agreement or any other form approved by the Administrative Agent and, at the expense of the Loan Parties, each of the Revolving Secured Parties shall deliver all possessory Collateral (if any), together with any necessary endorsements and other documents (including any applicable stock powers or note powers), then in such Revolving Secured Party's possession or in the possession of its agent or bailee, or turn over control as to any pledged Collateral, deposit accounts or securities accounts of which such Revolving Secured Party or its agent or bailee then has control, as the case may be, to the ABL Term Loan Agent to act as the successor Administrative Agent and Collateral Agent and otherwise take such actions as may be reasonably appropriate to effect an orderly transition to the ABL Term Loan Agent to act as the successor Administrative Agent and Collateral Agent. Upon the consummation of the purchase of the Revolving Obligations pursuant to this Section, the Administrative Agent and Collateral Agent shall be deemed to have resigned as an "agent" or "administrative agent" or "collateral agent" (or any similar role) for the Secured Parties or the Revolving Secured Parties, as applicable, under the Loan Documents; *provided* that the Administrative Agent and Collateral Agent (and all other agents under this Agreement) shall be entitled to all of the rights and benefits of a former "agent" or "administrative agent" or "collateral agent" under this Agreement.

Notwithstanding the foregoing purchase of the Revolving Obligations by the Revolving Purchasing Creditors, the Revolving Secured Parties shall retain those contingent indemnification obligations and other obligations under the Loan Documents which by their terms would survive any repayment of the Revolving Obligations.

SECTION 9.02 Notices and Other Communications; Facsimile Copies.

(a) *General*. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, 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 any Loan Party, to it at The Gymboree Corporation, Attention: Kimberly Holtz MacMillan, Vice President and General Counsel, 500 Howard Street, San Francisco, California 94105 (Facsimile No. (415) 278-7562) (E-Mail: kimberly_macmillan@gymboree.com), with a copy to the attention of Andrew North, The Gymboree Corporation, Chief Financial Officer, 500 Howard Street, San Francisco, California 94105 (Facsimile No. (415) 278-7502) (E-Mail: andy_north@gymboree.com), and with a copy to Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attention: Michelle Kilkenney, P.C., Esquire (Facsimile No. (312) 862-2200), (E-Mail: michelle.kilkenney@kirkland.com); and

(ii) if to the Administrative Agent, the Collateral Agent or the Swingline Lender to Bank of America, N.A., 100 Federal Street, Boston, Massachusetts 02110, Attention: Rick Hill (Facsimile No. (617) 310-2156), (E-Mail: rick.hill@baml.com), with a copy to Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attention: Matthew F. Furlong, Esquire (Facsimile No. (617) 341-7701) (E-Mail: matthew.furlong@morganlewis.com);

(iii) If to the ABL Term Loan Agent to Pathlight Capital LLC, 18 Shipyard Drive, Suite 2C, Hingham, Massachusetts 02043, Attention: Katie Hendricks (E-Mail: khendricks@pathlightcapital.com), with a copy to Choate Hall & Stewart, LLP, Two International Place, Boston, Massachusetts 02110. Attention: Jennifer Conway Fenn, Esquire (Facsimile No. (617) 502-4845), (E-Mail: jfenn@choate.com);

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

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of SECTION 5.02), when delivered; *provided* that notices and other communications to the Administrative Agent, the Issuing Banks and the Swingline Lender pursuant to Article II shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

Notwithstanding the foregoing, any notice hereunder sent by e-mail shall be solely for the distribution of (i) routine communications such as financial statements and (ii) documents and signature pages for execution by the parties hereto, and for no other purpose. Unless the Administrative Agent otherwise prescribes, 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. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(b) *Effectiveness of Facsimile Documents and Signatures*. Loan Documents may be transmitted and/or signed by facsimile or by electronic pdf copy. The effectiveness of any such documents and signatures shall, subject to Applicable Law, have the same force and effect as manually signed originals and shall be binding on all Loan Parties, the Administrative Agent, the Collateral Agent, the Issuing Banks, and the Lenders.

(c) *Reliance by Agents and Lenders.* The Administrative Agent, the Collateral Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Requests) purportedly given by or on behalf of any Borrower 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 Borrowers shall indemnify the Credit Parties and each Related Person 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 Borrowers in the absence of gross negligence or willful misconduct. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03 No Waiver; Cumulative Remedies.

No failure or delay by any Credit Party in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any other rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by SECTION 9.01, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Revolving Credit 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.

SECTION 9.04 Attorney Costs and Expenses.

The Loan Parties shall pay and reimburse the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent and the Arranger and their respective Affiliates for all Credit Party Expenses, including for all reasonable and documented legal (including all Attorney Costs of Morgan, Lewis & Bockius LLP and Choate Hall & Stewart LLP and of local counsel in Virginia to (i) the Administrative Agent, and the Collateral Agent and (ii) the ABL Term Loan Agent, respectively, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent or any Arranger in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties (or any groups thereof), one additional counsel in each relevant jurisdiction to each group of affected Credit Parties similarly situated taken as a whole), accounting, field examination, appraisal, liquidation or valuation consultant, consulting, financial advisory and other fees, costs and expenses incurred by it in connection with (a) negotiation, preparation, due diligence, syndication, execution and delivery of any Loan Documents, the Pre-Petition Loan Documents, the Interim Order and the Final Order, including any amendment, waiver or other modification thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of the Administrative Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; (c) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit, or any demand for payment thereunder; (d) each field examination, inspection, audit or appraisal with respect to any Loan Party, any Collateral or any assets of any Loan Party, whether prepared by the Administrative Agent's, the Collateral Agent' or the ABL Term Loan Agent's personnel or a third party; and (e) otherwise incurred in connection with the Loan Documents, the Pre-Petition Loan Documents, the

Restructuring Support Agreement or the Chapter 11 Cases. The Loan Parties shall also reimburse the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, the Arranger, the Issuing Banks and the Lenders for all reasonable and documented costs, expenses and disbursements incurred by them (whether during a Default, an Event of Default or otherwise) in connection with the enforcement or preservation of any rights under this Agreement or any of the other Loan Documents, including all such amounts expenses incurred during any workout, restructuring or negotiations in respect of any Loans or Letters of Credit. For the avoidance of doubt, the Loan Parties shall reimburse Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, the Arranger and their respective Affiliates for all reasonable and documented legal, accounting, appraisal, consulting, financial advisory and other fees, costs and expenses (limited to all Attorney Costs of Morgan, Lewis & Bockius LLP, Choate Hall & Stewart LLP and of local counsel in Virginia to (i) the Administrative Agent and the Collateral Agent and (ii) the ABL Term Loan Agent, respectively, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent or any Arranger in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties (or any groups thereof), one additional counsel in each relevant jurisdiction to each group of affected Credit Parties similarly situated taken as a whole)) incurred in connection with the negotiation, preparation and administration of the Loan Documents, the Interim Order, and the Final Order or incurred in connection with:

(a) amendment, modification or waiver of, consent with respect to, or termination of, any of the Loan Documents or advice in connection with the syndication and administration of the Loans made pursuant hereto or its rights hereunder or thereunder;

(b) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, any Lender, the Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents, the Pre-Petition Loan Documents, the Restructuring Support Agreement or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case or proceeding commenced by or against any Borrower or any other Person that may be obligated to Agent by virtue of the Loan Documents; including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; *provided* that no Person shall be entitled to reimbursement under this clause (b) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction);

(c) any attempt to enforce or prosecute any rights or remedies of the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, against any or all of the Loan Parties or any other Person that may be obligated to the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loans prior to or during the pendency of one or more Events of Default;

(d) any work-out or restructuring of the Obligations prior to or during the pendency of one or more Events of Default;

(e) the obtaining of approval of the Loan Documents by the Bankruptcy Court or any other court;

(f) the preparation and review of pleadings, documents and reports related to the Chapter 11 Cases and any Successor Cases, attendance at meetings, court hearings or conferences related to the Chapter 11 Cases and any Successor Cases, and general monitoring of the Chapter 11 Cases and any Successor Cases and any action, arbitration or other proceeding (whether instituted by or against the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, the Arranger, any Lender, any Loan Party, any representative of creditors of an Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of any Agent's Liens with respect to any Collateral), the Pre-Petition Loan Documents, Loan Documents or Obligations, including any lender liability or other claims;

(g) efforts to (i) monitor the Loans or any of the other Obligations, (ii) evaluate, observe or assess any of the Loan Parties or their respective affairs, (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral or any other assets of the Loan Parties or (iv) settle or otherwise satisfy any taxes, charges or Liens with respect to any Collateral;

(h) any lien searches or request for information listing financing statements or liens filed or searches conducted to confirm receipt and due filing of financing statements and security interests in all or a portion of the Collateral; and

(i) including, as to each of clauses (a) through (h) above, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all reasonable expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this SECTION 9.04, all of which shall be payable by the Loan Parties Borrower to the Administrative Agent. Without limiting the generality of the foregoing, such reasonable expenses, costs, charges and fees may include: reasonable fees, costs and expenses of accountants, sales consultants, financial advisors, any Agent's Advisor, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; air express charges; and reasonable expenses for travel, lodging and food paid or incurred in connection with the performance of such legal, professional or other advisory services.

All amounts reimbursable by Borrower under this SECTION 9.04 shall constitute Obligations secured by the Collateral. The agreements in this SECTION 9.04 shall survive the termination of the Commitments, the repayment of all of the other Obligations and the assignment of any portion of the Obligations. All amounts due under this SECTION 9.04 shall be paid within five (5) Business Days of receipt by the Lead Borrower of an invoice relating thereto. If any Loan Party fails to pay when due any amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion, without notice to or consent from the Loan Parties, and any amounts so paid shall constitute Loans hereunder.

SECTION 9.05 Indemnification by the Lead Borrower.

Whether or not the transactions contemplated hereby are consummated, the Lead Borrower shall indemnify and hold harmless each Credit Party, including without limitation, the ABL Term Credit Parties, their respective Related Parties and their respective Affiliates (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including fees and expenses of counsel to the Administrative Agent, the Collateral Agent, the Arranger, and the Lenders and counsel to the ABL Term Loan Agent and the ABL Term Lenders (and, if necessary, one firm of local counsel in each applicable jurisdiction for each of (x) the Administrative Agent and the Collateral Agent and the Lenders and (y) the

ABL Term Loan Agent and the ABL Term Lenders, and, in the event of any actual or perceived conflict of interest, one additional counsel of each type for all similarly situated affected parties, taken as a whole) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document, the Pre-Petition Credit Agreement or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan (including Swingline Loans) or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Bank 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), or (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Lead Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related in any way to the Lead Borrower, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto and, in each case, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from (i) the gross negligence, bad faith or willful misconduct of such Indemnitee or of its Affiliate or any of the officers, directors, employees, advisors, agents or other representatives of the foregoing, as determined by the final non-appealable judgment of a court of competent jurisdiction, or (ii) disputes solely between or among Indemnitees other than (1) any claim against an Indemnitee or its Related Parties in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent, Arranger, ABL Term Loan Agent or any other Person acting in a similar claim and (2) any claim arising out of the any act or omission of any Borrower or any of their Affiliates. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee or any Loan Party have any liability and each party hereby waives, any claim against any other party to this Agreement or any Indemnitee, for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date), *provided* that nothing in this sentence shall limit the indemnity and reimbursement obligations of the Loan Parties to the extent that such special, punitive, indirect or consequential damages are included in any claim by a third party unaffiliated with the applicable Indemnitee with respect to which the applicable Indemnitee is entitled to indemnification as set forth in this SECTION 9.05. In the case of an investigation, litigation or other proceeding to which the indemnity in this SECTION 9.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this SECTION 9.05 shall be paid within fifteen (15) Business Days after written demand therefor. The agreements in this SECTION 9.05 shall survive the resignation of the Administrative Agent or the Collateral Agent, the replacement of any Lender, the termination of the Commitments, the repayment, satisfaction or discharge of all the other Obligations and the assignment of any of the Obligations to a third party. For the avoidance of doubt, this SECTION 9.05 shall not apply to Taxes (other than Taxes relating to liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements arising from a non-tax matter indemnified under this SECTION 9.05).

SECTION 9.06 Payments Set Aside.

To the extent that any payment by or on behalf of the Lead Borrower 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 the Bankruptcy Code or any other 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 severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent or the Collateral 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 Effective Rate from time to time in effect.

SECTION 9.07 Successors and Assigns.

The provisions of this Agreement shall be binding upon and inure to the benefit of the Secured Parties, the Loan Parties 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 without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of SECTION 9.07(d) or SECTION 9.07(e), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of SECTION 9.07(g) or SECTION 9.07(h) (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 Secured Parties, the Loan Parties and their respective successors and assigns permitted hereby, Participants to the extent provided in SECTION 9.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(a) (i) Subject to the conditions set forth in paragraph (a)(ii) below, any Lender may 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 and/or the Loans (including for purposes of this SECTION 9.07(a), participations in Letters of Credit and in Swingline Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender, or an Approved Fund; and

(B) the Issuing Banks and the Swingline Lender for any assignment of the Tranche A Commitments that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit or Swingline Loans (in each case, whether or not then outstanding);

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or ABL Term Loans, the amount of the Commitment and the ABL Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than (x) with respect to Tranche A Commitments, $5,000,000, (y) in the case of FILO Commitments, $1,000,000 or (z) in the case of ABL Term Loans, $1,000,000, unless, in each case, the Administrative

Agent otherwise consents, *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (unless such fee is waived by the Administrative Agent);

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire satisfactory in form and content to the Administrative Agent; and

(D) the assignment shall be recorded in the Register.

(b) Subject to acceptance and recording thereof by the Administrative Agent pursuant to SECTION 9.07(c), from and after the effective date specified in each Assignment and Acceptance, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (except to the extent provided in SECTION 8.09, and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of SECTION 9.04 and 9.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note (if any), 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 clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with SECTION 9.07(d). For greater certainty, any assignment by a Lender pursuant to this SECTION 9.07 shall not in any way constitute or be deemed to constitute a novation, discharge, recession, extinguishment or substitution of the existing Indebtedness and any Indebtedness so assigned shall continue to be the same obligation and not a new obligations.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans (including Swingline Loans) and Obligations with respect to Letters of Credit 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 Administrative Agent, the Borrowers and the Credit Parties shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the owner of the related Commitments and Obligations as set forth next to the name of such Person in the Register, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and any Credit Party, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than (w) a Defaulting Lender, (x) any Loan Party or its Affiliates, (y) any natural person, or (z) the Sponsors or any of their respective Affiliates) (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 Letters of Credit and/or Swingline 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 Borrowers and the other Credit Parties shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *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 SECTION 9.01(a) that directly and adversely affects such Participant. Subject to SECTION 9.07(f), the Borrowers agree that each Participant shall be entitled to the benefits of SECTION 2.14 and SECTION 2.23 (subject to the terms thereof as if it were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to SECTION 9.07(b). To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of SECTION 9.09 as though it were a Lender; *provided* that such Participant agrees to be subject to SECTION 8.04 as though it were a Lender.

(e) Each Lender that sells a participation shall, acting solely for this purposes as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and interest thereon) of each Participant's interest in the Loans or other Obligations under this Agreement (the "Participant Register"). Notwithstanding any other provision of this Agreement, no sale, grant or other transfer of participation shall be effective until recorded in the Participant Register. The entries in a Participant Register shall be conclusive and the Borrowers, Lenders and each Agent shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding any notice to the contrary. The Participant Register shall be available for inspection by any Borrower and any Credit Party at any reasonable time and from time to time upon reasonable prior notice.

(f) A Participant shall not be entitled to receive any greater payment under SECTION 2.14 or SECTION 2.23 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.

(g) 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.

(h) Notwithstanding anything to the contrary contained herein, (1) any Lender may in accordance with Applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a fund that invests in loans may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this SECTION 9.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(i) Notwithstanding anything to the contrary contained herein, any Issuing Bank or the Swingline Lender may, upon thirty (30) days' notice to the Lead Borrower and the Lenders, resign as an Issuing Bank or the Swingline Lender, respectively; *provided* that on or prior to the expiration of such 30-

day period with respect to such resignation, the relevant Issuing Bank or the Swingline Lender shall have identified a successor Issuing Bank or Swingline Lender willing to accept its appointment as successor Issuing Bank or Swingline Lender, as applicable. In the event of any such resignation of an Issuing Bank or the Swingline Lender, the Lead Borrower shall be entitled to appoint from among the Revolving Credit Lenders willing to accept such appointment a successor Issuing Bank or Swingline Lender hereunder; *provided* that no failure by the Lead Borrower to appoint any such successor shall affect the resignation of the relevant Issuing Bank or the Swingline Lender, as the case may be. If an Issuing Bank resigns as an Issuing Bank, it shall retain all the rights and obligations of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all Obligations with respect thereto (including the right to require the Lenders to make Prime Rate Loans or fund risk participations in Letters of Credit). If the Swingline Lender resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Prime Rate Loans or fund risk participations in outstanding Swingline Loans.

(j) Notwithstanding anything to the contrary contained herein, the parties hereby agree that MLPFS may, without notice to the Company, assign its rights and obligations under this Agreement to any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation's or any of its subsidiaries' investment banking, commercial lending services or related businesses may be transferred following the Closing Date.

SECTION 9.08 Confidentiality.

Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its Affiliates' directors, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and shall agree to keep such Information confidential); (b) to the extent requested by any Governmental Authority; (c) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this SECTION 9.08 (or as may otherwise be reasonably acceptable to the Lead Borrower), to any pledgee referred to in SECTION 9.07(g), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; (f) with the written consent of the Lead Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this SECTION 9.08; (h) to any Governmental Authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; (i) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); (j) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (k) to the extent such Information becomes available to any Credit Party on a nonconfidential basis from a source other than the Loan Parties; and (l) to the extent that such Information is independently developed by such Credit Party. In addition, the Credit Parties may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Credit Parties in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions.

For the purposes of this SECTION 9.08, "Information" means all information received from any Loan Party relating to any Loan Party or its business, other than any such information that is publicly

available to any Credit Party prior to disclosure by any Loan Party other than as a result of a breach of this SECTION 9.08; *provided* that, in the case of information received from a Loan Party after the Closing Date, such information is clearly identified at the time of delivery as confidential.

SECTION 9.09 Setoff.

Subject to the Order and the terms thereof, in addition to any rights and remedies of the Lenders provided by Applicable Law, upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each Lender and its Affiliates is authorized (notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court) at any time and from time to time, without prior notice to the Lead Borrower or any other Loan Party, any such notice being waived by the Lead Borrower (on its own behalf and on behalf of each Loan Party and its Subsidiaries) to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final (but excluding deposits in Excluded Accounts described in clauses (ii) through (v) of the definition thereof)) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender and its Affiliates hereunder or under any other Loan Document or document governing any Other Liabilities, now or hereafter existing, irrespective of whether or not such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document or document governing any Other Liabilities and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness, *provided* that, in the event that any Defaulting Lender shall exercise any such right of set-off, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of this Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Swing Line Lender, the Issuing Banks and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations then due and owing to such Defaulting Lender as to which it exercised such right of set-off. Each Lender agrees promptly to notify the Lead Borrower and the Administrative Agent after any such set off and application made by such Lender or Issuing Bank; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, each Lender and each Issuing Bank under this SECTION 9.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent, such Lender or Issuing Bank may have.

SECTION 9.10 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, any 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 any Credit Party shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans (including Swingline Loans) or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by a Credit Party 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.

SECTION 9.11 Counterparts.

This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier, by electronic .pdf copy or by other electronic means of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Administrative Agent, the Collateral Agent, may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

SECTION 9.12 Integration.

This Agreement, together with the Fee Letter, the ABL Term Loan Fee Letter and the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Credit Parties in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. If any provision in the Agreement or any other Loan Document conflicts with any provision in the Interim Order or Final Order, the provisions in the Order shall govern and control.

SECTION 9.13 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.14 Governing Law.

(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY AND EACH CREDIT PARTY CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE JURISDICTION OF THOSE COURTS. EACH LOAN PARTY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION OR OTHER JURISDICTION CHOSEN BY THE ADMINISTRATIVE AGENT IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. NOTHING IN THIS AGREEMENT

OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION (I) FOR PURPOSES OF ENFORCING A JUDGMENT, (II) IN CONNECTION WITH EXERCISING REMEDIES AGAINST THE COLLATERAL IN A JURISDICTION IN WHICH SUCH COLLATERAL IS LOCATED, (III) IN CONNECTION WITH ANY PENDING BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING IN SUCH JURISDICTION.

(c) EACH LOAN PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING TO THE BORROWER OR HOLDINGS AT THE ADDRESS PROVIDED FOR IT IN SECTION 9.02. NOTHING IN THIS SECTION LIMITS THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 9.15 Waiver of Right to Trial by Jury.

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 9.15 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 9.16 Binding Effect.

This Agreement shall become effective when it shall have been executed by the Loan Parties and the Administrative Agent, each Lender, the Swingline Lender and the Issuing Bank has executed it and thereafter shall be binding upon and inure to the benefit of each Loan Party and each Credit Party and their respective successors and assigns, except that no Loan Party shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as otherwise permitted hereby.

SECTION 9.17 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance

with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under Applicable Law).

SECTION 9.18 Lender Action.

Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this SECTION 9.18 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 9.19 USA PATRIOT ACT, ETC.; PROCEEDS OF CRIME ACT.

Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") and other "know your customer" rules, regulations, laws and policies (together with the Act, collectively, the "KYC Provisions"), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with KYC Provisions.

SECTION 9.20 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, 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.

SECTION 9.21 Electronic Execution of Assignments and Certain Other Documents.

The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments or other borrowing noticed, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, 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; *provided* that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

SECTION 9.22 Survival.

All covenants, agreements, indemnities, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and, notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan (including Swingline Loans) and all fees and other Obligations (other than contingent indemnity obligations with respect to then unasserted claims) shall have been paid in full, (iii) all Letters of Credit shall have expired or terminated (or been Cash Collateralized or backstopped in a manner reasonably satisfactory to the applicable Issuing Bank) and (iv) all Letter of Credit Outstandings have been reduced to zero (or Cash Collateralized in a manner reasonably satisfactory to the applicable Issuing Bank). In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent, on behalf of itself and the other Credit Parties, may require such indemnities 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 9.04 or SECTION 9.05 hereof or other matters reasonably required by the Administrative Agent.

SECTION 9.23 Press Releases and Related Matters.

Each Loan Party consents to the publication by the Administrative Agent and the ABL Term Loan Agent of customary trade advertising material in tombstone format relating to the financing transactions contemplated by this Agreement using any Loan Party's name, and with the consent of the Lead Borrower, logo or trademark. The Administrative Agent or the ABL Term Loan Agent, as applicable, shall endeavor to provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Administrative Agent, the ABL Term Loan Agent and the Lenders reserve the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

SECTION 9.24 Additional Waivers.

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

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

(c) To the fullest extent permitted by Applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash of all the Obligations after the termination of all Commitments to any Loan Party under any Loan Document. To the fullest extent permitted by Applicable Law, the Collateral Agent, each Secured Party and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and performed in full after the termination of Commitments to any Loan Party under any Loan Document. Pursuant to, and to the fullest extent permitted by, Applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to

Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security. To the fullest extent permitted by Applicable Law, each Loan Party waives any and all suretyship defenses.

(d) Except as otherwise specifically provided herein, each Loan Party 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 payment in full in cash of all the Obligations (other than contingent indemnity obligations for then unasserted claims) and the termination of all Commitments to any Loan Party under any Loan Document. 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 Administrative 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 Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Loan Party hereunder (an "Accommodation Payment"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Parties in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties; *provided* that such rights of contribution and indemnification shall be subordinated to the prior payment in full, in cash, of all of the Obligations. As of any date of determination, the "Allocable Amount" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without (a) rendering such Loan Party "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 Loan Party 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 Loan Party 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.

(e) Each Loan Party understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Loan Party may have to seek reimbursement, contribution, or indemnification from the other Loan Parties or others based on any right such Loan Party may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Loan Party hereunder or under the Guaranty. Each Loan Party further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Loan Party's rights, if any, may entitle such Loan Party to assert a defense to its obligations based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing the Loan Documents, each Loan Party freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that such Loan Party will be fully liable under the Loan Documents even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Loan Party will not assert that defense in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce the Loan Documents; (iii) acknowledges and agrees that the rights and defenses waived by such Loan Party herein include any right or defense that such Loan Party may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in

creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

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

(g) Each Loan Party waives any right or defense it may have at law or equity, including California Code of Civil Procedure §580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

SECTION 9.25 Intercreditor Agreement.

Each of the Loan Parties, the Agents, the Lenders and the other Credit Parties (i) consent to and ratify the execution by the Administrative Agent (in both its capacities as Administrative Agent and Collateral Agent) of the Intercreditor Acknowledgment and any amendments or supplements expressly contemplated thereby, (ii) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement, as modified by the Intercreditor Acknowledgment and (iii) acknowledges that it has received a copy of the Intercreditor Agreement and the Intercreditor Acknowledgment and that the exercise of certain of the Agents' rights and remedies hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement and the Intercreditor Acknowledgment. Except as specified herein, nothing contained in the Intercreditor Agreement and the Intercreditor Acknowledgment shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Agents, the Lenders and the other Credit Parties shall remain in full force and effect.

SECTION 9.26 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the guarantee of or the grant of the security interest by, in each case, any Specified Loan Party under any Loan Document, becomes or would become effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under its guarantee and the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this SECTION 9.26 voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor

under this SECTION 9.26 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this SECTION 9.26 to constitute, and this SECTION 9.26 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

SECTION 9.27 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[*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 day and year first above written.

THE GYMBOREE CORPORATION,
as Lead Borrower and as a Borrower

By: _____
Name:
Title:

GYMBOREE MANUFACTURING, INC.,
as a Borrower

By: _____
Name:
Title:

GYMBOREE OPERATIONS, INC.,
as a Borrower

By: _____
Name:
Title:

GYMBOREE RETAIL STORES, INC.,
as a Borrower

By: _____
Name:
Title:

GYM-CARD, LLC,
as a Borrower

By: _____
Name:
Title:

BORROWERS (cont.):

GYM-MARK, INC.,
as a Borrower

By: _____
Name:
Title:

S.C.C. WHOLESALE, INC.,
as a Borrower

By: _____
Name:
Title:

FACILITY GUARANTORS:

GIRAFFE INTERMEDIATE B, INC.,
as a Facility Guarantor

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Administrative Agent, as Collateral Agent, and as Issuing Bank

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Swingline Lender, and as a Lender

By: _____
Name:
Title:

PATHLIGHT CAPITAL LLC,
as ABL Term Loan Agent

By: _____
Name:
Title:

PATHLIGHT CAPITAL LLC,
as an ABL Term Lender

By: _____
Name:
Title:

Exhibit C

DIP Term Loan Agreement

Execution Version

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of

June [__], 2017

among

GIRAFFE INTERMEDIATE B, INC.,

as Holdings,

THE GYMBOREE CORPORATION,

as Borrower,

THE OTHER GUARANTORS PARTY HERETO FROM TIME TO TIME,

THE LENDERS PARTY HERETO

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,

as Administrative Agent and Collateral Agent

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION FACILITY

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DEBTOR-IN-POSSESSION TERM LOAN AGREEMENT, dated as of June [__], 2017, among THE GYMBOREE CORPORATION, a Delaware corporation, as debtor and debtor-in-possession (the "**Borrower**" or the "**Company**"), GIRAFFE INTERMEDIATE B, INC., a Delaware corporation, as debtor and debtor-in-possession ("**Holdings**"), and certain of its subsidiaries party hereto from time to time, each as debtor and debtor-in-possession (together with Holdings, the "**Guarantors**"), the Lenders (such term and each other capitalized term used but not defined in this introductory statement having the meaning given it in Article 1), and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity, including any successor thereto, the "**Administrative Agent**") and as collateral agent (in such capacity, including any successor thereto, the "**Collateral Agent**") for the Lenders.

RECITALS

WHEREAS, the Loan Parties have commenced voluntary cases (the "**Chapter 11 Cases**") under Chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the Eastern District of Virginia (the "**Bankruptcy Court**"), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has asked the Lenders to make post-petition loans and advances to the Borrower comprising a term loan facility in an aggregate principal amount of $105 million. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth; and

WHEREAS, to provide security for the repayment of the Term Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the Loan Documents, the Loan Parties will provide and grant to the Administrative Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof, and, in the case of the Loan Parties, security interests and liens pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, and other rights and protections, as more fully described herein.

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

ARTICLE 1
DEFINITIONS

Section 1.01. *Defined Terms*. As used in this Agreement, the following terms shall have the meanings specified below:

"**2017 Incremental Lender**" shall mean each lender that provided the 2017 Incremental Term Loans under the Prepetition Term Loan Agreement.

"**2017 Incremental Term Loans**" shall have the meaning assigned to such term in the Prepetition Term Loan Agreement.

"**ABL Agent**" shall mean Bank of America, N.A., in its capacity as administrative agent and collateral agent in respect of the ABL Facility under the ABL Facility Documentation, or any successor administrative agent or collateral agent in respect of the ABL Facility under the ABL Facility Documentation.

"**ABL Collateral**" has the meaning specified in Section 12.05(a)(iv).

"**ABL Credit Agreement**" shall mean that certain asset based credit agreement dated as of June [__], 2017, among Holdings, the Borrower, the subsidiaries of the Borrower party thereto, the lenders party thereto and the ABL Agent, providing for debtor-in-possession asset-based loans, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced from time to time, in each case as and to the extent permitted by this Agreement and the Prepetition Intercreditor Agreement.

"**ABL Facility**" shall mean the debtor-in-possession asset-based credit facility made available to the Borrower and certain of its Subsidiaries pursuant to the ABL Credit Agreement.

"**ABL Facility Documentation**" shall mean the "Loan Documents" as defined in the ABL Credit Agreement.

"**ABL Facility Indebtedness**" shall mean Indebtedness of Holdings, the Borrower or any Subsidiary outstanding under the ABL Facility Documentation, including all "Obligations" as defined in the ABL Credit Agreement.

"**ABL Priority Collateral**" shall have the meaning assigned to such term in the Prepetition Intercreditor Agreement.

"**ABR**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"**Adequate Protection Orders**" has the meaning specified in Section 4.01(c).

"**Adjusted LIBO Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum equal to the greater of (a) 1.00% per annum in the case of New Money Loans and 1.50% per annum in the case of Roll-up Loans and (b) the product of (i) the LIBO Rate in effect for such Interest Period and (ii) Statutory Reserves.

"**Administrative Agent**" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"**Administrative Questionnaire**" shall mean an Administrative Questionnaire in a form approved by the Administrative Agent.

"**Affiliate**" shall mean, with respect to any Person, 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. "**Control**" shall mean 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.

"**Agent Advisors**" means, collectively, any financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Administrative Agent, the Collateral Agent or the attorney's or other advisors of the Administrative Agent and the Collateral Agent, including, for the avoidance of doubt, Milbank, Rothschild and Carriage House.

"**Agents**" shall have the meaning assigned to such term in Article 9.

"**Agreement**" or "**this Agreement**" means this Debtor-in-Possession Term Loan Agreement, and as the same may be amended, supplemented or otherwise modified from time to time.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; *provided* that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate determined on such day at approximately 11 a.m. (London time) by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the British Bankers' Association as an authorized vendor for the purpose of displaying such rates). If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be.

"**Applicable Margin**" means (a) in the case of New Money Loans, (i) 12.00% per annum for Eurodollar Term Loans and (ii) 11.00% per annum for ABR Term Loans and (b) in the case of Roll-up Loans, (i) 3.50% per annum for Eurodollar Term Loans and (ii) 2.50% per annum for ABR Term Loans.

"**Approved Plan of Reorganization**" means a plan of reorganization in form and substance satisfactory to the Required Lenders in all respects and consented to by the Required Lenders, confirmed by a Confirmation Order.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in the form of Exhibit C or such other form as shall be approved by the Administrative Agent.

"**Attorney Costs**" shall mean and shall include all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

"**Attributable Indebtedness**" shall mean, on any date, in respect of any Capitalized Lease 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 as in effect on the Closing Date.

"**Audited Financial Statements"** means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ending July 30, 2016, and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries.

"**Australian Dollars**" shall mean lawful money of Australia.

"**Avoidance Actions**" means all causes of action arising under Chapter 5 of the Bankruptcy Code.

"**Backstop Commitment Agreement**" means the Backstop Commitment Agreement, dated as of June [__], 2017 among The Gymboree Corporation, each of the other debtors party thereto, and the commitment parties party thereto.

"**Backstop DIP Lenders**" means those Lenders who are party to this Agreement on the date hereof and indicated as a "Backstop DIP Lender" on Schedule 2.01.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Court**" has the meaning specified therefor in the recitals hereto.

"**Bankruptcy Court Order**" means the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as applicable.

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"**Borrower**" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"**Borrower Materials**" shall have the meaning assigned to such term in Section 10.01(c).

"**Borrowing**" shall mean Loans of the same Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"**Borrowing Notice**" shall mean a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit A, or such other form as shall be approved by the Administrative Agent.

"**Budget**" means the 13-week cash flow projection and initial budget of the Loan Parties broken down by week, including the anticipated receipts and disbursements for such period, a copy of the initial version of which is attached as Exhibit D; *provided* that the Borrower may propose to update (and not less than once per four-week period shall update) such Budget and, upon approval thereof by the Required Lenders, the "Budget" shall give effect to such update; *provided however*, that if such Budget proposal is not approved by the Required Lenders the Budget that is then in effect shall remain in place.

"**Budget Event**" shall mean any of the following:

(a) the actual amount of aggregate cumulative operating disbursements and expenses (excluding professional fees and expenses) during any Budget Testing Period shall exceed the projected cumulative operating disbursements (on a cumulative basis) in the Budget for such Budget Testing Period by more than 10%; or

(b) the aggregate amount of actual receipts during any Budget Testing Period shall be less than 90% of the aggregate cumulative receipts in the Budget for such Budget Testing Period.

"**Budget Testing Period**" means, with respect to the initial Budget Testing Date, the period beginning on the Petition Date and ending on a Saturday immediately preceding the initial Budget Testing Date and for each Budget Test Date thereafter, the four-week period ending on the Saturday immediately preceding such Budget Test Date.

"Budget Testing Date" means, with respect to the Budget, commencing on July [__], 2017[1] and on the third (3rd) Business Day of each week thereafter.

"**Business Day**" shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however,* that when used in connection with a Eurodollar Loan, the term "**Business Day**" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"**Canadian Dollars**" shall mean lawful money of Canada.

"**Canadian Subsidiary**" shall mean a Subsidiary of the Borrower organized under the laws of Canada or any province thereof, including Gymboree Canada/Delaware.

"**Capital Expenditures**" shall mean, for any period, the aggregate of (a) all amounts that would be reflected as additions to property, plant or equipment on a consolidated statement of cash flows of Holdings, the Borrower and its Subsidiaries in accordance with GAAP and (b) the value of all assets under Capitalized Leases incurred by Holdings, the Borrower and its Subsidiaries during such period; *provided* that the term "Capital Expenditures" shall not include (i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased substantially concurrently with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) the purchase of plant, property or equipment to the extent financed with the proceeds of Dispositions that are not required to be applied to prepay Term Loans pursuant to Section 2.13, (iv) expenditures that are accounted for as capital expenditures by Holdings, the Borrower or any Subsidiary and that actually are paid for by a Person other than Holdings, the Borrower or any Subsidiary and for which none of Holdings, the Borrower or any Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period) other than rent and similar or related obligations or (v) expenditures that constitute Investments permitted hereunder (but the term "Capital Expenditures" shall include all expenditures made with the proceeds of such Investments by the recipient thereof that would otherwise constitute Capital Expenditures).

"**Capitalized Leases**" shall mean all leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date.

"**Carriage House**" means Carriage House Capital Advisors, LLC.

"**Carve Out**" has the meaning specified in the Bankruptcy Court Order.

"**Cash Equivalents**" shall mean any of the following types of Investments, to the extent owned by Holdings, the Borrower or any Subsidiary:

(a) Dollars, Australian Dollars, Canadian Dollars and euros;

[1] To be dated the Thursday following the first three full weeks after the Petition Date.

(b) in the case of any Foreign Subsidiary, such local currencies held by them from time to time in the ordinary course of business and not for speculation;

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

(d) investments in commercial paper maturing within 270 days from the date of issuance thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(e) investments in demand deposits, certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000 and that issues (or the parent of which issues) commercial paper rated at least "*Prime 1*" (or the then equivalent grade) by Moody's or "*A 1*" (or the then equivalent grade) by S&P;

(f) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (c) above and entered into with a financial institution satisfying the criteria of clause (e) above;

(g) investments in "*money market funds*" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and

(h) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing.

"**Cash Management Orders**" has the meaning specified in Section 4.01(c).

"**Casualty Event**" shall mean any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Property (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Property or as compensation for such condemnation event.

"**Change of Control**" shall be deemed to occur if:

(a) One or more Permitted Holders (taken collectively) shall fail to own beneficially (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority of the aggregate voting power represented by the issued and outstanding Equity Interests of Holdings;

(b) a "**change of control**" (or similar event) shall occur under (i) the ABL Facility Documentation or (ii) any other post-petition Indebtedness for borrowed money with an aggregate principal amount (in the case of this clause (ii)) in excess of the Threshold Amount; or

(c) Holdings shall cease to own, directly, 100% of the Equity Interests of the Borrower.

"**Charges**" shall have the meaning assigned to such term in Section 10.09.

"**Chapter 11 Cases**" has the meaning assigned to such term in the recitals hereto.

"**Closing Date**" means the first date all the conditions in Section 4.01 have been satisfied or waived which shall not be earlier than three (3) Business Days after the Interim Bankruptcy Court Order Entry Date or later than six (6) Business Days after the Interim Bankruptcy Court Order Entry Date, in either case without the consent of the Required Lenders.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all of the "Collateral" as defined in the Collateral Documents and the "DIP Term Collateral" referred to in the Bankruptcy Court Orders.

"**Collateral Agent**" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"**Collateral Documents**" shall mean, collectively, the Bankruptcy Court Order, the Security Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements, intellectual property security agreements or other similar agreements delivered to the Administrative Agent or the Collateral Agent in connection with this Agreement and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Commitment**" shall mean, with respect to any Lender, such Lender's New Money Commitment and such Lender's Roll-up Loans Commitment.

"**Communications**" shall have the meaning assigned to such term in Section 10.01(c).

"**Company**" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"**Confirmation Order**" means an order of the Bankruptcy Court, in form and substance acceptable to the Administrative Agent and the Required Lenders, confirming the Approved Plan of Reorganization.

"**Contractual Obligation**" shall mean, as to any Person, any provision of any security issued by such Person or 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**" shall have the meaning specified in the definition of "Affiliate."

"**Credit Date**" means the date of a Term Borrowing.

"**Debtor Relief Laws**" shall mean the Bankruptcy Code of the United States, 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**" shall mean 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.

"**DIP Superpriority Claim**" has the meaning specified in Section 12.05(a)(i).

"**DIP Funding Account**" means the account in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent in which the proceeds of the New Money Loans shall be deposited and held.

"**Disposition**" or "**Dispose**" shall mean the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"**Disqualified Equity Interests**" shall mean any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), the Borrower or the Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by the Borrower or if its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"**Dollars**" or "**$**" shall mean lawful money of the United States of America.

"**Domestic Subsidiary**" shall mean any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia. The term "Domestic Subsidiary" shall not include (x) Gymboree Island, LLC, a Puerto Rico entity, and (y) Gymboree Canada/Delaware.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electing DIP Term Lender**" has the meaning specified in Section 2.01(c).

"**Election Deadline**" shall mean 5:00 pm eastern time on the date that is the fourteenth day following the entry of the Interim Bankruptcy Court Order. For the avoidance of doubt, if the Interim Bankruptcy Court Order is entered on June [__], 2017, the Election Deadline shall be at 5:00 pm eastern time on June [__], 2017.

"**Eligible Assignee**" shall mean (i) a Lender, (ii) an Affiliate of a Lender, (iii) a Related Fund of a Lender, and (iv) any other Person (other than a natural person) approved by the Administrative Agent; *provided*, that notwithstanding the foregoing, "**Eligible Assignee**" shall not include Holdings, the Borrower, any other Affiliate of Holdings or the Sponsor.

"**Environmental Laws**" shall mean all former, current and future federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), and agreements in each case, relating to the environment, natural resources, human health and safety or the presence, Release of, or exposure to, hazardous materials, or the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or the arrangement for such activities with respect to, hazardous materials.

"**Environmental Liability**" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and investigation or remediation costs), whether contingent or otherwise, arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equity Interests**" shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" shall mean any trade or business (whether or not incorporated) that, together with a Loan Party or any Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"**ERISA Event**" shall mean (a) a Reportable Event; (b) the failure to satisfy the minimum funding standard with respect to a Plan within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA, whether or not waived (unless such failure is corrected by the final due date for the plan year for which such failure occurred), (c) a determination that a Plan is or will be in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the receipt by a Loan Party, any Subsidiary or any of their respective ERISA Affiliates of notice pursuant to Section 305(b)(3)(D) of ERISA that a Multiemployer Plan is or will be in "endangered status" or "critical status" (as defined in Section 305(b) of ERISA); (e) the filing pursuant to Section 431 of the Code or Section 304 of ERISA of

an application for the extension of any amortization period; (f) the failure to timely make a contribution required to be made with respect to any Plan; (g) the filing of a notice to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (h) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA; (i) the filing pursuant to Section 412(c) of the Code of an application for a waiver of the minimum funding standard with respect to any Plan; (j) the incurrence by a Loan Party, any Subsidiary or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, other than for the payment of Plan contributions or of premiums to the PBGC; (k) the receipt by a Loan Party, any Subsidiary or any of their respective ERISA Affiliates from the PBGC of any notice of an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (l) the receipt by a Loan Party, any Subsidiary or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from a Loan Party, any Subsidiary or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability; (m) the occurrence of any event or condition that constitutes grounds under ERISA for the termination of a Plan or the appointment of a trustee to administer a Plan; (n) any Foreign Benefit Event or (o) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan which could reasonably be expected to result in liability to a Loan Party, any Subsidiary or any of their respective ERISA Affiliates.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Eurodollar**", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate (other than the Alternate Base Rate) determined by reference to the Adjusted LIBO Rate.

"**Event of Default**" shall have the meaning assigned to such term in Article 8.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Excluded Subsidiary**" shall mean each of the Subsidiaries of the Borrower set forth on Schedule 1.01(b).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to an Agent or Lender or required to be withheld or deducted from a payment to an Agent or Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Agent or Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.07) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Agent's or Lender's failure to comply with Section 3.01(d) and (d) any withholding Taxes imposed under FATCA.

"**Exit Conversion**" has the meaning specified in Section 2.17(a).

"**Exit Credit Agreement**" has the meaning specified in Section 2.17(b)(i).

"**Exit Term Sheet**" means the Term Sheet attached hereto as Exhibit F.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as in effect on the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections whether in existence on the Closing Date or promulgated or published thereafter, any intergovernmental agreements (and implementing legislation, rules or practices adopted pursuant thereto) with respect thereto and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

"**Federal Funds Effective Rate**" shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"**Fee Letter**" means the letter agreement dated as of June [__], 2017, between the Borrower and the Administrative Agent.

"**Final Bankruptcy Court Order**" means the final order of the Bankruptcy Court, approving the Term Facility on a final basis, in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole discretion, as the same may be amended, modified or supplemented from time to time with the express written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

"**Final Bankruptcy Court Order Entry Date**" means the date on which the Final Bankruptcy Court Order shall have been entered on the docket of the Bankruptcy Court.

"**Final Loan**" means a Loan made on or after the Final Bankruptcy Court Order Entry Date.

"**Flood Laws**" shall mean the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board).

"**Foreign Benefit Event**" shall mean, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law or in excess of the amount that would be permitted absent a waiver from applicable governmental authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments (including any applicable grace period), (c) the receipt of a notice by applicable Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, in either case to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the Foreign Pension Plan or any unreasonable increase in liability with respect to the Foreign Pension Plan or alleging the insolvency of any such Foreign Pension Plan, (d) the incurrence by a Loan Party, any Subsidiary or any Affiliate of any liability under applicable law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein or (e) the occurrence of any transaction that is prohibited under any applicable law and that could reasonably be expected to result in the incurrence of any liability by a Loan Party, any

Subsidiary or any Affiliate, other than for the payment of Foreign Pension Plan contributions or of premiums to the applicable Governmental Authority.

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

"**Foreign Pension Plan**" shall mean any defined benefit plan described in Section 4(b)(4) of ERISA that under applicable law is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

"**Foreign Subsidiary**" shall mean any direct or indirect Subsidiary of the Borrower which is not a Domestic Subsidiary; *provided*, that each of Gymboree Canada/Delaware and Gymboree Island, LLC shall be deemed to be a Foreign Subsidiary.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith; *provided, further* that GAAP as applied herein with respect to Attributable Indebtedness and Capitalized Leases shall be GAAP as in effect on the Closing Date.

"**Governmental Authority**" shall mean any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Granting Lender**" shall have the meaning assigned to such term in Section 10.04(i).

"**Guarantee**" shall mean, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary 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 monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary 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 monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary 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 monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course

of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). 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.

"**Guaranteed Obligations**" shall have the meaning specified in Section 11.01.

"**Guarantors**" shall mean (i) Holdings, (ii) each debtor in the Bankruptcy Cases other than the Borrower, (iii) each wholly owned Domestic Subsidiary of Borrower as of the Closing Date (other than an Excluded Subsidiary) and (iv) each wholly owned subsidiary that issues a Guarantee of the Obligations after the Closing Date pursuant to Section 6.11 (which section 6.11, for the avoidance of doubt, does not require that any Excluded Subsidiary provide such a Guarantee) or otherwise.

"**Guaranty**" shall mean, collectively, the guaranty of the Obligations by the Guarantors pursuant to this Agreement.

"**Gymboree Canada/Delaware**" shall mean that certain Subsidiary of the Borrower that is organized under the Laws of the State of Delaware as "Gymboree Canada, Inc." and under the Laws of the province of New Brunswick, Canada as "Gymboree, Inc.".

"**Hazardous Materials**" shall mean (a) any petroleum products, distillates or byproducts and all other hydrocarbons, coal ash, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law.

"**Holdings**" shall have the meaning assigned to such term in the introductory statement to this Agreement.

"**Indebtedness**" shall mean, as to any Person at a particular time, without duplication, all of the following:

(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 (after giving effect to any prior drawings or reductions which may have been reimbursed) of all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(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 (i) trade accounts payable in the ordinary course of business, (ii) any earn-out obligation until such earn-out obligation is not paid after becoming due and payable and (iii) liabilities accrued in the ordinary course);

(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 and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness; and

(g) all obligations of such Person in respect of Disqualified Equity Interests, whether or not the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, 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 joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited. 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. The amount of Indebtedness of any Person for purposes of clause (e) that is limited in recourse to the property encumbered thereby shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Liabilities**" shall have the meaning assigned to such term in Section 10.05(b).

"**Indemnified Taxes**" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnitee**" shall have the meaning assigned to such term in Section 10.05(b).

"**Information**" shall have the meaning assigned to such term in Section 10.16.

"**Intercompany Note**" shall mean a promissory note substantially in the form of Exhibit E.

"**Interest Payment Date**" shall mean the last Business Day of each month.

"**Interest Period**" shall mean, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last Business Day) in the following calendar month that is 1 month thereafter; *provided, however,* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that 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 and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made.

"**Interim Bankruptcy Court Order**" means the order of the Bankruptcy Court, approving the Term Facility on an interim basis, in the form of Exhibit H hereto, as the same may be amended, modified

or supplemented from time to time with the express written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

"**Interim Bankruptcy Court Order Entry Date**" means the date on which the Interim Bankruptcy Court Order shall have been entered on the docket of the Bankruptcy Court.

"**Interim Loan**" means Loans made on (i) the Closing Date and (ii) the Second Interim Funding Date, in each case excluding the Roll-up Loans.

"**Investment**" shall mean, 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 or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person or (d) the purchase or other acquisition of a Store. 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.

"**Investors**" mean the Sponsor and the Management Stockholders.

"**IP Rights**" has the meaning set forth in Section 5.16.

"**Laws**" shall mean, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, requirements, and agreements with, any Governmental Authority.

"**Lender**" shall mean each lender from time to time party hereto.

"**LIBO Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "**LIBO Rate**" shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

"**Lien**" shall mean 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 of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property,

and any Capitalized Lease or financing lease having substantially the same economic effect as any of the foregoing), whether or not filed, recorded or perfected under applicable Law, and in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Loan**" shall mean any Term Loan.

"**Loan Documents**" means this Agreement, and the Collateral Documents, the Fee Letter, the Prepetition Intercreditor Agreement, and any other agreement, instrument, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Obligation.

"**Loan Parties**" shall mean, collectively, the Borrower and each Guarantor.

"**Management Stockholders**" shall mean the members of management of Holdings, the Borrower or any of its Subsidiaries who are investors in Holdings or any direct or indirect parent thereof.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

"**Master Agreement**" shall have the meaning specified in the definition of "**Swap Contract.**"

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, operations, assets, liabilities (actual or contingent), operating results or financial condition of the Borrower and its Subsidiaries, taken as a whole, excluding in any event the events leading up to and resulting from the Chapter 11 Cases and the Chapter 11 Cases themselves; (b) material adverse effect on the ability of the Loan Parties (taken as a whole) to fully and timely perform their payment obligations under any Loan Document to which the Borrower or any of the Loan Parties is a party; or (c) material adverse effect on the right and remedies available to the Lenders, the Administrative Agent or the Collateral Agent under any Loan Document.

"**Maturity Date**" means the date which is the earliest of (i) December [__], 2017[2], (ii) the earlier of the maturity date or the acceleration of the loans under the ABL Credit Agreement, (iii) the earlier of the effective date and the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code), in each case, of the Approved Plan of Reorganization that has been confirmed by the Confirmation Order, (iv) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a Chapter 7 case, (v) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (vi) the date that is 35 days after the Petition Date if the Final Bankruptcy Court Order Entry Date shall not have occurred; (vii) the date on which the Loan Parties consummate a sale of all or substantially all of the assets of any of the Loan Parties pursuant to section 363 of the Bankruptcy Code or otherwise, and (viii) such earlier date on which the Term Loans shall become due and payable in accordance with the terms of this Agreement and the other Loan Documents.

"**Maximum Rate**" shall have the meaning assigned to such term in Section 10.09.

"**Milbank**" means Milbank, Tweed, Hadley & McCloy LLP.

"**Moody's**" shall mean Moody's Investors Service, Inc., or any successor thereto.

"**Multiemployer Plan**" shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA to which a Loan Party, any Subsidiary or any of their respective ERISA Affiliates is an "employer" as defined in Section 3(5) of ERISA.

[2] To be dated the six month anniversary of the Petition Date.

"**Net Proceeds**" shall mean:

(a) 100% of the cash proceeds actually received by the Borrower or any of the Subsidiaries (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation and similar awards, but in each case only as and when received) from any Disposition or Casualty Event, net of (i) attorneys' fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations that are secured by a senior Lien which is senior in priority to the Lien of the Term Loans in such asset or property on the applicable asset or property (including without limitation principal amount, premium or penalty, if any, interest and other amounts) (other than pursuant to the Loan Documents or the ABL Facility Documentation), other expenses and brokerage, consultant and other fees actually incurred in connection therewith, (ii) in the case of any Disposition or Casualty Event by a non-wholly owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (ii)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Subsidiary as a result thereof, (iii) taxes paid or reasonably estimated to be payable as a result thereof (*provided*, that if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Casualty Event, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid), and (iv) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted pursuant to clause (i) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Disposition or Casualty Event occurring on the date of such reduction); provided, that with respect to proceeds of one or more Casualty Events not to exceed $2,000,000 in the aggregate for the term of this Agreement, the Borrower may use such Casualty Event proceeds to repair or replace (or reimburse amounts used to repair or replace) the assets or property subject to such Casualty Event; and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any of the Subsidiaries of any Indebtedness, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale, *provided*, that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to Holdings, the Borrower or the Subsidiaries shall be disregarded.

"**New Money Commitment**" means as to each Lender, its obligation to make a New Money Loan to Borrower hereunder, expressed as an amount representing the maximum principal amount of New Money Loans to be made by such Lender under this Agreement, as such commitment may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Acceptance. The amount of each Lender's New Money Commitment is set forth on Schedule 2.01 under the caption "New Money Loans" or, otherwise, in the Assignment and Acceptance pursuant to which such Lender shall have assumed its New Money Commitment, as the case may be. The aggregate amount of the New Money Commitments on the Closing Date is $35 million.

"**New Money Loans**" means the Interim Loans and the Final Loans.

"**Non-Consenting Lender**" has the meaning set forth in Section 3.07(b).

"**Notice of Withdrawal**" shall mean a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

"**Obligations**" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries arising under any Loan Document or otherwise with respect to any Loan, 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 and fees that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding (or would accrue but for the operation of applicable Debtor Relief Laws), regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that any Agent or Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

"**Organization Documents**" shall mean (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; and (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.

"**Other Connection Taxes**" shall mean, with respect to any Agent or Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07).

"**Participant Register**" shall have the meaning assigned to such term in Section 10.04(f).

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"**Permitted Holders**" shall mean any of the Investors; *provided* that if the Management Stockholders own beneficially or of record more than ten percent (10%) of the outstanding voting stock of Holdings in the aggregate at any time, for purposes of any determination of Permitted Holders (including pursuant to the definition of "Change of Control") at such time, the Management Stockholders shall be deemed to hold ten percent (10%) of the outstanding voting stock of Holdings at such time.

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

"**Petition Date**" means June 11, 2017.

"**Plan**" shall mean any employee pension benefit plan subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA and in respect of which a Loan Party, any Subsidiary or any of their respective ERISA Affiliates is (or if such plan were terminated would under Section 4069 of ERISA be deemed to be) a "contributing sponsor" as defined in Section 4001(a)(13) of ERISA.

"**Platform**" shall have the meaning assigned to such term in Section 10.01.

"**Prepetition ABL Agent**" means (i) Bank of America, N.A. in its capacity as administrative agent under any of the Prepetition ABL Documents, or (ii) any successor administrative agent.

"**Prepetition ABL Collateral Agreement**" means the "Security Agreement", dated as of November 23, 2010 (as amended and supplemented from time to time) by and among the Loan Parties and the Prepetition ABL Agent.

"**Prepetition ABL Collateral Documents**" means, collectively, the Prepetition ABL Collateral Agreement, each of the mortgages, collateral assignments, supplements to all of the foregoing, security agreements, pledge agreements, control agreements or other similar agreements delivered to the Prepetition ABL Agent in connection with the Prepetition ABL Credit Agreement, and each of the other agreements, instruments or documents (including, without limitation, patent, trademark or copyright filings) that creates or purports to create a Lien in favor of the Prepetition ABL Agent and the Prepetition ABL Term Agent for the benefit of the Prepetition ABL Lenders and Prepetition ABL Term Lenders.

"**Prepetition ABL Credit Agreement**" means that certain Amended and Restated Credit Agreement, dated as of March 30, 2012, by and among the Borrower, the Guarantors party thereto, the Prepetition ABL Agent, the Prepetition ABL Term Agent, the Prepetition ABL Lenders and the Prepetition ABL Term Lenders, as amended, restated, supplemented or otherwise modified from time to time.

"**Prepetition ABL Documents**" means the Prepetition ABL Credit Agreement, the Prepetition ABL Collateral Documents and each of the other agreements, instruments or documents executed pursuant thereto.

"**Prepetition ABL Indebtedness**" shall mean Indebtedness of Holdings, the Borrower or any Subsidiary outstanding, or secured, under the Prepetition ABL Documents.

"**Prepetition ABL Lenders**" means the lenders party to the Prepetition ABL Credit Agreement, from time to time, under and as defined in the Prepetition ABL Credit Agreement.

"**Prepetition ABL Term Agent**" (i) Pathlight Capital LLC in its capacity as ABL term agent under any of the Prepetition ABL Documents, or (ii) any successor ABL term agent.

"**Prepetition ABL Term Lenders**" means the lenders party to the Prepetition ABL Credit Agreement, from time to time, under and as defined in the Prepetition ABL Credit Agreement.

"**Prepetition Indebtedness Holders**" means, collectively, the Prepetition Term Agent, the Prepetition Term Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition ABL Term Agent and the Prepetition ABL Term Lenders and any holders of Other Liabilities (as defined in the Prepetition ABL Credit Agreement) and obligations under Secured Hedge Agreements (as defined in the Prepetition Term Loan Agreement).

"**Prepetition Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of November 23, 2010, by and among the Prepetition ABL Agent and the Prepetition Term Agent, as supplemented by the Prepetition Intercreditor Acknowledgement and as amended, supplemented or otherwise modified prior to the date hereof.

"**Prepetition Intercreditor Acknowledgment**" means that certain Acknowledgment and Agreement, dated as of the Closing Date, by and among the Prepetition Administrative Agent, the Prepetition ABL Agent, the Administrative Agent and the ABL Agent and acknowledged by the Loan Parties.

"**Prepetition Loan Documents**" means the Prepetition Term Loan Documents, the Prepetition ABL Documents and the Prepetition ABL Intercreditor Agreement and any other agreement, instrument, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Prepetition Obligation.

"**Prepetition Obligations**" means all Prepetition Term Obligations and "Obligations" (as defined in the Prepetition ABL Credit Agreement) of the Loan Parties to the Prepetition Indebtedness Holders incurred prior to the Petition Date.

"**Prepetition Term Agent**" means (i) Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under any of the Prepetition Term Loan Documents, or (ii) any successor administrative agent.

"Prepetition Term Loan Collateral" means all collateral (as defined therein) purported to be granted to the Prepetition Term Agent pursuant to the Prepetition Term Loan Documents.

"**Prepetition Term Loan Collateral Documents**" means the "Collateral Documents" as defined in the Prepetition Term Loan Agreement.

"**Prepetition Term Loan Documents**" means the "Loan Documents" as defined in the Prepetition Term Loan Agreement.

"**Prepetition Term Lenders**" means the lenders party to the Prepetition Term Loan Agreement, from time to time, under and as defined in the Prepetition Term Loan Agreement.

"**Prepetition Term Loan Agreement**" means that certain Amendment and Restated Credit Agreement, dated as of February 11, 2011, by and among the Borrower, the Guarantors party thereto, the Prepetition Term Agent and the Prepetition Term Lenders, as amended, restated, supplemented or otherwise modified from time to time.

"**Prepetition Term Loans**" means the "Loans" under and as defined in the Prepetition Term Loan Agreement.

"**Prepetition Term Obligations**" means "Obligations" (as defined in the Prepetition Term Loan Agreement).

"**Prime Rate**" shall mean the rate of interest per annum determined from time to time by Credit Suisse AG as its prime rate in effect at its principal office in New York City and notified to the Borrower. The prime rate is a rate set by Credit Suisse based upon various factors including Credit Suisse AG'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 rate.

"**Priming Liens**" has the meaning specified in Section 12.05(a)(v).

"**Pro Rata Share**" shall mean, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments (or, if Commitments have been terminated, the principal amount of the Loans) under the Term Facility of such Lender at such time and the denominator of which is the amount of the aggregate Commitments (or, if the Commitments have been terminated, the principal amount of the Loans) under the Term Facility at such time.

"**Public Lender**" shall have the meaning assigned to such term in Section 10.01.

"**Qualified Equity Interests**" shall mean any Equity Interests that are not Disqualified Equity Interests.

"**Real Property**" shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Register**" shall have the meaning assigned to such term in Section 10.04(d).

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Related Fund**" shall mean, with respect to any Lender that is a fund or commingled investment vehicle that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Parties**" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"**Release**" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure, facility or fixture.

"**Reportable Event**" shall mean any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived with respect to a Plan.

"**Required Lenders**" means, as of any date of determination, Lenders holding more than 50% of the sum of the total outstanding Loans and unused Commitments of the Term Loans.

"**Responsible Officer**" shall mean the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, director of treasury or other similar officer of a Loan Party and, as to any document delivered on the Closing Date, any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed by the recipient of such document 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 by the recipient of such document to have acted on behalf of such Loan Party.

"**Restricted Payment**" shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Holdings, the Borrower or any Subsidiary, 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 Equity Interest of Holdings, the Borrower or any Subsidiary, or on account of any return of capital to Holdings', the Borrower's or a Subsidiary's stockholders, partners or members (or the equivalent Persons thereof).

"**Restructuring**" means the restructuring of Holdings and its Subsidiaries to be implemented through the filing of cases and confirmation of an Approved Plan of Reorganization under chapter 11 of the Bankruptcy Code.

"**Restructuring Claims**" means (a) Prepetition Term Loans, (b) Loans and Commitments and (c) Backstop Commitments (as defined in the Backstop Commitment Agreement).

"**Restructuring Support Agreement**" means that certain Restructuring Support Agreement, dated as of June 11, 2017 (as amended and supplemented from time to time), between the Loan Parties and the other parties party thereto.

"**Roll-up Loans**" are the loans made pursuant to Section 2.01(b).

"**Roll-up Loan Aggregate Commitment**" means $70,000,000, which amount shall be (i) comprised of a roll-up and refinancing of the Prepetition Term Loans approved pursuant to the Interim Bankruptcy Court Order and (ii) shall be deemed funded by the Lenders in part on the Closing Date and in part on the Second Interim Funding Date.

"**Roll-up Loans Commitment**" means, as to each Lender, its obligation to make a Loan to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 under the caption "Roll-up Loans Commitment" or in the Election Joinder, as applicable, as such amount shall be adjusted on the Second Interim Funding Date.

"**Rothschild**" means Rothschild Inc.

"**S&P**" shall mean Standard & Poor's Ratings Service, or any successor thereto.

"**SEC**" shall mean the Securities and Exchange Commission or any Governmental Authority that is the successor thereto.

"**Second Interim Funding Date**" shall have the meaning assigned to such term in Section 2.01.

"**Secured Parties**" means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to this Agreement and the other Persons the Obligations owing to which are secured by the Collateral under the terms of the Collateral Documents.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Security Agreement**" means the Security Agreement, dated as of the Closing Date, among the Borrower, the guarantors party thereto, and the Collateral Agent.

"**Segregated Operating Account**" means the deposit account established by the Borrower for the purpose of receipt of the Withdrawals and proceeds of Term Priority Collateral.

"**Senior Notes**" means the 9.125% Senior Notes due 2018 issued by the Borrower.

"**SPV**" shall have the meaning assigned to such term in Section 10.04(i).

"**Specified Store Closing Sales**" means the closure of the Loan Party's Stores identified in writing by the Company to Rothschild by June 23, 2017 and agreed by Rothschild on or prior to June 30, 2017.

"**Sponsor**" shall mean Bain Capital Partners, LLC and any of its Affiliates and funds or partnerships managed or advised by Bain Capital Partners, LLC or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

"**Stapling Requirement**" shall mean the requirements that, simultaneously with any Lender's transfer of all or any portion of a Restructuring Claim, such Lender and its Related Funds shall be obligated to make a proportionate assignment of each of the Restructuring Claims held by the Lender and its Related Funds to the same Eligible Assignee (and/or its Related Funds) (for the avoidance of doubt, the amount shall be determined by dividing the amount of the individual type of Restructuring Claim proposed to be sold by the total amount of the same type of Restructuring Claim held by the Lender and its Related Funds and then applying that percentage to the aggregate amount of each type of Restructuring Claim held by the Lender and its Related Funds); *provided*, that the assignment by a Lender of Restructuring Claims made to such Lenders' Related Funds are not subject to the Stapling Requirement.

"**Statutory Reserves**" shall mean 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 Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of

the Board) 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. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Store**" means any retail store (which includes any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by the Borrower or any Subsidiary.

"**Subsidiary**" of a Person shall mean a corporation, partnership, joint venture, limited liability company, unlimited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned or (ii) 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 the Borrower.

"**Subsidiary Guarantor**" shall mean any Guarantor other than Holdings. The Subsidiary Guarantors as of the Closing Date are set forth on Schedule 1.01(a).

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

"**Swap Termination Value**" shall mean, 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).

"**Taxes**" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Borrowing**" shall mean the Borrowing comprised of the $35 million New Money Loans under the Term Facility.

"**Term Facility**" means, at any time, the term credit facility under which the Term Loans are provided.

"**Term Loans**" means, collectively, the New Money Loans and Roll-up Loans.

"**Term Note**" means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit I hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

"**Term Priority Collateral**" shall have the meaning assigned to such term in the Bankruptcy Court Order.

"**Threshold Amount**" shall mean $2,000,000.

"**Type**", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "**Rate**" shall mean the Adjusted LIBO Rate and the Alternate Base Rate.

"**Unaudited Financial Statements**" means the unaudited consolidated balance sheets and the related statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for the fiscal quarter ending January 28, 2017.

"**Uniform Commercial Code**" or "**UCC**" shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

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

"**United States Tax Compliance Certificate**" shall have the meaning assigned to such term in Section 3.01(d).

"**USA PATRIOT Act**" shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

"**wholly owned**" shall mean, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

"**Withdrawal**" means a disbursement of funds from the DIP Funding Account. "**Withdraw**" and "**Withdrawn**" shall have correlative meanings thereto.

"**Withdrawal Date**" means that date of a Withdrawal.

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

"**Withdrawal Weekly Cap**" means, for any week, the amount of Withdrawals (if any) which would be required to be made in order to prevent the projected unrestricted "book" cash liquidity of Holdings and its Subsidiaries for such week from falling below $5,000,000 (or to the extent insufficient amounts remain to be drawn to satisfy such test, all such remaining amounts).

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 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 meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words "herein," "hereto," "hereof' and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term "including" is by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) 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."

(d) 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.

(e) The word "or" is not exclusive.

Section 1.03. *Accounting Terms*. 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, except as otherwise specifically prescribed herein.

Section 1.04. *[Reserved]*.

Section 1.05. *References to Agreements, Laws, Etc.* Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and

(b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06. *Times of Day*. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07. *Timing of Payment of Performance*. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day (subject to Section 2.16(b)).

Section 1.08. *[Reserved]*.

Section 1.09. *[Reserved]*.

Section 1.10. *Certain Accounting Matters*. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Subsidiaries at "fair value", as defined therein.

Section 1.11. *Classification of Loans and Borrowings*. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Eurodollar Loan") or as either New Money Loans or Roll-up Loans.

Section 1.12. *Currency Equivalents Generally*. For purposes of determining compliance with Sections 7.01, 7.02 and 7.03 with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Investment is incurred (so long as such Indebtedness or Investment, at the time incurred, made or acquired, was permitted hereunder).

ARTICLE 2
THE CREDITS

Section 2.01. *Commitments to Lend; Term Loan*.

(a) Subject to the terms and conditions set forth herein and in the Bankruptcy Court Order, each Lender severally and not jointly agrees to make, on the applicable borrowing date, Loans to the Borrowers in an aggregate amount not to exceed such Lender's New Money Commitment. The Borrowers may make only five (5) Borrowings under the New Money Commitments that shall be, in the case of the Interim Loans, two (2) drawings the first of which will occur on the Closing Date in an aggregate principal amount of $13,216,288.78 and the second shall occur three Business Days following the Election Deadline (the "**Second Interim Funding Date**") and in an aggregate principal amount of $6,783,711.22 and, in the case of the Final Loans, in up to three (3) drawings following the Final Bankruptcy Court Order Entry Date in minimum increments of $1,000,000, up to an aggregate principal amount not to exceed $15,000,000. The New Money Commitments in respect of the Interim Loans shall terminate automatically immediately after the making of the Interim Loans on the Second Interim Funding Date and the New Money Commitments in respect of the Final Loans shall terminate

automatically immediately after the making of the Final Loans. Proceeds of the New Money Loans shall be deposited in the DIP Funding Account and used solely as permitted herein.

(b) Subject to the terms and conditions set forth herein and in the Bankruptcy Court Order, each Lender severally and not jointly agrees to make on the Closing Date and on the Second Interim Funding Date, Loans to the Borrower in the aggregate amount of the Roll-up Loan Aggregate Commitment. The Administrative Agent, the Lenders and the Loan Parties each acknowledges and agrees that $46,257,010.72 of the Roll-up Loans shall be deemed funded as of the Closing Date and the remaining $23,742,989.28 of the Roll-up Loans shall be deemed funded on the Second Interim Funding Date and the Roll-up Loan Aggregate Commitment shall expire upon the deemed funding of the Roll-up Loans on the Second Interim Funding Date. Each Lender's Roll-up Loan Commitment shall be in the amount two times the amount of such Lender's total outstanding New Money Loans and unused New Money Commitments.

(c) Each Lender as of the Closing Date, hereby acknowledges and agrees that each Prepetition Term Lender (other than the 2017 Incremental Lenders) that is a party to the Restructuring Support Agreement (in such capacity, an "**Electing DIP Term Lender**") may participate in providing the Loans in an amount equal to such Electing DIP Term Lenders pro rata share (determined on the basis of the principal amount of Prepetition Term Loans held by such Lender as compared to the principal amount of Prepetition Term Loans held by all Lenders under the Prepetition Term Loan Agreement (other than the 2017 Incremental Lenders)) by executing an election joinder in the form of Exhibit J no later than the Election Deadline and (i) each such Person shall become a Lender on the day after the Election Deadline and (ii) each existing Lender's Commitment shall be reduced proportionally on such date.

(d) All Loans and all other Obligations owing hereunder with respect to the Loans shall be paid in full not later than the Maturity Date.

Section 2.02. *Loans*.

(a) Each Term Borrowing shall be made upon the Borrower's irrevocable notice to the Administrative Agent. In order to request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 12:00 (noon), New York City time, three Business Days before a proposed Borrowing, and (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, one Business Day before a proposed Borrowing. Each such telephonic Borrowing Request shall be confirmed promptly by hand delivery or fax to the Administrative Agent of a written Borrowing Request and shall specify the following information: (i) whether such Borrowing is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day) and (iii) the amount of such Borrowing. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing.

(b) Following receipt of a Borrowing Notice by the Administrative Agent and subject to the satisfaction or waiver of the conditions set forth in Sections 4.01 and 4.02, the Administrative Agent shall promptly advise the applicable Lenders thereof, and of each Lender's portion of the requested Borrowing, and each Lender shall make each Term Loan to be made by it hereunder (net of original issue discount pursuant to Section 2.05(c)) by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 1:00 p.m., New York City time, on the Business Day specified in the applicable Borrowing Notice.

(c) Unless the Required Lenders determine that any applicable condition specified in Article 4 has not been satisfied or waived, the amount so received by the Administrative Agent shall on the date

of the Term Borrowing be applied by the Administrative Agent to pay all fees and expenses then earned, due and payable under Section 2.05(a) and Section 10.05 and the amount net of such applied amount shall be deposited by the Administrative Agent in the DIP Funding Account.

(d) Subject to Article 4 and the other terms and conditions set forth herein, the Borrower may request disbursements from the DIP Funding Account by delivering to the Administrative Agent a Notice of Withdrawal, not later than 12:00 p.m., New York City time, one Business Day before (or such shorter time as agreed by the Administrative Agent) the proposed date of the applicable Withdrawal and no more frequently than one Withdrawal per week; provided that the amount that may be Withdrawn during any calendar week shall not exceed the Withdrawal Weekly Cap for such week. Promptly upon the receipt of a Notice of Withdrawal and the satisfaction or waiver of the conditions set forth in Sections 4.02, the Administrative Agent shall disburse funds from the DIP Funding Account in an aggregate principal amount equal to the amount specified in such Notice of Withdrawal to the Segregated Operating Account. All proceeds of the Term Loans shall be held in the DIP Funding Account at all times until such proceeds are disbursed in accordance with this Section 2.02(d) for purposes permitted under Section 5.17 or applied in accordance with Section 2.11 or Section 12.05(d). The Borrower and the other Loan Parties shall have no property interest of any kind in the DIP Funding Account and the funds held therein.

(e) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the ABR promptly following the public announcement of such change.

Each submission by the Borrower to the Administrative Agent of a Notice of Withdrawal shall be deemed to constitute a representation and warranty by the Borrower that the conditions set forth in Section 4.02 have been satisfied or waived as of the date of the Withdrawal. With respect to any disbursement, withdrawal, transfer, or application of funds from the DIP Funding Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, (i) any Notice of Withdrawal submitted by the Borrower Agent and (ii) any instructions from the Required Lenders. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to fund any amount in excess of the amounts then held in the DIP Funding Account.

Section 2.03. *[Reserved]*.

Section 2.04. *Evidence of Debt*.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender under this Agreement.

(b) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and, if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Guarantor and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any

error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms and (ii) in the event of any conflict between the accounts set forth in paragraphs (a) and (b) above, the amounts set forth in the accounts maintained pursuant to paragraph (b) shall prevail.

(d) Any Lender may request that Loans made by it hereunder be evidenced by a Term Note. In such event, the Borrower shall execute and deliver to such Lender a Term Note payable to such Lender and its registered assigns in accordance with Section 10.04. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a Term Note, the interests represented by such Term Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

Section 2.05. *Fees*.

(a) *Administrative Agent Fee*. The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative agent fees and expenses in the amounts and at the times set forth in the Fee Letter. The Administrative Agent shall be entitled to apply funds held in the DIP Funding Account to the payment of such fees and expenses.

(b) *Backstop Premium*. The Borrower shall pay to the Backstop Lenders a non-refundable premium in an amount equal to 3.5% of the aggregate amount of the New Money Loans on the Closing Date. Such premium shall be fully earned, due and payable on the Closing Date and shall not be refundable for any reason whatsoever.

(c) *Original Issue Discount*. The Borrower and each Lender agrees that on the date of the Term Borrowing the Borrower shall receive proceeds from the New Money Loans based on a purchase price of 98% of the principal amount thereof. For the avoidance of doubt, on the Closing Date, each Lender shall advance to the Administrative Agent for application as set forth in Section 2.02(b) an amount equal to 98% of its ratable share of the New Money Loans requested by the Borrower as of such date in exchange for the Borrower's obligations to repay in full the face amount of the New Money Loans plus interest accrued thereon in accordance with the terms hereof.

Section 2.06. *Interest on Loans*. (a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days (or, in the case of ABR Loans that bear interest by reference to the Prime Rate, 365 or 366 days, as applicable) and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.07. *Default Interest*. During the continuance of an Event of Default, the Borrower shall pay interest on all amounts owed hereunder at a fluctuating interest rate per annum at all times, after as well as before judgment, equal to (a) in the case of principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 360 days at all times) equal to the rate that would be applicable to an ABR Loan plus 2.00% per annum, and such interest shall be payable on demand.

Section 2.08. *Alternate Rate of Interest*. In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that Dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to the majority of Lenders of making or maintaining Eurodollar Loans during such Interest Period, or that reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or fax notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have revoked such notice, any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.02 shall be deemed to be a request for an ABR Borrowing. Each determination by the Administrative Agent under this Section 2.08 shall be conclusive absent manifest error.

Section 2.09. *[Reserved]*.

Section 2.10. *[Reserved]*.

Section 2.11. *Repayment of Term Loans*. Upon the Maturity Date or earlier, if otherwise required by the terms hereof, (i) the Borrower shall repay to the Administrative Agent for the ratable account of the Lenders (including the Administrative Agent as a Lender) the aggregate outstanding principal amount of the Term Loans (less any amounts remaining in the DIP Funding Account) and all accrued but unpaid interest thereon (together with any fees and expenses payable therewith, including without limitation, any such fees or expenses due under Section 2.05 and Section 10.05), and (ii) the Administrative Agent shall apply such funds (together with any funds remaining in the DIP Funding Account (after the payment of fees and expenses, including without limitation any such fees or expenses due under Section 2.05 and Section 10.05)) to repay each Lender in the amount of such Lender's ratable portion of the remaining amount (based on such Lender's Pro Rata Share in respect of the Term Facility); provided, however that, subject to terms and conditions set forth in Section 2.17(b), if the Borrower elects to exercise the Exit Conversion, (x) the Borrower shall not be required to repay the New Money Term Loans pursuant to clause (i) of this Section 2.11 and (y) all proceeds (after the payment of fees and expenses, including without limitation any such fees or expenses due under Section 2.05 and Section 10.05) in the DIP Funding Account shall be remitted to the Borrower as directed by the Borrower in writing to the Administrative Agent on the date of the Exit Conversion subject to the terms and conditions of the Exit Credit Agreement. In the event that a Lender elects, after giving effect to the DIP Surplus Conversion (as defined in the Restructuring Support Agreement) (if any) and pursuant to the provisions therefor contained in the Restructuring Support Agreement, to direct and deem any amount which would (i) otherwise be paid to it under this Section 2.11 or (ii) be returned to the Borrower from the DIP Funding Account pursuant to clause (y) of the preceding sentence, to instead satisfy its equity commitments under the Restructuring Support Agreement, such amount shall not be paid to such Lender (in the case of clause (i)) but shall instead be retained by the Borrower and deemed in satisfaction of such equity commitments to the extent of such amount (or in the case of clause (ii), in an amount equal to such Lender's pro rata share of the funds in the DIP Funding Account).

Section 2.12. *Voluntary Prepayment*. The Borrower shall have the right at any time and from time to time to prepay the Term Loans, in whole but not in part, upon at least three Business Days' prior written or fax notice to the Administrative Agent before 12:00 (noon), New York City time subject to payment by the Borrower of a prepayment premium equal to 5.0% of the principal amount of Term Loans being prepaid.

Section 2.13. *Mandatory Prepayments*.

(a) (i) [Reserved].

(ii) If (1) the Borrower or any Subsidiary Disposes of any property or assets pursuant to Section 7.05(a), (f), (i) or (k) (other than, so long as the ABL Credit Agreement is in effect, any Disposition of (A) ABL Priority Collateral and (B) assets of the Canadian Subsidiary of the type described in the definition of ABL Priority Collateral in the Bankruptcy Court Order), or (2) any Casualty Event occurs, which results in the realization or receipt by the Borrower or a Subsidiary of Net Proceeds, the Borrower shall on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or any Subsidiary of such Net Proceeds apply 100% of such Net Proceeds realized or received to repay the Loans at par; provided that Net Proceeds of Dispositions in an aggregate amount of $250,000 for the term of this Agreement shall not be required to be applied pursuant to this Section and may be retained by the Borrower for use in accordance with the Budget.

(iii) On the date of receipt by the Borrower or any of its Subsidiaries of cash proceeds from a capital contribution to, or the issuance of any Equity Interests of, the Borrower or any of its Subsidiaries (other than issuances of Equity Interests by a Subsidiary to the Borrower and capital contributions by the Borrower to a Subsidiary), the Borrower shall prepay an aggregate principal amount of the Term Loans equal to 100% of such Net Proceeds received therefrom no later than five Business Days following receipt thereof by such Person.

(iv) If the Borrower or any Subsidiary incurs or issues any Indebtedness after the Closing Date (other than Indebtedness permitted under Section 7.03, including for the avoidance of doubt, ABL Facility Indebtedness borrowed on or after the Closing Date), the Borrower shall cause to be prepaid an aggregate principal amount of Term Loans in an amount equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Subsidiary of such Net Proceeds.

(b) Each prepayment of Term Loans pursuant to Section 2.13(a) shall be applied ratably to the Loans then outstanding.

(c) [Reserved].

(d) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to Section 2.13(a) at least three (3) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each applicable Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share or other applicable share of the prepayment.

(e) *Funding Losses, Etc.* All prepayments under this Section 2.13 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment

and shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a day prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.05.

Section 2.14. *Pro Rata Treatment*. Except as required under Section 3.02, each Borrowing, each payment or prepayment of principal of any Borrowing and each payment of interest on the Loans, shall be allocated pro rata among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans); *provided* that the provisions of this Section 2.14 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

Section 2.15. *Sharing of Setoffs*. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans as a result of which the unpaid principal portion of its Loans shall be proportionately less than the unpaid principal portion of the Loans of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans of such other Lender, so that the aggregate unpaid principal amount of the Loans and participations in Loans held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loans prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that (i) if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.15 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest, and (ii) the provisions of this Section 2.15 shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Holdings or any of its Affiliates as to which the provisions of this Section 2.15 shall apply. The Borrower and Holdings expressly consent to the foregoing arrangements and agree that any Lender holding a participation in a Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower and Holdings to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

Section 2.16. *Payments*. (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any Fees or other amounts due and payable) hereunder and under any other Loan Document not later than 12:00 (noon), New York City time, on the date when due in immediately available Dollars, without setoff, defense or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent at its offices at Eleven Madison Avenue, New York, NY 10010 or such other office notified by the Administrative Agent to the Borrower in accordance with Section 10.01. The Administrative Agent shall promptly distribute to each Lender any payments received by the Administrative Agent on behalf of such Lender.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

Section 2.17. *Conversion of Loans; Implementation.*

(a) Upon the consummation of an Approved Plan of Reorganization, subject to the satisfaction, or waiver, of the conditions set forth in the Exit Term Sheet and otherwise substantially in accordance with the terms and conditions set forth in the Exit Credit Agreement (as defined below), the Borrower may exercise an option to continue or convert the New Money Loans into an exit term facility financing (the "**Exit Conversion**").

(b) If the Borrower elects to exercise the Exit Conversion, subject to the satisfaction or waiver by the Required Lenders of the conditions contained in the Exit Term Sheet and the Exit Credit Agreement (as defined below):

(i) each Lender, severally and not jointly, hereby agrees to continue its New Money Loans hereunder outstanding on the date of consummation of an Approved Plan of Reorganization as loans under, and subject entirely and exclusively to the terms and provisions of, the definitive documentation to be mutually agreed (including a credit agreement governing the continuation and conversion of the New Money Loans, the "**Exit Credit Agreement**") and related documentation to the extent that such documentation is substantially consistent with the Exit Term Sheet and contains substantially the terms set forth in the Exit Term Sheet and is otherwise in form and substance reasonably satisfactory to the Required Lenders; and

(ii) subject to Section 2.17(a), the Administrative Agent, the Lenders and the Loan Parties agree that, upon the effectiveness of the Exit Credit Agreement:

(A) the Borrower, in its capacity as reorganized Borrower, and each Guarantor, in its capacity as a reorganized Guarantor, shall assume all the Obligations hereunder with respect to the New Money Loans and all other obligations in respect thereof in the manner set forth in the Exit Credit Agreement and related loan documents;

(B) the New Money Loans hereunder shall be continued or converted, as the case may be, as loans under the Exit Credit Agreement;

(C) each Lender hereunder shall be a lender under the Exit Credit Agreement in respect of its New Money Loans continued or converted as the case may be;

(D) the Administrative Agent hereunder shall be the administrative agent and collateral agent under the Exit Credit Agreement (provided that the Exit Credit Agreement and related documentation is in form and substance reasonably satisfactory to the Administrative Agent); and

(E) with respect to the New Money Loans, this Agreement and all Obligations hereunder with respect thereto shall terminate and be superseded and replaced by the Exit Credit Agreement.

ARTICLE 3

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01. *Taxes*.

(a) Except as provided in this Section 3.01, any and all payments made by or on account of the Borrower or any Guarantor under any Loan Document to any Lender or Agent shall be made free and clear of and without deduction for any Taxes, except as required by applicable Law. If the Borrower, any Guarantor or other applicable withholding agent shall be required by any Laws to deduct any Tax from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (w) if such Tax is an Indemnified Tax, the sum payable by the Borrower or Guarantor shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), such Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (x) the applicable withholding agent shall make such deductions, (y) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws, and (z) as soon as practicable after the date of such payment, the applicable withholding agent shall furnish to such Agent or Lender (as the case may be) the original or a certified copy of a receipt evidencing payment thereof or other evidence acceptable to such Agent or Lender.

(b) In addition but without duplication of any obligation pursuant to Section 3.01(a), the Borrower agrees to pay any and all Other Taxes.

(c) Without duplication of any obligation pursuant to Section 3.01(a) or (b), the Borrower and each Guarantor agree to indemnify each Agent and each Lender, within 10 days after demand therefor, for (i) the full amount of Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid by such Agent or Lender and (ii) any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, provided such Agent or Lender, as the case may be, provides Borrower or Guarantor with a written statement (which shall be conclusive absent manifest error) thereof setting forth in reasonable detail the basis and calculation of such amounts.

(d) Each Lender and Agent shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Law certifying as to any entitlement of such Lender or Agent to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender and Agent shall, whenever a lapse in time or change in circumstances renders such documentation obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, the Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable Law from such payments at the applicable statutory rate. Notwithstanding the foregoing, a Lender shall not be required to deliver any form pursuant to this clause (d) that such Lender is not legally able to deliver. In addition, each Lender and Agent shall deliver to the Borrower and the Administrative Agent such other tax forms or other documents as shall be prescribed by applicable Law, to the extent applicable, (x) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to demonstrate that payments

to such Lender or Agent under this Agreement and the other Loan Documents are exempt from any United States federal withholding tax imposed pursuant to FATCA or (y) to allow the Borrower and the Administrative Agent to determine the amount to deduct or withhold under FATCA from a payment hereunder. For purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Without limiting the foregoing:

(i) Each Lender and Agent that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender or Agent (as the case may be) is exempt from federal backup withholding.

(ii) Each Lender and Agent that is not a United States person (as defined in Section 7701(a)(30) of the Code) shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) in the case of a Lender claiming eligibility for the benefits of an income tax treaty to which the United States is a party, two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms), and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms) and, in the case of an Agent, a withholding certificate that satisfies the requirements of Treasury Regulation Sections 1.1441-1(b)(2)(iv) and 1.1441-1(e)(3)(v) as applicable to a U.S. branch that has agreed to be treated as a U.S. person for withholding tax purposes,

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (1) a certificate substantially in the form of Exhibit G-1, G-2, G-3 or G-4, as applicable (any such certificate a "**United States Tax Compliance Certificate**") and (2) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information from each beneficial owner, as applicable (provided that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owner).

Each Lender and Agent shall deliver to the Borrower and the Administrative Agent two further original copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender and Agent shall promptly notify the Borrower and the

Administrative Agent in writing at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(e) Any Lender or Agent claiming any additional amounts payable pursuant to this Section 3.01 shall use its reasonable efforts to change the jurisdiction of its lending office (or take any other measures reasonably requested by the Borrower) if such a change or other measures would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, result in any unreimbursed cost or expense or be otherwise materially disadvantageous to such Lender.

(f) If any Lender or Agent determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Indemnified Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall promptly remit such refund to the Borrower or Guarantor, net of all out-of-pocket expenses of the Lender or Agent, as the case may be and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any Taxes payable by any Agent or Lender on such interest); *provided* that the Borrower and Guarantors, upon the request of the Lender or Agent, as the case may be, agree promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. Notwithstanding anything to the contrary in this clause (f), in no event will the Lender or Agent be required to pay any amount to the Borrower or Guarantor pursuant to this clause (f) the payment of which would place such Lender or Agent in a less favorable net after-Tax position than such Lender or Agent would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to Taxes that it deems confidential) to the Borrower or any other person.

(g) Each party's obligations under this Section 3.01 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 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 Eurodollar Loans, or to determine or charge interest rates based upon the LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all applicable Eurodollar Loans of such Lender to ABR Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03. *[Reserved]*.

Section 3.04. *Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans*.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the Closing Date, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Eurodollar Loans, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes or (ii) reserve requirements contemplated by Section 3.04(c) or reflected in the Adjusted LIBO Rate) and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligations to make any Loan), or to reduce the amount of any sum received or receivable by such Lender, then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the Closing Date, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender or controlling entity for such reduction within fifteen (15) days after receipt of such demand.

(c) Except to the extent already reflected in the Adjusted LIBO Rate, the Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurodollar funds or deposits, additional interest on the unpaid

principal amount of each applicable Eurodollar Loan of the Borrower equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of any Eurodollar Loans of the Borrower, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another lending office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office(s) to suffer no material economic, legal or regulatory disadvantage, and *provided further* that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

Section 3.05. *Funding Losses.* Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

(i) any payment or prepayment of any Eurodollar Loan of the Borrower on a day prior to the last day of the Interest Period for such Loan; or

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

including an amount equal to the excess, as reasonably determined by such Lender, of (1) its cost of obtaining funds for the Eurodollar Loan that is the subject of such event for the period from the date of such event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (2) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such event for such period, but excluding loss of anticipated profits.

Section 3.06. *Matters Applicable to all Requests for Compensation.*

(a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another any applicable Eurodollar Loan, or, if applicable, to convert ABR Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Eurodollar Loan shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Eurodollar Loans shall be automatically converted into ABR Loans (or, if such conversion is not possible, repaid) on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.02 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's applicable Eurodollar Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as ABR Loans (if possible), and all ABR Loans of such Lender that would otherwise be converted into Eurodollar Loans shall remain as ABR Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02 or 3.04 hereof that gave rise to the conversion of any of such Lender's Eurodollar Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders under the Term Facility are outstanding, if applicable, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans under the Term Facility and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments for the Term Facility.

(e) Notwithstanding anything herein to the contrary, the Dodd Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, shall be deemed to have been adopted after the Closing Date, regardless of the date enacted or adopted.

Section 3.07. *Replacement of Lenders under Certain Circumstances*.

(a) If at any time (i) the Borrower become obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make any Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.04 or (ii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten

(10) Business Days' prior written notice to the Administrative Agent and such Lender, (x) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04(b) (with the assignment fee to be paid by the Borrower in such instance) (it being understood that any such assignment shall become effective only in accordance with Section 10.04(e)), all of its rights and obligations under this Agreement to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; and *provided further* that (A) 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 and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to, and shall be sufficient (together with all other consenting Lenders) to cause the adoption of, the applicable departure, waiver or amendment of the Loan Documents; or (y) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date; *provided* that in the case of any such termination of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable departure, waiver or amendment of the Loan Documents;

(b) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender or each affected Lender, in each case in accordance with Section 10.08, and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender**."

(c) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Acceptance with respect to such Lender's applicable Commitment and outstanding Loans and (ii) deliver any Term Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Acceptance, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's outstanding Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Acceptance and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Term Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Acceptance reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Acceptance to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance without any action on the part of the Non-Consenting Lender.

(d) Notwithstanding anything to the contrary contained above, the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with Article 9.

Section 3.08. *Survival*. All of the Borrower's obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Obligations hereunder.

ARTICLE 4

CONDITIONS PRECEDENT TO TERM BORROWING

Section 4.01. *Conditions Precedent to Closing Date*. This Agreement shall become effective as of the Business Day of and, subject to, the satisfaction, or waiver by the Required Lenders in accordance with this Agreement of the following conditions:

(a) The Chapter 11 Cases shall have been commenced in the Bankruptcy Court and all of the "first day orders" and all related pleadings to be entered at the time of commencement of the Chapter 11 Cases or shortly thereafter shall be in form and substance reasonably satisfactory to the Required Lenders.

(b) The Interim Bankruptcy Court Order shall have been entered by the Bankruptcy Court within three (3) days of the Petition Date and the Administrative Agent shall have received a true and complete copy of such order, and such order shall be in the form of Exhibit H hereto, be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Administrative Agent and the Required Lenders.

(c) All orders entered by the Bankruptcy Court pertaining to cash management ("**Cash Management Orders**") and adequate protection ("**Adequate Protection Orders**") and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent).

(d) No trustee, examiner or receiver shall have been appointed or designated with respect to Holdings or its Subsidiaries' business, properties or assets and no motion shall be pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral.

(e) The Prepetition Term Agent and the Prepetition Term Lenders shall have each received adequate protection in respect of the Liens securing their respective Prepetition Obligations pursuant to the Adequate Protection Orders.

(f) The Administrative Agent shall have received UCC, tax and judgment lien searches and other appropriate evidence~~,~~ in form and substance reasonably satisfactory to the Administrative Agent.

(g) The Administrative Agent, for its benefit and the benefit of each Lender, shall have been granted a perfected lien on the Collateral by the Bankruptcy Court Orders on the terms and conditions set forth herein and in the other Loan Documents.

(h) The Administrative Agent shall have received appropriate UCC-1 financing statements for filing under the UCC of each jurisdiction of organization of each Loan Party.

(i) The ABL Facility Documentation shall be in form and substance reasonably satisfactory to the Required Lenders in their sole discretion.

(j) The Administrative Agent shall have received the Budget.

(k) The Borrower shall have paid to the Administrative Agent and Lenders the fees and expenses then due and payable under the Loan Documents (including, without limitation, the fees and expenses of Carriage House, Milbank and Rothschild) subject to and in accordance with the Bankruptcy Court Orders.

(l) The Administrative Agent shall have received customary certificates of resolutions or other action, incumbency certificates of Responsible Officers of each Loan Party evidencing 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 and (B) certificates (including Organization Documents and good standing certificates) relating to the organization, existence and good standing of each Loan Party in its jurisdiction of organization, in each case, as certified by the Secretary or an Assistant Secretary of such Loan Party.

(m) The Administrative Agent shall have received executed counterparts of this Agreement and the other Loan Documents executed by each party hereto and thereto, each of which shall be in form and substance reasonably satisfactory to the Required Lenders.

Without limiting the generality of the provisions of this Article 9, for purposes of determining compliance with the conditions specified in Article 4, 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 Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02. *Conditions to each Borrowing and to each Withdrawal Date*. The obligation of each Lender to make Term Borrowings on a Credit Date, and the Borrower's right to make a Withdrawal on each Withdrawal Date, also are subject to (other than in respect of Withdrawals for the payment of amounts due and payable in accordance with Section 10.05(e)) the satisfaction, or waiver in accordance with this Agreement, of the following further conditions precedent:

(a) With respect to any Term Borrowing and Withdrawal Date that is on or after the date which is 35 days following the Petition Date, the Final Bankruptcy Court Order shall have been signed and entered by the Bankruptcy Court, and (i) the Administrative Agent shall have received a true and complete copy of such order, (ii) such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion and (iii) such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

(b) The Borrower shall have delivered to the Administrative Agent, a duly executed and completed Borrowing Notice or Notice of Withdrawal, as applicable.

(c) The Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, shall be in full force and effect and shall contain customary terms for loans of this nature, including waivers of section 506(c) and the "equities of the case" exception under section 552 of the Bankruptcy Code, and shall not (in whole or in part) have been enjoined temporarily, preliminarily or permanently, reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any challenge.

(d) The Loan Parties shall be in compliance in all material respects with the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be.

(e) The Loan Parties shall be in compliance in all material respects with each Cash Management Order.

(f) [Reserved].

(g) The following statements shall be true and correct: (i) the representations and warranties contained in Article 5 and in each other Loan Document are true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and warranties shall be true and correct in all respects) on and as of such Credit Date or Withdrawal Date, as applicable, as though made on and as of such date, except to the extent that any such representation or warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (unless otherwise qualified by materiality in which case such representations and warranties shall be true and correct in all respects) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on such Credit Date or Withdrawal Date, as applicable, or would result from the making of such Term Borrowing or Withdrawal on such date.

(h) With respect to each Final Loan, the Borrower shall have no availability to draw amounts under the ABL Credit Agreement (after giving effect to the $5,000,000 borrowing reserve set forth in Section 5.21(c) thereof).

(i) With respect to each Final Loan, the Bankruptcy Court shall have entered an order approving the disclosure statement in support of the Approved Plan of Reorganization and such order shall be in full force and effect and shall not (in whole or in part) have been enjoined temporarily, preliminarily or permanently, reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any challenge.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Each of Holdings, the Borrower and each of the Subsidiary Guarantors party hereto represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders on the Closing Date, the Credit Date and each Withdrawal Date that:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws.* Each Loan Party and each Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (where relevant) under the Laws of the jurisdiction of its incorporation or organization, (b) subject to the entry and the terms of the Bankruptcy Court Order and other orders of the Bankruptcy Court, as applicable, has all requisite power and authority to (i) own or lease its assets and carry on its business as currently conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions unless stayed by the Chapter 11 Cases, (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted unless stayed by the Chapter 11 Cases; except in each case, referred to in clause (a) (other than with respect to any Loan Party), (b)(i), (c), (d) or (e), to the extent that failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any other Loan Party is an EEA Financial Institution.

Section 5.02. *Authorization; No Contravention.* Subject to the entry and the terms of the Bankruptcy Court Order: the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, are within such Loan Party's corporate or other powers, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any post-petition Contractual

Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any material Law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (ii), to the extent that such violation, conflict, breach, contravention or payment, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents*. Other than the Bankruptcy Court Orders, 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 in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent, the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) any filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.04. *Binding Effect*. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is a party thereto. Subject to the entry and the terms of the Bankruptcy Court Orders, this Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

Section 5.05. *Financial Statements; No Material Adverse Effect*.

(a)

(i) The Audited Financial Statements (x) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (y) fairly present in all material respects the financial condition of the Company and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein and (y) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries on a consolidated basis as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(ii) The Unaudited Financial Statements fairly present in all material respects the financial condition of the Company and its consolidated Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) As of the Closing Date, neither Holdings, the Borrower nor any of the Subsidiaries has any Indebtedness or other obligations or liabilities, direct or contingent (other than (i) the liabilities reflected on Schedule 5.05, (ii) obligations arising under the Loan Documents and the ABL Facility and (iii) liabilities incurred in the ordinary course of business) that, either individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

Section 5.06. *Litigation*. Except for the Chapter 11 Cases, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Holdings or the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of its Subsidiaries or against any of their properties or revenues that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07. *Compliance With Laws; No Default*.

(a) Neither Holdings or the Borrower nor any of the Subsidiaries is in default under or with respect to, or a party to, any post-petition Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of Holdings, the Borrower or any of the Subsidiaries or any of their respective properties or assets is in violation of, nor will the continued operation of their properties and assets as currently conducted violate, any law, rule or regulation (including any zoning, building, Environmental Law, ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Mortgaged Property, or is in default with respect to any unstayed judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

Section 5.08. *Ownership of Property; Liens; Casualty Events*. (a) Each of Holdings, the Borrower and the Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all its properties and assets (including all Mortgaged Property), free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Closing Date, Schedule 5.08 contains a true and complete list of each Real Property owned by Holdings, the Borrower and the Subsidiaries.

(c) As of the Closing Date, except as otherwise disclosed in writing to the Collateral Agent, (i) no Loan Party has received any notice of, nor has any knowledge of, the occurrence (and still pending as of the Closing Date) or pendency or contemplation of any Casualty Event affecting all or any portion of a Mortgaged Property, and (ii) no Mortgage encumbers improved Mortgaged Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the Flood Laws unless Evidence of Flood Insurance has been delivered to the Collateral Agent.

Section 5.09. *Environmental Matters*. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) Each Loan Party and each Subsidiary is and has been in compliance with all Environmental Laws, which includes obtaining and maintaining all applicable Environmental Permits

required under such Environmental Laws to carry on the business of the Loan Parties and the Subsidiaries unless stayed by the Chapter 11 Cases;

(b) the Loan Parties and the Subsidiaries have not received any written notice that alleges any of them is in violation of or potentially liable under any Environmental Laws and none of the Loan Parties and the Subsidiaries nor any of the Real Property is the subject of any claims, investigations, liens, demands, or judicial, administrative or arbitral proceedings pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law or to revoke or modify any Environmental Permit held by any of the Loan Parties or the Subsidiaries;

(c) there has been no Release, discharge or disposal of Hazardous Materials on, to, at, under or from any Real Property or facilities owned or leased by any of the Loan Parties or the Subsidiaries, or, to the knowledge of the Borrower, Real Property formerly owned, operated or leased by any Loan Party or any Subsidiary or arising out of the conduct of the Loan Parties or the Subsidiaries that could reasonably be expected to require investigation, remedial activity or corrective action or cleanup or could reasonably be expected to result in the Borrower or any other Loan Party or Subsidiary incurring liability relating to Environmental Laws; and

(d) there are no facts, circumstances or conditions arising out of or relating to the operations of the Loan Parties or the Subsidiaries or any Real Property or facilities currently or previously owned or leased by the Loan Parties or any Subsidiary that could reasonably be expected to require investigation, remedial activity or corrective action or cleanup or could reasonably be expected to result in the Borrower or any other Loan Party or Subsidiary incurring any Environmental Liability.

Section 5.10. *Taxes*. Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Loan Parties and their Subsidiaries have timely filed all Tax returns required to be filed, and have paid all Taxes levied or imposed upon them or their properties, that are due and payable (including in their capacity as a withholding agent), except those which are being contested in good faith by appropriate proceedings diligently conducted if such contest shall have the effect of suspending enforcement or collection of such Taxes and for which adequate reserves have been provided in accordance with GAAP or the payment of which are stayed by the Chapter 11 Cases. There is no proposed Tax deficiency or assessment known to any Loan Party against any Loan Party or any Subsidiary that would, if made, individually or in the aggregate, have a Material Adverse Effect.

Section 5.11. *ERISA Compliance, Etc.* (a) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws (and the regulations and published interpretations thereunder).

(b) As of the Closing Date, (i) no Plan is a Multiemployer Plan; nor is any Plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code and (ii) no Loan Party, Subsidiary or any of their respective ERISA Affiliates nor any predecessor thereof (A) has in the past six years sponsored, maintained or contributed to, any Plan subject to Title IV of ERISA or (B) has in the past six years contributed to any Multiemployer Plan.

(c) (i) No Loan Party, Subsidiary or any of their respective ERISA Affiliates has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (ii) no Loan Party, Subsidiary or any of their respective ERISA Affiliates 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 (iii) no Loan Party, Subsidiary or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(c), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) The Plans and Foreign Pension Plans of the Loan Parties and the Subsidiaries are funded to the extent required by Law or otherwise to comply with the requirements of any material Law applicable in the jurisdiction in which the relevant pension scheme is maintained, in each case, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.12. *Subsidiaries*. As of the Closing Date, no Loan Party has any direct or indirect Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests owned by the Loan Parties (or a Subsidiary of any Loan Party) in such Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable and all Equity Interests owned by a Loan Party (or a Subsidiary of any Loan Party) in such Subsidiaries are owned free and clear of all Liens except (a) those created under the Collateral Documents, under the ABL Facility Documentation (which Liens shall be subject to the Bankruptcy Court Order), the Carve-Out, the Prepetition Term Loan Documents or the Prepetition ABL Documents and (b) any non-consensual Lien that is permitted under Section 7.01. As of the Closing Date, Schedule 5.12(a) sets forth the name and jurisdiction of each Loan Party and Schedule 5.12(b) sets forth the ownership interest of Holdings, the Borrower and any other Subsidiary thereof in each Subsidiary, including the percentage of such ownership.

Section 5.13. *Margin Regulations; Investment Company Act.*

(a) No Loan Party or Subsidiary is engaged nor will it engage, principally, or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation T, U or X.

(b) Neither Holdings, nor the Borrower, nor any of the Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 5.14. *Disclosure*. No confidential information memorandum, report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information and information of a general economic or industry nature) to any 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 (as modified or supplemented by other information so furnished) when taken as a whole contains or will contain any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were or will be made, not materially misleading. With respect to projected financial information and pro forma financial information, each of Holdings and the Borrower represents that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.15. *Labor Matters*. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any of its Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing; (b) hours

worked by and payment made to employees of the Borrower or any of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from the Borrower or any of its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.16. *Intellectual Property; Licenses, Etc.* (a) Holdings, the Borrower and its Subsidiaries own, license or possess the right to use all of the trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, licenses, technology, software, know-how, trade secrets, database rights, design rights and other intellectual property rights (and all registrations and applications for registration of any of the foregoing) (collectively, "**IP Rights**"), in each case reasonably necessary for the conduct of their respective businesses as currently conducted, except to the extent that the failure to own, license or possess the right to use such IP Rights, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and, such IP Rights do not conflict with the rights of any Person, except to the extent such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) The conduct of the business of Holdings, the Borrower or any of its Subsidiaries does not infringe, misappropriate or otherwise violate any IP Rights held by any Person, except for such infringements, misappropriations or violations, which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There is no claim, investigation, suit or proceeding pending or, to the knowledge of the Borrower, threatened in writing, against Holdings, the Borrower or any of its Subsidiaries (i) challenging the validity of any IP Rights held by any of them or (ii) alleging that their respective use of any IP Rights or the conduct of their respective businesses infringes, misappropriates, or otherwise violates the IP Rights of any other Person, in each case which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) As of the Closing Date, Schedule 5.16(c) contains a true and complete list of all patents, patent applications, registered trademarks, trademark applications, material registered copyrights and material copyright applications that are owned by Holdings, the Borrower or any of its Subsidiaries and all such IP Rights are valid and in full force and effect, except to the extent the failure of such IP Rights to be valid and in full force and effect could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.17. *Purpose of Loans*. The proceeds of the New Money Loans will be used in accordance in all material respects with the terms of the Budget (subject to the permitted variance), including, without limitation: (i) to pay amounts due to Lenders and the Administrative Agent hereunder and professional fees and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lenders and the Administrative Agent, including those incurred in connection with the preparation, negotiation, documentation and court approval of the transactions contemplated hereby and (ii) to provide working capital, and for other general corporate purposes of the Loan Parties, and to pay administration costs of the Chapter 11 Cases and claims or amounts approved by the Bankruptcy Court.

Section 5.18. *Collateral Documents*. The provisions of the Interim Bankruptcy Court Order and Final Bankruptcy Court Order, as applicable, are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable) security interest (subject, in the case of any Collateral, to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Bankruptcy Court Order). Except for filings contemplated hereby and by the Interim Bankruptcy Court Order and Final Bankruptcy Court Order, as applicable, no filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

Section 5.19. *Budget and Financial Plan*. The Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made.

Section 5.20. *Prepetition Obligations*. Except for the Prepetition Obligations, the ABL Facility Indebtedness, the Senior Notes, and as disclosed on Schedule 7.03(b), the Loan Parties do not have any other material Indebtedness for borrowed money outstanding on the date hereof.

ARTICLE 6
AFFIRMATIVE COVENANTS

From and after the Closing Date, so long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder which is accrued or payable shall remain unpaid or unsatisfied (other than contingent obligations not due and payable), then from and after the Closing Date, Holdings and the Borrower shall and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.15) cause each of the Subsidiaries to:

Section 6.01. *Financial Statements; Budget.*In the case of the Borrower, deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower (commencing with the fiscal year ending on or about February 3, 2018) and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Deloitte & Touche LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards;

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (x) consolidated statements of income or operations for such fiscal quarter and for the portion of the fiscal year then ended and (y) consolidated statements of cash flows for such fiscal quarter and the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available but in any event within thirty-five (35) days after the end of each month, the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such month and for the period from the beginning of the current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, together with reports of key performance indicators or similar reports prepared for management for such month, all in reasonable detail; and

(d) on each Budget Testing Date (prior to 11:59 p.m.), (x) a variance report certified by a Responsible Officer of the Borrower and Holdings, substantially in form attached hereto as Exhibit K or otherwise as reasonably acceptable to the Required Lenders in their sole discretion, setting forth (i) the

actual cash receipts, expenditures and disbursements for the immediately preceding calendar week on a line-item basis and the aggregate liquidity as of the end of such calendar week and (ii) the variance in dollar amounts of the actual expenditures and disbursements (including debt service, professional fees and, for each calendar month, capital expenditures) for each weekly period from those reflected for the corresponding period in the Budget and including explanations for all material variances (including whether such variance is permanent in nature or timing related) and (y) an analysis, certified by a Responsible Officer of the Holdings, demonstrating that a Budget Event shall not have occurred for such week (if applicable).

Documents required to be delivered pursuant to Section 6.01(a), (b) and (c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower (or any direct or indirect parent of the Borrower) posts such documents, or provides a link thereto, on the website on the Internet at www.gymboree.com; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the reports required by Section 6.01(d) to the Administrative Agent; provided, however, that if such reports are first delivered by electronic means, the date of such delivery by electronic means shall constitute the date of delivery for purposes of compliance with Section 6.01(d).

Section 6.02. *Certificates; Other Information*. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) promptly after the furnishing thereof, copies of any material requests or material notices received by any Loan Party or Subsidiary (other than in the ordinary course of business) or material statements or material reports furnished to any holder of Indebtedness or debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of the ABL Facility Documentation not otherwise required to be furnished to the Lenders pursuant to any clause of this Section 6.02;

(b) promptly after the same are available and to the extent feasible not later than three (3) days prior to the filing thereof (other than in exigent circumstances in which case as soon as practicable), all pleadings, motions, applications and any other documents to be filed by or on behalf of the Loan Parties and any other written reports given to the US Trustee and to any official committee relating to the operations, business, assets, properties or financial condition of the Loan Parties;

(c) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Loan Parties or any of their respective Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request;

(d) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

(e) promptly after the receipt thereof by Holdings or the Borrower or any of the Subsidiaries, a copy of any "management letter" received by any such Person from its certified public accountants and the management's response thereto; and

(f) no later than the Thursday of the fourth week after delivery of the initial Budget and on each Thursday of the fourth week thereafter, a proposed updated budget.

Section 6.03. *Notices*. Promptly after a Responsible Officer of Holdings, the Borrower or any Subsidiary Guarantor has obtained knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority (other than the Chapter 11 Cases), (i) against Holdings, the Borrower or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document, and any material development with respect thereto;

(d) any material amendments, restatements, supplements or other modifications to the ABL Loan Documents; and

(e) of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liabilities of a Loan Party, any Subsidiary or any of their respective ERISA Affiliates in an aggregate amount exceeding the Threshold Amount.

Each notice pursuant to this Section (other than Section 6.03(d)) shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 6.03(a), (b), (c), or (e) (as applicable) and (y) setting forth details of the occurrence referred to in Section 6.03(a), (b), (c), or (e), as applicable, and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. *Payment of Obligations*. Promptly pay, discharge or otherwise satisfy as the same shall become due and payable all of its Indebtedness arising after the Petition Date, except where (i) the amount or validity thereof is being contested in good faith, (ii) non-payment thereof is permitted under the Bankruptcy Code or order of the Bankruptcy Court, or (iii) the failure to make such payment could not reasonably be expected to result in a Material Adverse Effect.

Section 6.05. *Preservation of Existence, Etc.*

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05 and (b) obtain, maintain, renew, extend and keep in full force and effect all rights (including IP Rights), privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of clause (a) (other than with respect to any Loan Party) or (b), to the extent that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.06. *Maintenance of Properties*. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and fire, casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice and in the normal conduct of its business.

Section 6.07. *Maintenance of Insurance*.

(a) *Generally*. Maintain with financially sound and reputable insurance companies, 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, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

(b) *Requirements of Insurance*. (A) Use commercially reasonable efforts to cause, not later than ninety (90) days after the Closing Date (or such longer period as the Required Lenders may agree in their sole discretion), all insurance required pursuant to Section 6.07(a) (x) to provide (and to continue to provide at all times thereafter) that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent (giving the Administrative Agent and the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent and the Collateral Agent (the Borrower shall deliver a copy of the policy (and to the extent any such policy is cancelled or renewed, a renewal or replacement policy) or other evidence thereof to the Administrative Agent and the Collateral Agent, or insurance certificate with respect thereto) and (y) to name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable (and to continue to so name the Collateral Agent at all times thereafter) and (B) in the case of all such property and casualty insurance policies with respect to the Mortgaged Properties located in the United States, not later than ninety (90) days after the Closing Date (or such longer period as the Required Lenders may agree in writing in their discretion) cause such policies to be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Administrative Agent or the Collateral Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the Loan Parties under such policies directly to the Collateral Agent; cause all such policies to provide that neither the Borrower, the Collateral Agent, the Administrative Agent nor any other party shall be a coinsurer thereunder and to contain a "Replacement Cost Endorsement," without any deduction for depreciation, and such other provisions as the Administrative Agent or the Collateral Agent may reasonably (in light of a Default or a material development in respect of the insured Mortgaged Property) require from time to time to protect their interests.

(c) *Flood Insurance*. With respect to each Mortgaged Property, if at any time the area in which any building or other improvement is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such amount and with such deductible as is required to ensure compliance with the Flood Laws. Following the Closing Date, the Borrower shall deliver to the

Collateral Agent annual renewals of the flood insurance policy or annual renewals of a force-placed flood insurance policy.

(d) Carry and maintain commercial general liability insurance including the "broad form CGL endorsement" (or equivalent coverage) and coverage on an occurrence basis against claims made for personal injury (including bodily injury, death and property damage) and umbrella liability insurance against any and all claims, in each case in amounts and against such risks as are customarily maintained by companies engaged in the same or similar industry operating in the same or similar locations naming the Collateral Agent as an additional insured, on forms reasonably satisfactory to the Collateral Agent.

(e) Notify the Administrative Agent and the Collateral Agent promptly whenever any separate insurance concurrent in form or contributing in the event of material loss with that required to be maintained under this Section 6.07 is taken out by the Borrower or another Loan Party; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies, or an insurance certificate with respect thereto.

Section 6.08. *Compliance with Laws*. Comply with (i) the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or such compliance is stayed by the Chapter 11 Cases and (ii) the Bankruptcy Court Orders in all material respects.

Section 6.09. *Books and Records*. Maintain proper books of record and account, in which entries are made that are full, true and correct in all material respects and are in conformity with GAAP and which reflect all material financial transactions and matters involving the assets and business of Holdings, the Borrower or a Subsidiary, as the case may be.

Section 6.10. *Inspection Rights*. Permit representatives and independent contractors of the Administrative Agent and each Lender 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 independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, (x) only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and (y) the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Nothing in this Section 6.10 shall require the Borrower or any of the Subsidiaries to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (x) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or any binding agreement or (y) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.11. *Additional Collateral; Additional Guarantors*. At the Borrower's expense, take all action necessary or reasonably requested by the Required Lenders, the Administrative Agent or the Collateral Agent to ensure that:

(a) Upon the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (provided, that prior to any such formation or acquisition, such Loan Party shall have received the written consent of the Required Lenders) by the Borrower:

(i) as soon as practicable, but in any event within thirty (30) days after such formation, acquisition, designation or other event, or such longer period as the Administrative Agent may agree in writing in its discretion:

(A) cause each such Domestic Subsidiary to duly execute and deliver to the Administrative Agent or the Collateral Agent (as appropriate) joinders to this Agreement as Guarantors and to the Collateral Documents and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent;

(B) cause each such Domestic Subsidiary (and the parent of each such Domestic Subsidiary that is a Loan Party) to deliver any and all certificates representing Equity Interests (to the extent certificated) and intercompany notes (to the extent certificated) that are required to be pledged, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Subsidiary and each direct or indirect parent of such Subsidiary (that is a Loan Party) to take whatever action (including (if requested by the Administrative Agent) the recording of Mortgages, the filing of UCC financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Administrative Agent to create valid and perfected Liens;

(ii) if reasonably requested by the Administrative Agent, within thirty (30) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Required Lenders a signed copy of a customary opinion, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties;

(iii) as promptly after the reasonable request therefor by the Administrative Agent, deliver to the Collateral Agent with respect to each Real Property, any existing surveys, title reports, abstracts or environmental assessment reports, to the extent available and in the possession or control of the Borrower; *provided*, *however*, that there shall be no obligation to deliver to the Collateral Agent any existing environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained; and

(iv) if reasonably requested by the Administrative Agent, in any event within thirty (30) days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Collateral Agent any other items necessary from time to time provide a valid, perfected, existing and priority of security interests with respect to property

of any Guarantor acquired after the Closing Date, but not specifically covered by the preceding clauses (i), (ii) or (iii).

(b) The Obligations are secured by a first-priority security interest in all the Equity Interests of the Borrower in accordance with the Bankruptcy Court Orders.

Section 6.12. *Compliance with Environmental Laws*. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or is otherwise stayed by the Chapter 11 Cases, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent the Loan Parties or the Subsidiaries are required by Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 6.13. *Further Assurances*. Promptly upon reasonable request by the Administrative Agent or the Collateral Agent (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Loan Documents and to cause the Collateral to remain perfected. If the Required Lenders reasonably determine that they are required by applicable Law to have appraisals prepared in respect of each Real Property of any Loan Party subject to a Mortgage, the Borrower shall cooperate with the Required Lenders in obtaining such appraisals and pay all costs and expenses relating thereto.

Section 6.14. *Lender Calls*. The Loan Parties shall host the following telephonic conference calls with the Administrative Agent and the Agent Advisors:

(a) Promptly following the delivery of each variance report pursuant to Section 6.01(e), a call with Alix Partners to discuss the contents of such variance report;

(b) No less frequently than once every two (2) weeks, a call with A&G Realty Partners to discuss the status of landlord negotiations; and

(c) No less frequently than once every two (2) weeks, a call with the Borrower's store liquidation consultant to discuss store liquidation status.

Section 6.15. *Access to Information*. Promptly following reasonable request, deliver information reasonably requested by the Agent Advisors in connection with the Restructuring; provided that, notwithstanding anything to the contrary in this Section 6.17, none of the Borrower or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (x) constitutes non-registered Intellectual Property, non-financial trade secrets or non-financial proprietary information, (y) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or any binding agreement or (z) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.16. *Collateral Proceeds*. All proceeds resulting from any Disposition of, or Casualty Event relating to, any property or assets constituting Term Priority Collateral shall be deposited into the Segregated Operating Account in accordance with the Bankruptcy Court Order.

ARTICLE 7
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligations hereunder (other than contingent obligations not due and owing) which is accrued or payable shall remain unpaid or unsatisfied, then from and after the Closing Date:

Section 7.01. *Liens*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) (i) Liens pursuant to any Prepetition Loan Document, (ii) Liens pursuant to any Loan Document, (iii) Liens pursuant to any ABL Loan Document and (iv) the Carve-Out;

(b) Liens existing on the Petition Date and listed on Schedule 7.01(b);

(c) Liens for taxes, assessments or governmental charges that are not required to be paid pursuant to Section 6.04 that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory or common law Liens of landlords, sublandlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, in each case arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP and such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(e) (i) subject to the Bankruptcy Court Orders, pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Subsidiaries;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (in the case of each of the foregoing, other than for Indebtedness), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and minor title defects affecting Real Property that do not in the aggregate materially interfere with the ordinary conduct of the business of Holdings, the Borrower and

the Subsidiaries, taken as a whole, and any exceptions on the Mortgage Policies issued in connection with the Mortgaged Properties;

(h) Liens on assets which do not constitute Collateral securing judgment for the payment of money not constituting an Event of Default under Section 8.01(h) in an amount not to exceed $500,000 for the term of this Agreement;

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of Holdings, the Borrower and the Subsidiaries, taken as a whole or (ii) secure any Indebtedness;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) in respect of letters of credit issued to support customs obligations not to exceed $250,000, in each case of which payments are not overdue for a period of more than thirty (30) days and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP and such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) arising in the ordinary course of business in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry or arising pursuant to such banking institutions general terms and conditions;

(l) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.03(n) and expressly contemplated by the Budget, to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to dispose of any property, solely to the extent such Disposition would have been permitted on the date of the creation of such Lien;

(m) [Reserved];

(n) any interest or title (and all encumbrances and other matters affecting such interest or title) of a lessor, sublessor, licensor or sublicensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any of the Subsidiaries in the ordinary course of business and consistent with the Budget; *provided*, that no such lease or sublease shall constitute a Capitalized Lease;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Subsidiaries in the ordinary course of business permitted by this Agreement;

(p) Liens encumbering reasonable customary initial deposits and similar Liens attaching to brokerage accounts, incurred in the ordinary course of business and not for speculative purposes;

(q) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder and expressly contemplated by the Budget;

(r) Liens that are customary contractual rights of set-off (i) relating to the establishment of depository relations with banks in the ordinary course of business and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(s) [Reserved];

(t) ground leases in respect of Real Property on which facilities owned or leased by the Borrower or any of the Subsidiaries are located;

(u) Liens securing Indebtedness in respect of Capitalized Leases permitted pursuant to Section 7.03(e); *provided* that such Liens encumber only the assets subject to such Capital Leases;

(v) Liens on insurance proceeds incurred in the ordinary course of business in connection with the financing of insurance premiums and consistent with past practice;

(w) [Reserved];

(x) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of Holdings, the Borrower and the Subsidiaries, taken as a whole;

(y) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings;

(z) Other Liens not in respect of Indebtedness for borrowed money not to exceed $500,000 at any time outstanding;

(aa) [Reserved];

(bb) [Reserved];

(cc) [Reserved];

(dd) Liens in favor of the Prepetition Indebtedness Holders as adequate protection granted pursuant to the Bankruptcy Orders;

(ee) [Reserved]; and

(ff) Liens arising by operation of law in the United States under Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods.

Notwithstanding the foregoing, no consensual Liens shall exist on Equity Interests that constitute Collateral other than pursuant to clauses (a) and (dd) above or on Schedule 7.01(b).

Section 7.02. *Investments*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, make or hold any Investments, except:

(a) Investments by Holdings, the Borrower or any of the Subsidiaries in assets that were Cash Equivalents when such Investment was made;

(b) Loans or advances to officers, directors and employees of Holdings, the Borrower and its Subsidiaries for reasonable and customary business related travel, entertainment, relocation and analogous ordinary business purposes;

(c) Investments (i) by the Borrower or any Subsidiary in any Loan Party (other than Holdings) and (ii) by any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party that are permitted by the Budget and do not to exceed $1,000,000 in the aggregate during the course of this Agreement;

(d) 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 and other credits to suppliers in the ordinary course of business;

(e) Investments consisting of transactions permitted under Sections 7.01, 7.03 (other than 7.03(c)), 7.04 (other than 7.04(c) or (e)), 7.05 (other than 7.05(d) or (e)), 7.06 (other than 7.06(b)) and 7.13;

(f) Investments (i) existing on the Petition Date and set forth on Schedule 7.02(f) and (ii) existing on the Petition Date by any Loan Party in any other Loan Party;

(g) Investments in Swap Contracts permitted under Section 7.03;

(h) Investments expressly contemplated by the Budget (including with respect to any permitted variances);

(i) [Reserved];

(j) [Reserved];

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) [Reserved];

(n) other Investments in an aggregate amount outstanding pursuant to this clause (n) (valued at the time of the making thereof, and without giving effect to any write downs or write offs thereof) at

any time not to exceed $1,000,000 at any time (valued at the time of making thereof); *provided*, that no Event of Default shall have occurred and be continuing or would result from the making of any such Investment; and

(o) advances of payroll payments to employees in the ordinary course of business.

Section 7.03. *Indebtedness*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Indebtedness, except:

(a) (i) Indebtedness of any Loan Party under (x) the Loan Documents, (y) the Prepetition Loan Documents as in effect on the Prepetition Date and (z) the Carve-Out and (ii) ABL Facility Indebtedness;

(b) Indebtedness outstanding on the Petition Date and listed on Schedule 7.03(b);

(c) Guarantees by Holdings, the Borrower and any Subsidiary in respect of Indebtedness of the Borrower or any Subsidiary of the Borrower otherwise permitted hereunder;

(d) Unsecured Indebtedness of the Borrower or any Subsidiary owing to the Borrower or any other Subsidiary to the extent expressly contemplated by the Budget and constituting an Investment permitted by Section 7.02(c); *provided* that all such Indebtedness of any Loan Party owed to any Person that is not, or ceases to be, a Loan Party shall be subject to the subordination terms set forth in the Security Agreement pursuant to an express written agreement by such Person for the benefit of the Administrative Agent and the Collateral Agent;

(e) Indebtedness in respect of Capitalized Leases; *provided* that such Indebtedness shall not exceed $1,500,000 in the aggregate for the term of this Agreement and any payments in respect of such Indebtedness shall be expressly contemplated by the Budget;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(g) Indebtedness representing deferred compensation, phantom equity plan obligations, severance, and health and welfare retirement benefits to current and former employees and other services providers of Holdings, the Borrower and its Subsidiaries (or their beneficiaries) incurred in the ordinary course of business or existing on the Closing Date;

(h) Indebtedness in respect of treasury, depository, credit card, debit card and cash management services or automated clearinghouse transfer of funds, overdraft or any similar services incurred in the ordinary course of business and consistent with past practice;

(i) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or- pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(j) other unsecured Indebtedness not in respect of borrowed money in an amount not to exceed $500,000 in the aggregate for the term of this Agreement;

(k) Indebtedness incurred by the Borrower or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary

course of business and consistent with past practice, including in respect of customs, workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness incurred in the ordinary course of business with respect to reimbursement-type obligations regarding workers compensation claims; *provided* that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof; provided further such Indebtedness shall not exceed $1,500,000 in the aggregate at any time outstanding;

(l) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice and not in connection with the borrowing of money or Swap Contracts; and

(m) Indebtedness expressly permitted by the Budget (including with respect to any permitted variances).

Section 7.04. *Fundamental Changes*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that so long as no approval of the Bankruptcy Court is required (or such approval is required and shall have been received):

(a) any Subsidiary may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (w) no Event of Default exists or would result therefrom, (x) the Borrower shall be the continuing or surviving Person, (y) such transaction does not result in the Borrower ceasing to be organized under the laws of the United States, any State thereof or the District of Columbia and (z) such transaction does not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents or (ii) one or more other Subsidiaries; *provided*, in the case of this clause (ii), that when such transaction involves a Loan Party, a Loan Party shall be the continuing or surviving Person;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and the Subsidiaries and is not materially disadvantageous to the Lenders (it being understood that in the case of any liquidation or dissolution of a Guarantor, such Guarantor shall transfer its assets to a Loan Party, and in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor and such transaction shall not have an adverse effect on the perfection or priority of the Liens granted under the Collateral Documents); and

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party; *provided* that if the transferor in such a transaction is a Guarantor, then the transferee must be a Guarantor or the Borrower.

Section 7.05. *Dispositions*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions in the ordinary course of business of property no longer used or useful in the conduct of the business of Holdings, the Borrower or any of the Subsidiaries;

(b) Dispositions of inventory and goods held for sale in the ordinary course of business and immaterial assets (considered in the aggregate) (including allowing any registrations or any applications for registration of any immaterial IP Rights to lapse or go abandoned in the ordinary course of business) in the ordinary course of business;

(c) Dispositions set forth on Schedule 7.05;

(d) Dispositions of property (i) to the Borrower or any other Loan Party or (ii) by any Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(e) to the extent constituting Dispositions, transactions permitted by Sections 7.01, 7.02 (other than Section 7.02(e)), 7.04 and 7.06 (other than Section 7.06(b));

(f) so long as no Event of Default exists or would result therefrom, bulk sales or other Dispositions by the Borrower and the Subsidiaries of inventory not in the ordinary course of business in connection with Store closings; *provided* that (i) all such sales or other Dispositions are on arm's length terms, (ii) all such sales or other Dispositions are made in accordance with customary liquidation agreements with professional liquidators, (iii) all such sales or other Dispositions are permitted under the ABL Credit Agreement as in effect on the Closing Date and (iv) for avoidance of doubt, assets constituting Term Priority Collateral may not be sold or otherwise Disposed of pursuant to this Section 7.05(f);

(g) Dispositions of Cash Equivalents;

(h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of Holdings, the Borrower or any of its Subsidiaries and termination of leases in the ordinary course of business;

(i) The Specified Store Closing Sales or dispositions expressly identified and provided for in the Budget;

(j) transfers of property subject to Casualty Events upon the receipt (where practical) of the Net Proceeds of such Casualty Event; and

(k) Dispositions or discounts without recourse of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business (and not in connection with any factoring or similar arrangement);

provided that any Disposition of any property pursuant to this Section 7.05 (except pursuant to Sections 7.05(e) and (i) and except for Dispositions from a Loan Party to any other Loan Party) shall be for no less than the fair market value of such property at the time of such Disposition. To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Borrower, upon the certification delivered to the Administrative Agent by the Borrower

that such Disposition is permitted by this Agreement, the Administrative Agent or the Collateral Agent, as applicable, shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

Section 7.06. *Restricted Payments*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Subsidiary may make Restricted Payments to the Borrower or any other Loan Party (and, in the case of a Restricted Payment by a non-wholly owned Subsidiary, to the Borrower and any other Loan Party and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests of the relevant class of Equity Interests);

(b) to the extent provided for in the Budget (including permitted variances), the Borrower may make Restricted Payments to Holdings in amounts required for Holdings to pay, in each case without duplication,

(i) franchise taxes and other fees, Taxes and expenses required to maintain Holdings' corporate existence;

(ii) for any taxable period in which the Borrower and/or any of its Subsidiaries is a member of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrower is the common parent (a "Tax Group"), the federal, foreign, state and local income taxes of such Tax Group that are attributable to the taxable income of the Borrower and/or its Subsidiaries; *provided* that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Borrower and its Subsidiaries would have been required to pay in respect of federal, foreign, state and local income taxes if such entities were a stand-alone group (it being understood and agreed that if the Borrower or any Subsidiary pays any such federal, foreign, state or local income taxes directly to such taxing authority, that a Restricted Payment in duplication of such amount shall not be permitted to be made pursuant to this clause (ii)), in each case to the extent provided for in the Budget;

(iii) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Subsidiaries and any reasonable and customary indemnification claims made by directors or officers of Holdings attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(iv) customary salary, bonus and other benefits payable to officers and employees of Holdings or any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Subsidiaries;

(c) the Borrower or any of its Subsidiaries may make payments in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant incurred by such person in their capacities as employee, director, manager or consultant of any Loan Party; and

(d) to the extent constituting Restricted Payments, Holdings, the Borrower and the Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Sections 7.02 (other than 7.02(e)), 7.04 or 7.08.

Section 7.07. *Change in Nature of Business*. The Borrower shall not, nor shall the Borrower permit any of the Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Subsidiaries on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof.

Section 7.08. *Transactions with Affiliates*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, enter into any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than (i) transactions among the Borrower and the other Loan Parties (other than Holdings), (ii) transactions among non-Loan Parties (other than transfers from Gymboree Canada/Delaware to any other non-Loan Party), (iii) transactions set forth on Schedule 7.08 and (iv) transactions between the Loan Parties or Gymboree Canada/Delaware on the one hand and non-Loan Party Subsidiaries on the other hand, in each case on arm's length terms and with any payments in respect thereof expressly contemplated by the Budget and (iv) Restricted Payments to Holdings permitted by Section 7.06(b).

Section 7.09. *Burdensome Agreements*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, directly or indirectly, enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of (a) any Subsidiary that is not a Guarantor to make Restricted Payments to the Borrower or any Guarantor or to make or repay loans or advances to or otherwise transfer assets to or make Investments in the Borrower or any Subsidiary that is a Guarantor or (b) any Loan Party to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; *provided* that the foregoing clauses (a) and (b) shall not apply to Contractual Obligations which (i)exist on the Closing Date and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 hereto; (ii) represent Indebtedness of a Subsidiary of the Borrower which is not a Loan Party which is permitted pursuant to Section 7.03, (iii) arise in connection with any Disposition permitted herein, (iv) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.02 and applicable solely to such joint venture entered into in the ordinary course of business, (v) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.03 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness, (vi) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (vii) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to Section 7.03(e) to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (viii) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary, (ix) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (x) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (xi) are customary restrictions contained in the documentation relating to the Senior Notes, the Pre-Petition Term Loan Facility, the ABL Facility or the Pre-Petition ABL Credit Agreement, (xii) arise in connection with cash or other deposits permitted under Section 7.01 and Section 7.02 and limited to such cash or deposit,and (xiii) arise under applicable law or any applicable rule, regulation or order.

Section 7.10. *Use of Proceeds*. The proceeds of the New Money Loans shall be applied in accordance in all material respects with the Budget (subject to permitted variances). No part of the proceeds of the New Money Loans will be used, whether directly or indirectly:

(a) in any manner that causes such Loan or the application of such proceeds to violate the Regulations of the Board, including Regulation T, Regulation U and Regulation X, or any other regulation thereof, or to violate the Securities Exchange Act;

(b) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court Order;

(c) to investigate, commence, prosecute or finance in any way any action, proceeding or objection with respect to or related to: (i) the claims, liens or security interest of the Administrative Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders or their respective rights and remedies under this Agreement, the other Loan Documents, the Bankruptcy Court Order or the Prepetition Loan Documents, as the case may be, including to commence or prosecute or join in any action against any or all of the Administrative Agent, the Lenders the Prepetition Agent or the Prepetition Lenders seeking (x) to avoid, subordinate or recharacterize the Obligations or any of the Administrative Agent's the Prepetition Agent or any Prepetition Lender's Liens, (y) any monetary, injunctive or other affirmative relief against any or all of the Administrative Agent, the Lenders the Prepetition Agent or the Prepetition Lenders or their Collateral or "Collateral" under (and as defined in) the Prepetition Loan Documents) in connection with the Loan Documents or the Prepetition Loans Documents or (z) to prevent or restrict the exercise by any or all of the Administrative Agent, the Lenders, the Prepetition Agent or the Prepetition Lenders of any of their respective rights or remedies under the Loan Documents or the Prepetition Loan Documents, (ii) any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness or obligations that are subjects of a release under the Approved Plan of Reorganization against the Administrative Agent, the Lenders and the Prepetition Lenders, or (iii) certain stipulations to be made by the Credit Parties and approved by the Bankruptcy Court; provided that, advisors to the Official Committee, if one is appointed, may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the Prepetition Credit Agreement at an aggregate expense for such investigation not to exceed $25,000, provided that no portion of such amount may be used to prosecute any such claims;

(d) to finance in any way: (x) any adversary action, suit, arbitration, proceeding, application, motion, contested matter or other litigation of any type materially adverse to the interests of any or all of the Administrative Agent, the Lenders, the Prepetition Term Agent or the Prepetition Term Lenders or their respective rights and remedies under the Loan Documents, the Interim Bankruptcy Court Order, the Final Bankruptcy Court Order or the Prepetition Term Loan Documents or (y) any other action which with the giving of notice or passing of time would result in an Event of Default hereunder or under any of the Loan Documents.

Nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the Administrative Agent's and the Lenders' right to review and object to any such requests, motions or applications).

Section 7.11. [Reserved]

Section 7.12. *Fiscal Year*. Neither Holdings nor the Borrower shall make any change in its fiscal year or fiscal quarters (it being understood (i) that the Borrower's fiscal year ends on the Saturday closest to July 31 of each year and consists of any period of twelve (12) consecutive months ending on the Saturday closest to July 31 of any calendar year thereafter and that Holdings and the Borrower are authorized to change their respective fiscal year to the Saturday closest to January 31, and (ii) that each of

the first three fiscal quarters of each fiscal year of the Borrower ends on the Saturday closest to each of April 30, July 31 and October 31, respectively).

Section 7.13. *Prepayments and Modifications of Indebtedness*. (a) Make any payment of principal or interest or otherwise on account of any Prepetition Obligations or payables under the Prepetition Loan Documents, other than (i) payments made in compliance in all material respects with the Budget (including permitted variance), (ii) payments agreed to in writing by the Required Lenders, (iii) payments approved by the Bankruptcy Court Order and, if necessary, authorized by the Bankruptcy Court and (iv) the roll-up of the Prepetition ABL Indebtedness into the ABL Facility pursuant to the ABL Credit Agreement; or (b) amend or modify the terms of the Prepetition Loan Documents or the ABL Credit Agreement (other than amendments or modifications materially adverse to the Agent or the Lenders or their rights and remedies under the Loan Documents or which would have any material and adverse impact on the Collateral) consented to in writing by the Administrative Agent).

Section 7.14. *Permitted Activities.*

(a) With respect to Holdings, engage in any operating or business activities (other than to a de minimis extent) or have any material assets or liabilities; *provided*, that, to the extent not otherwise prohibited under Article 7, the following shall be permitted: (i) its ownership of the Equity Interests of Borrower (and all Subsidiaries of such Person) and activities incidental thereto, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Loan Documents and any other Indebtedness permitted hereunder, (iv) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower, (v) holding any cash or property (but not operate any property), (vi) providing indemnification to officers and directors, (vii) activities described in Schedule 7.14 and (viii) any activities incidental to the foregoing. Holdings shall not incur any consensual Liens on Equity Interests of the Borrower other than Liens securing the Obligations, the Carve-Out, Prepetition Obligations, the ABL Facility, Liens permitted pursuant to the Bankruptcy Court Order, and Holdings shall not directly own any Equity Interests other than those of the Borrower.

Section 7.15. *Capital Expenditures*. Neither Holdings nor the Borrower shall, nor shall they permit any Subsidiary to, make any Capital Expenditures that are not consented to by the Required Lenders, other than Capital Expenditures in an amount not exceeding the aggregate amount of Capital Expenditures set forth in the Budget, with such Capital Expenditures measured at the end of each fiscal month.

Section 7.16. *Chapter 11 Modifications*. Except as permitted pursuant to the terms of this Agreement, the ABL Credit Agreement and the Bankruptcy Court Order:

(a) Make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court Orders.

(b) Incur, create, assume or suffer to exist or permit any other DIP Superpriority Claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders hereunder, except for the Carve Out and claims in respect of the ABL Facility Indebtedness.

Section 7.17. *Segregated Operating Account*.

(a) Create, incur, assume or suffer to exist (i) any Lien upon the DIP Funding Account other than the first priority Lien created in favor of the Agent under the Loan Documents or (ii) any Lien upon the Segregated Operating Account other than the first priority Lien created in favor of the Agent under the

Loan Documents and the second priority Lien created in favor of the ABL Agent under the ABL Credit Agreement. For the avoidance of doubt, the Segregated Operating Account shall constitute Term Loan Priority Collateral.

(b) Make or permit to be made any payment of principal or interest or otherwise on account of the ABL Facility Indebtedness with funds to be kept in or disbursed from the Segregated Operating Account.

Section 7.18. *Right of Subrogation*. Assert any right of subrogation or contribution against any other Loan Party.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default*. Any of the following from and after the Closing Date shall constitute an event of default (an "**Event of Default**"):

(a) *Non-Payment*. Any Loan Party shall fail to pay any principal or interest on the Term Loan, or any fee, indemnity or other amount payable under this Agreement or any other Loan Document when due and in the case of such fee, indemnity or other amount payable, such nonpayment continues for three (3) Business Days (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise); or

(b) *Specific Covenants*. Any Loan Party (i) fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a) or 6.05(a) or Article 7 or (ii) fails to perform or observe any material term of any Bankruptcy Court Order; or

(c) *Other Defaults*. Any Loan Party fails to perform or observe any other term, covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days after notice thereof by the Administrative Agent to the Borrower; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default*. The occurrence of an event of default, by any Loan Party or Subsidiary with respect to the ABL Facility (subject to expiration of any grace period set forth therein); or

(f) *Budget*. The proceeds of any New Money Loan shall have been expended in a manner which is not in accordance in all material respects with the Budget (subject to permitted variances); or

(g) *Budget Event*. There occurs any Budget Event; or

(h) *Judgments*. There is entered against any Loan Party or any of its Subsidiaries one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders then outstanding at such time) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not deny coverage) and such

judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of 60 consecutive days; or

(i) *Invalidity of Loan Documents*. Any material 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 as a result of acts or omissions by the Administrative Agent or Collateral Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Collateral Documents on a material portion of the Collateral; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of satisfaction in full of the Obligations), or purports in writing to revoke or rescind any Loan Document; or

(j) *Change of Control*. There occurs any Change of Control; or

(k) *Collateral Documents*. The Interim Bankruptcy Court Order and the Final Bankruptcy Court Order, as applicable, together with the Credit Documents shall cease to create a valid and perfected Lien with such priority required by this Agreement (other than in accordance with their terms or as a result of the action or inaction of any Agent or Lender), subject to Permitted Liens, on a material portion of the Collateral purported to be covered thereby; or

(l) *ERISA*. (i) An ERISA Event that, alone or together with any other ERISA Events that have occurred, has resulted or could reasonably be expected to result in liability of a Loan Party, any Subsidiary or any of their respective ERISA Affiliates in an aggregate amount at any particular time exceeding the Threshold Amount, or (ii) a Loan Party, any Subsidiary or any of their respective ERISA Affiliates 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 exceeding the Threshold Amount; or

(m) *Entry of Order*. The Final Bankruptcy Court Order Entry Date shall not have occurred within thirty-five (35) days after the Petition Date; or

(n) *Conversion to Chapter 7*. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court converting such Chapter 11 Case to a Chapter 7 case; or

(o) *Alternate Financing*. Any Loan Party shall file a motion in the Chapter 11 Cases without the express written consent of Required Lenders, to obtain additional financing from a party other than Lenders under Section 364(d) of the Bankruptcy Code or to use cash collateral of a Lender under Section 363(c) of the Bankruptcy Code that does not either have the prior written consent of the Agent or provide for the payment of the Obligations in full and in cash upon the incurrence of such additional financing; or

(p) *Prepetition Claims*. Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim other than (x) as provided for in the "first-day orders" or "second day" orders, (y) contemplated by the Budget (subject to permitted variances), or (z) otherwise consented to by the Required Lenders in writing, (ii) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $1,000,000 in the aggregate or to permit other actions that would have a material adverse effect on the Loan Parties or their estates, or (iii) except with respect to the Prepetition Obligations as provided in the Bankruptcy Court Orders, approving any settlement or other stipulation not approved by the Required Lenders and not included in the Budget

with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor; or

(q) *Appointment of Trustee or Examiner*. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court appointing, or any Loan Party, or any Subsidiary of a Loan Party or any Permitted Holder shall file an application for an order with respect to any Chapter 11 Case seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; or

(r) *Dismissal of Chapter 11*. An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the total New Money Commitment, and payment in full of all Obligations (other than contingent Obligations not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof; or

(s) *Order With Respect to Chapter 11 Cases*. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent), (i) to revoke, reverse, stay, modify, supplement or amend any of the Bankruptcy Court Orders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Administrative Agent and the Lenders in respect of the Obligations (other than the Carve Out or the ABL Obligations) or (iii) to grant or permit the grant of a Lien on the Collateral (other than Permitted Liens); or

(t) *Application for Order By Third Party*. An application for any of the orders described in clause (s) above shall be made by a Person other than the Loan Parties and such application is not contested by the Loan Parties in good faith or the relief requested is not withdrawn, dismissed or denied within 30 days after filing or any Person obtains a final order under § 506(c) of the Bankruptcy Code against the Administrative Agent or obtains a final order adverse to the Administrative Agent or the Lenders or any of their respective rights and remedies under the Loan Documents or in the Collateral; or

(u) *Right to File Chapter 11 Plan.* The entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders; or

(v) *Liens*. (i) Any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Administrative Agent and/or the Lenders, claims or rights against such Person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by Collateral Documents or the Bankruptcy Court Orders with respect to the Collateral shall, for any reason, cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Administrative Agent and/or the Lenders created by any of the Bankruptcy Court Order, this Agreement, or any Collateral Document; or

(w) *Invalidation of Claims*. Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Loan Party) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any

Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms); or

(x) *Public Announcements*. Any Loan Party files or publicly announces its intention to file a chapter 11 plan that contains terms and conditions that are inconsistent in any material respect with the Approved Plan of Reorganization or any exhibit or supplement attached thereto and any permitted amendment or modification thereof, without the prior written consent of the Required Lenders; or

(y) *Amendment of Bankruptcy Court Orders*. The Interim Bankruptcy Court Order or the Final Bankruptcy Court Order is amended, supplemented, reversed, vacated or otherwise modified without the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent); or

(z) *Payments*. Any Loan Party or any of their Affiliates shall have filed a motion seeking the entry of, or the Bankruptcy Court shall have entered, an order approving a payment to any Person that would be materially inconsistent with the treatment of any such Person under the Approved Plan of Reorganization unless permitted by the Budget, without the prior written consent of the Required Lenders; or

(aa) *Liquidation*. The determination of the Holdings or any of its Subsidiaries, whether by vote of such Person's board of directors or otherwise, to suspend the operation of such Person's business in the ordinary course, liquidate all or substantially all of such Person's assets, or to conduct any sales of all or substantially all of such Person's assets, or the filing of a motion or other application in the Chapter 11 Cases, seeking authority to do any of the foregoing, other than any liquidation of any entity set forth on Schedule 8.01(aa) hereto; or

(bb) *Restructuring Support Agreement*. (i) Any breach by any Loan Party of its obligations under Section 5.03 of the Restructuring Support Agreement or (ii) the Restructuring Support Agreement is terminated for any reason; or

(cc) *Modifications*. The Approved Plan of Reorganization or the Confirmation Order is amended, supplemented or otherwise modified without the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent); or

(dd) *Withdrawal or Termination of Reorganization Plan*. The withdrawal or termination of the Approved Plan of Reorganization; or

(ee) *Alternate Reorganization Plan*. (i) The Loan Parties' pursuit of any plan of reorganization other than an Approved Plan of Reorganization or (ii) the entry of an order approving any disclosure statement in support of a plan of reorganization that is not an Approved Plan of Reorganization.

Section 8.02. *Remedies Upon Event of Default*. Subject to the terms of the Bankruptcy Court Order and the Prepetition Intercreditor Agreement, if any Event of Default occurs and is continuing, the Administrative Agent, at the direction of the Required Lenders shall, take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable or accrued hereunder or under any other Loan Document 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 Borrower and each other Loan Party; and

(iii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law.

Section 8.03. *Application of Funds*. After the exercise of remedies provided for in Section 8.02, any amounts received on account of the Obligations and such other proceeds remaining in (i) the DIP Term Loan Funding Account shall be applied in accordance with Section 2.11 hereof and (ii) the Segregated Operating Account shall be applied by the Administrative Agent in accordance with the Bankruptcy Court Order.

ARTICLE 9

THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each Lender hereby irrevocably appoints the Administrative Agent and the Collateral Agent (for purposes of this Article 9, the Administrative Agent and the Collateral Agent are referred to collectively as the "**Agents**") its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

The institution serving as the Administrative Agent and/or the Collateral 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 it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Holdings, the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent hereunder.

Neither Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.08), and (c) except as expressly set forth in the Loan Documents, neither Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to Holdings, the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.08) or in the absence of its own gross negligence or willful misconduct. Neither Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by Holdings, the

Borrower or a Lender, and neither Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each 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 believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent may also 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. Each Agent may consult with legal counsel (who may be counsel for the Borrower), 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.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Agent.

Subject to the appointment and acceptance of a successor Agent as provided below, either Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, with the consent of the Borrower (not to be unreasonably withheld, delayed or conditioned) to the extent no Event of Default exists, to appoint a successor. If no 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 (subject to receipt of any consent described above), on behalf of the Lenders, appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor Agent has been appointed pursuant to the immediately preceding sentence by the 30th day after the date such notice of resignation was given by such Agent, such Agent's resignation shall become effective and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent and/or Collateral Agent, as the case may be with the consent of the Borrower to the extent otherwise required above. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 10.05 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 acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender 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 or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

ARTICLE 10
MISCELLANEOUS

Section 10.01. *Notices; Electronic Communications.* 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 fax, as follows:

(a) if to the Borrower, Holdings or any other Loan Party, to it at:

The Gymboree Corporation
Att: Kimberly Holtz MacMillan
Vice President and General Counsel
500 Howard Street
San Francisco, CA 94105
415-278-7228 (phone)
415-278-7562 (fax)
kimberly_macmillan@gymboree.com

and

The Gymboree Corporation
Att: Jeffrey P. Harris
Chief Financial Officer
500 Howard Street
San Francisco, CA 94105
415-278-7693 (phone)
415-278-7196 (fax)
jeff_harris@gymboree.com

(b) if to the Administrative Agent, to:

Credit Suisse AG, Cayman Islands Branch
Att: Sean Portrait
Eleven Madison Avenue
New York, NY 10010
919 994 6369 (telephone)
212-322-2291 (fax)
agency.loanops@credit-suisse.com

(c) if to a Lender, to it at its address (or fax number) set forth on Schedule 10.01 or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10.01 or in accordance with the latest unrevoked direction from such party given

in accordance with this Section 10.01. As agreed to among Holdings, the Borrower, the Administrative Agent and the applicable Lenders from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person.

The Borrower hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Borrower, that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents or to the Lenders under Article 6, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Borrowing Notice, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format reasonably acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, the Borrower agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, the "**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 Holdings (or any parent thereof) or the Borrower or any of their respective securities) (each, a "**Public Lender**"). The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders 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 Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings (or any parent thereof) or the Borrower or any of their respective 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 10.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor;" and (z) the Administrative Agent 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 marked as "Public Investor." Notwithstanding the foregoing, the following Borrower Materials shall be marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains material non-public information: (1) the Loan Documents and (2) notification of changes in the terms of the Facilities.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities laws, to make reference to Communications that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information

with respect to Holdings (or any parent thereof) or the Borrower or any of their respective securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. 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 THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 10.02. *Survival of Agreement*. All covenants, agreements, representations and warranties made by the Borrower or Holdings herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans, regardless of any investigation made by the Lenders or on their behalf or that any Agent or Lender may have had notice of any Default or Event of Default at the time of any Term Borrowing, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. The provisions of Sections 3.01, 3.04, 3.05 and 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender.

Section 10.03. *Binding Effect*. This Agreement shall become effective when it shall have been executed by the Borrower, each other Loan Party party hereto on the Closing Date, Holdings and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto.

Section 10.04. *Successors and Assigns*. (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, Holdings, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and permitted assigns.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it), with the prior written consent of the Administrative Agent (not to be unreasonably withheld or delayed); *provided*, *however*, that (i) any assignment shall be an assignment of an equal percentage of New Money Loans and Roll-up Loans and such Eligible Assignee must be or become a party to the Restructuring Support Agreement, (ii) such assignment shall comply in all respects with the Stapling Requirement and shall not violate the Restructuring Support Agreement, (iii) the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an integral multiple of, and not less than, $1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loans); *provided* that simultaneous assignments by two or more Related Funds shall be combined for purposes of determining whether the minimum assignment requirement is met, (iv) the parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (B) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, and, in each case, shall pay to the Administrative Agent a processing and recordation fee of $3,500; *provided* that (x) simultaneous assignments by two or more Related Funds shall require the payment of a single processing and recordation fee of $3,500 and (y) such processing and recordation fee may be waived or reduced in the sole discretion of the Administrative Agent, and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire (in which the assignee shall designate one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable Laws, including Federal and state securities laws) and all applicable tax forms. Upon acceptance and recording pursuant to paragraph (e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an 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 10.05.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the outstanding balances of its Term Loans without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance, (ii) except as set forth in (i) above, such assigning Lender

makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is an Eligible Assignee legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with copies of the most recent financial statements referred to in Section 5.05 or delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and the interest on the Loans 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 Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall 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 Borrower, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective unless recorded in the Register. The parties hereto intend that the Loans will be treated as in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code (and any other relevant or successor provisions of the Code).

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of the Administrative Agent and, if required, the Borrower, to such assignment and any applicable tax forms, the Administrative Agent shall promptly (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other Persons in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided, however*, 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, (iii) the participating banks or other Persons shall be entitled to the benefit of the cost protection

provisions contained in Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(d) (it being understood that the documentation required under Section 3.01(d) shall be delivered to the participating Lender) to the same extent as if they were Lenders (but with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant and only if such participant has complied with the requirements of such provisions as if it were a Lender) and (iv) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of any provision of this Agreement (*provided* that the agreement or instrument pursuant to which such Lender has sold a participation may provide that such Lender shall not agree to the following amendments without the consent of such participating bank or Person hereunder: amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal of or the rate at which interest is payable on the Loans in which such participating bank or Person has an interest, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans in which such participating bank or Person has an interest, increasing or extending the Commitments in which such participating bank or Person has an interest, releasing all or substantially all of the Guarantors (other than in connection with the sale of any such Guarantor in a transaction permitted by Section 7.05) or (except as otherwise permitted hereby) releasing all or substantially all of the Collateral or the Term Priority Collateral)). To the extent permitted by law, each participating bank or other Person also shall be entitled to the benefits of Section 10.06 as though it were a Lender, provided such participating bank or other Person agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and interest thereon) of each participant's interest in the Loans or other Obligations under this Agreement (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Treasury Regulation Section 5f.103-1. The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Lenders and each Agent shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that, prior to any such disclosure of information designated by the Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lenders pursuant to Section 10.16.

(h) Any Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPV**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan, (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) the Granting Lender shall for all purposes remain the Lender hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, it will not institute against, or join any other Person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(j) Neither Holdings nor the Borrower shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(k) [Reserved].

(l) Notwithstanding anything in Section 10.08 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent, Collateral Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans (or Commitments in respect thereof) held by any Affiliated Lenders shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders have taken any actions.

Section 10.05. *Expenses; Indemnity*. (a) The Borrower and Holdings agree, jointly and severally, (i) if the Closing Date occurs, to pay or reimburse the Administrative Agent and the Collateral Agent for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including all Attorney Costs which shall be limited to Milbank (and one local counsel in each applicable jurisdiction for each group and, in the event of a conflict of interest, one additional counsel of each type to similarly situated parties)) and (ii) from and

after the Closing Date, to pay or reimburse the Administrative Agent, the Collateral Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all respective Attorney Costs which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders (and one local counsel in each applicable material jurisdiction for each group and, in the event of any conflict of interest, one additional counsel of each type to similarly situated parties)). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable out-of-pocket expenses incurred by any Agent.

(b) Whether or not the transactions contemplated hereby are consummated, from and after the Closing Date, the Loan Parties shall, jointly and severally, indemnify and hold harmless the Administrative Agent, the Collateral Agent, each Lender and their respective Affiliates, and the directors, officers, employees, partners, agents, trustees and other representatives of each of the foregoing (collectively the "**Indemnitees**") from and against any and all losses, damages, claims, liabilities and expenses (including Attorney Costs which shall be limited to Attorney Costs of one counsel to the Administrative Agent and the Lenders (and, if reasonably necessary, one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel for each type of similarly situated affected parties)) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the Transactions or the other transactions contemplated thereby, (ii) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property or facility currently or formerly owned, leased or operated by the Loan Parties or any Subsidiary, or any Environmental Liability related in any way to any Loan Parties or any Subsidiary or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**") in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of an Indemnitee; *provided* that, notwithstanding the foregoing, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, damages, claims, liabilities and expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, as determined by the final non-appealable judgment of a court of competent jurisdiction, (y) a material breach of its obligations under the Loan Documents by such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by the final non- appealable judgment of a court of competent jurisdiction or (z) any dispute solely among the Indemnitees other than (1) any claim against an Indemnitee in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent or similar role and (2) any claim arising out of any act or omission of the Borrower or any of its Affiliates. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement. In the case of a claim, investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such claim, investigation, litigation or proceeding is brought by any Loan Party, any Subsidiary of any Loan Party, any Loan Party's directors, stockholders or creditors or other Affiliates or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated

hereunder or under any of the other Loan Documents are consummated. For the avoidance of doubt, this paragraph shall not apply with respect to Taxes that are the subject of, or excluded from, Section 3.01.

(c) To the extent that any Loan Party fails to pay any amount required to be paid by them to the Administrative Agent or the Collateral Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Collateral Agent such Lender's pro rata share (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 Administrative Agent or the Collateral Agent in its capacity as such. For purposes hereof, a Lender's "***pro rata share***" shall be determined based upon its share of the sum of the outstanding Term Loans and unused Commitments at the time.

(d) To the extent permitted by applicable Law, (i) no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee and (ii) no Indemnitee shall assert, and each hereby waives, any claim against any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or the use of the proceeds thereof (whether before or after the Closing Date).

(e) The provisions of this Section 10.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent or any Lender. All amounts due under this Section 10.05 shall be payable within 10 Business Days after written demand therefor.

Section 10.06. *Right of Setoff*. In addition to any rights and remedies of the Lenders provided by Law but subject to the terms of the Bankruptcy Court Order, the Prepetition Intercreditor Agreement and the Carve-Out, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates (and the Collateral Agent, in respect of any unpaid fees, costs and expenses payable hereunder) is authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being waived by each Loan Party (on its own behalf and on behalf of each of its Subsidiaries), to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final excluding any payroll, trust, and tax withholding accounts) (other than payroll, trust, tax, ERISA, and petty cash accounts) at any time held by, and other indebtedness at any time owing by, such Lender and its Affiliates or the Collateral Agent to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender and its Affiliates or the Collateral Agent hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, the Collateral Agent and each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, the Collateral Agent and such Lender may have at Law but subject to the terms of the Bankruptcy Court Order, the Prepetition Intercreditor Agreement and the Carve-Out.

Section 10.07. *Applicable Law*. EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 10.08. *Waivers; Amendment*. (a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower, Holdings and the Required Lenders and (y) except as otherwise described below, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto with the consent of the Required Lenders; *provided*, *however*, that no such agreement shall (i) decrease the principal amount of, or extend the scheduled maturity date of or any scheduled principal payment date or scheduled date for the payment of any interest on any Loan, or waive or excuse any such payment or any part thereof (other than with respect to any default interest), or decrease the rate of interest on any Loan (other than with respect to any default interest or waiver of any default or Event of Default), without the prior written consent of each Lender directly adversely affected thereby (it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest or decrease or waiver), (ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (it being understood that a waiver of any condition precedent or of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (iii) amend or modify the pro rata requirements of Section 2.14, the provisions of Section 10.04(j) or the provisions of this Section or release all or substantially all of the Guarantors (other than in connection with the sale of such Guarantors in a transaction permitted by Section 7.04 or 7.05) or all or substantially all of the Collateral or of the Term Priority Collateral (other than as permitted hereby), without the prior written consent of each Lender directly and adversely affected thereby (or, in the case of Section 10.04(j), each Lender), (iv) modify the protections afforded to an SPV pursuant to the provisions of Section 10.04(i) without the written consent of such SPV, or (v) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders (if such consent is otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the New Money Commitments on the Closing Date); *provided further* that (x) no Lender consent is required to effect any amendment expressly contemplated by Section 7.12 and (y) modifications to Section 2.14, 2.15 or pursuant to any similar program that may in the future be permitted hereunder shall only require approval (to the extent any such approval is otherwise required) of the Required Lenders; *provided further* that no such agreement shall amend, modify or otherwise adversely affect the rights or duties of the Administrative Agent or the Collateral

Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable.

(c) The Administrative Agent and the Borrower may amend any Loan Document to correct administrative errors or omissions, or to effect administrative changes that are not adverse to any Lender. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Loan Document.

Section 10.09. *Interest Rate Limitation*. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable Law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 10.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.10. *Entire Agreement*. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

Section 10.11. *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

Section 10.12. *Severability*. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.13. *Counterparts*. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10.03. Delivery of an executed signature page to this Agreement by facsimile or other electronic imaging transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 10.14. *Headings*. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 10.15. *Jurisdiction; Consent to Service of Process*. (a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AGENT AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.16. *Confidentiality*. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that

Information may be disclosed (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, legal counsel and other advisors on a "need to know" basis (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 or quasi-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) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 10.16, to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any Subsidiary or any of their respective obligations, (f) with the consent of the Borrower or (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.16. For the purposes of this Section, "**Information**" shall mean all information received from the Borrower or Holdings and related to the Borrower or Holdings or their business, other than any such information that was available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis prior to its disclosure by the Borrower or Holdings; *provided* that, in the case of Information received from the Borrower or Holdings after the Closing Date, such information is clearly identified at the time of delivery as confidential or is delivered pursuant to Section 6.01, 6.02 or 6.03 hereof. Any Person required to maintain the confidentiality of Information as provided in this Section 10.16 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 its own confidential information.

Section 10.17. *Lender Action*. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, unless expressly provided for herein or in any other Loan Document, without the prior written consent of the Administrative Agent. The provisions of this Section 10.17 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.18. *USA PATRIOT Act Notice*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Holdings and the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies Holdings and the Borrower, which information includes the name and address of Holdings and the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify Holdings and the Borrower in accordance with the USA PATRIOT Act.

Section 10.19. *Collateral And Guaranty Matters*. The Lenders irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document shall be automatically released (i) upon termination of all Commitments hereunder and payment in full of all Obligations (other than contingent obligations not yet accrued or payable), (ii) at the time the property subject to such Lien is Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document to any Person other than a Person required to grant a Lien to the Administrative Agent or the Collateral Agent under the Loan Documents (or, if such transferee is a Person required to grant a Lien to the Administrative Agent or the Collateral Agent on such asset, at the option of the applicable Loan Party, such Lien on such asset may still be released in connection with the transfer so long as (x) the transferee grants a new Lien to the

Administrative Agent or Collateral Agent on such asset substantially concurrently with the transfer of such asset, (y) the transfer is between parties organized under the laws of different jurisdictions and at least one of such parties is a Foreign Subsidiary and (z) the priority of the new Lien is the same as that of the original Lien), (iii) subject to Section 10.08, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders or (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty pursuant to Section 11.10;

(b) [Reserved]; and

(c) that any Guarantor shall be automatically released from its obligations under the Guaranty as provided in Section 11.10.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral 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 Guaranty pursuant to this Section 10.19. In each case as specified in this Section 10.19, the Administrative Agent or the Collateral Agent will (and each Lender irrevocably authorizes the Administrative Agent and the Collateral Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as the Borrower may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 10.19.

Section 10.20. *[Reserved]*.

Section 10.21. *Payments Set Aside*. To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to any Agent or any Lender, or any Agent or any Lender 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 Agent or such Lender 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, to the fullest extent possible under provisions of applicable Law, 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 severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any 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 applicable Federal Funds Effective Rate from time to time in effect.

Section 10.22. *No Advisory or Fiduciary Responsibility*.

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities 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 Borrower and its Affiliates, on the one hand, and the Agents and the Lenders, on the other hand, and the Borrower and its Affiliates are 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, each of the

Agents and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Agents or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or any of its Affiliates 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 Agent or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Agents or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Agents, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Agents or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Agents and the Lenders 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 the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate. Each Loan Party hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty under applicable Law relating to agency and fiduciary obligations.

Each Loan Party acknowledges and agrees that each Lender and any affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, Holdings, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender or Affiliate thereof were not a Lender and without any duty to account therefor to any other Lender, Holdings, the Borrower, or any Affiliate of the foregoing. Each Lender and any affiliate thereof may accept fees and other consideration from Holdings, the Borrower, or any Affiliate thereof for services in connection with this Agreement, the Facilities, the commitment letter or otherwise without having to account for the same to any other Lender, Holdings, the Borrower, or any Affiliate of the foregoing.

Section 10.23. *Conflicts*. If any provision in this Agreement or any other Loan Document expressly conflicts with any provision in the Interim Order or Final Order, the provisions in the Bankruptcy Court Order shall govern and control.

ARTICLE 11
GUARANTEE

Section 11.01. *The Guarantee.*

Each Guarantor hereby jointly and severally with the other Guarantors guarantees, as a primary obligor and not as a surety to each Secured Party and their respective successors and permitted assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest on the Loans made by the Lenders to the Borrower, and all other Obligations from time to time owing to the Secured Parties by any other Loan Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly

paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 11.02. *Obligations Unconditional*.

The obligations of the Guarantors under Section 11.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of the Borrower or any other Guarantor under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(a) at any time or from time to time, without notice to the Guarantors, to the extent permitted by Law, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(d) any Lien or security interest granted to, or in favor of, any Secured Party or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(e) the release of any other Guarantor pursuant to Section 11.10.

Section 11.03. *Certain Waivers. Etc.* The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and, to the extent permitted by Law, all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive, to the extent permitted by Law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or

guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and permitted assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding. Each Guarantor waives any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided in Section 10.07, the provisions of this Article 11 shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this Article 11 which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above- referenced provisions of California law are in any way applicable to this Article 11, to any other provision of this Agreement or to the Obligations.

Section 11.04. *Reinstatement*.

The obligations of the Guarantors under this Article 11 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 11.05. *Subrogation; Subordination*.

Each Guarantor hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations (other than contingent obligations) and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 11.01, whether by subrogation or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party to any Person that is not a Loan Party permitted pursuant to Section 7.03(b) or 7.03(d) shall be subordinated to such Loan Party's Obligations in the manner set forth in, and substantially in the form of, the Intercompany Note evidencing such Indebtedness.

Section 11.06. *Remedies.*

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.02) for purposes of Section 11.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 11.01.

Section 11.07. *Instrument for the Payment of Money*.

Each Guarantor hereby acknowledges that the guarantee in this Article 11 constitutes an instrument for the payment of money, and consents and agrees that any Secured Party or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 11.08. *Continuing Guarantee.*

The guarantee in this Article 11 is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 11.09. *General Limitation on Guarantee Obligations*.

In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 11.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 11.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 11.11) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 11.10. *Release of Guarantors*.

When all Commitments hereunder have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied, this Agreement and the Guarantees made herein shall terminate with respect to all Obligations, except with respect to Obligations that expressly survive such repayment pursuant to the terms of this Agreement.

Section 11.11. *Right of Contribution.*

Each Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.05. The provisions of this Section 11.11 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Administrative Agent and the Secured Parties, and each Subsidiary Guarantor shall remain liable to the Administrative Agent and the Secured Parties for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.12. *Additional Guarantor Waivers and Agreements*.

(a) Each Guarantor understands and acknowledges that if the Collateral Agent or any other Secured Party forecloses judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under the Guaranty. Each Guarantor further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Guarantor's rights, if any, may entitle such Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Guarantor freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Collateral Agent or any other Secured Party may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense

in any action or proceeding which the Administrative Agent, the Collateral Agent or any other Secured Party may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Guarantor in this Guaranty include any right or defense that such Guarantor may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Each Guarantor waives all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property collateral pledged by the other Loan Parties; and (ii) if the Collateral Agent or any other Secured Party forecloses on any real property collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Administrative Agent, the Collateral Agent and the other Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Guarantor may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Guarantor may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

Each Guarantor waives any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

ARTICLE 12
SECURITY AND PRIORITY

Section 12.01. *Prepetition Obligations*. Each of the Loan Parties hereby acknowledges, confirms and agrees that the Borrower and certain of its Subsidiaries (including the Loan Parties) are indebted to the Prepetition Term Agent and the Prepetition Term Lenders for the Prepetition Term Obligations, as of the Petition Date, in an aggregate principal amount of approximately $788,750,000 plus accrued and unpaid interest and any fees, costs, and expenses incurred in connection therewith, in respect of Prepetition Term Obligations under the Prepetition Term Loan Agreement, plus indemnities, reimbursement obligations and other charges now or hereafter owed by the Borrower and certain of its Subsidiaries (including the Loan Parties) to the Prepetition Term Agent and Prepetition Term Lenders pursuant to the terms of the Prepetition Term Loan Agreement, all of which are unconditionally owing by the Borrower and its Subsidiaries to the Prepetition Term Agent and Prepetion Term Lenders, without offset, defense or counterclaim of any kind, nature and description whatsoever.

Section 12.02. *Acknowledgment of Security Interests*. As of the Petition Date, each of the Loan Parties hereby acknowledges, confirms and agrees (and hereby agrees that it will not dispute, challenge or otherwise contest) that the Prepetition Term Agent and the Prepetition Term Lenders have valid, enforceable (except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity) and perfected first priority and senior liens (subject only to Liens permitted under the Prepetition Term Loan Agreement upon and security interests in all of the Collateral (as defined in the Prepetition Term Loan Agreement) granted pursuant to the Prepetition Term Loan Documents and the other "Collateral Documents" (as defined in the Prepetition Term Loan Agreement) as in effect on the Petition Date to secure all of the Prepetition Obligations and (ii) such Liens are not subject to avoidance,

reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

Section 12.03. *Binding Effect of Documents*. Each of the Loan Parties hereby acknowledges, confirms and agrees (and hereby agrees that it will not dispute, challenge or otherwise contest) that as of the Petition Date (a) each of the Prepetition Term Loan Documents and the other "Collateral Documents" (as defined in the Prepetition Term Loan Documents) to which it is a party is in full force and effect as of the date hereof, (b) the agreements and obligations of the Borrower, Holdings and each of its Subsidiaries contained in the Prepetition Term Loan Documents and the other "Collateral Documents" (as defined in the Prepetition Term Loan Documents) constitute the legal, valid and binding obligations of each of the Borrower, Holdings and its Subsidiaries enforceable against each of them in accordance with their respective terms and none of the Borrower, Holdings or any of its Subsidiaries has any valid defense, offset or counterclaim to the enforcement of such obligations and (c) the Prepetition Term Agent and the Prepetition Term Lenders are and shall be entitled to all of the rights, remedies and benefits provided for in the Prepetition Term Loan Documents and the other "Collateral Documents" (as defined in the Prepetition Term Loan Documents), except to the extent clauses (b) and (c) above are subject to the automatic stay under the Bankruptcy Code upon commencement of the Chapter 11 Cases.

Section 12.04. *Collateral; Grant of Lien and Security Interest*.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court Order and in accordance with the terms thereof and subject to the Carve-Out, as security for the full and timely payment and performance of all of the Obligations, the Loan Parties hereby, pledge and grant to the Secured Parties, a security interest in and to and, subject to the Prepetition Intercreditor Agreement and Section 12.05, a Lien on all of the Collateral.

(b) Notwithstanding anything herein to the contrary (i) all proceeds received by the Administrative Agent and the Lenders from the Collateral subject to the Liens granted in this 10.24 and in each other Loan Document and by the Bankruptcy Court Order shall be subject to the Carve Out, and (ii) no Person entitled to amounts in respect of the Carve Out shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

Section 12.05. *Priority and Liens Applicable to Loan Parties*.

(a) Upon entry of the Interim Bankruptcy Court Order or Final Bankruptcy Court Order and subject to the terms thereof, as the case may be, the Obligations, Liens and security interests in favor of the Administrative Agent referred to in Section 12.04(a) hereof shall, subject to the Carve Out, at all times:

(i) pursuant to Bankruptcy Code Sections 364(c)(1), 503 and 507, all of the Obligations and the ABL Facility Indebtedness shall constitute allowed superpriority administrative expense claims ("**DIP Superpriority Claims**"), which DIP Superpriority Claims in respect of the Term Loans and the ABL Facility Indebtedness shall rank pari passu with each other and superior to all other claims; the DIP Superpriority Claims in respect of the Term Loans and the DIP Superpriority Claims in respect of the ABL Facility Indebtedness shall rank equally in priority and share on a 50%/50% basis with respect to all amounts payable in respect of such superpriority administrative expense claims;

(ii) pursuant to Bankruptcy Code Section 364(c)(2) with respect to all other "DIP Collateral" (as defined in the Bankruptcy Court Order) that was not otherwise subject to valid, perfected, enforceability and unavoidable liens on the Petition Date: (a) a junior Lien on and

security interest in all such Collateral that is of a type that would be "ABL Priority Collateral" under the Prepetition Intercreditor Agreement and (b) a first priority Lien on and security interest in all such Collateral that if of a type that would be "Term Priority Collateral" under the Prepetition Intercreditor Agreement;

(iii) pursuant to Bankruptcy Code Section 364(c)(2),a junior Lien on and security interest in the proceeds of real property leases and proceeds of Avoidance Actions; *provided, however,* that the ABL Agent and ABL Lenders shall first seek recourse against the ABL Priority Collateral comprising Inventory and Accounts (each as defined in the Prepetition ABL Agreement) prior to exercising any remedies against lease proceeds or proceeds of Avoidance Actions;

(iv) pursuant to Bankruptcy Code Section 364(c)(2), a first priority Lien on the Segregated Operating Account, the funds maintained in such account and all proceeds thereof;

(v) pursuant to Bankruptcy Code Section 364(c)(3), a junior Lien on and security interest in all Collateral of the Loan Parties encumbered by a first priority lien under ABL Facility Indebtedness (now or hereafter acquired and all proceeds thereof) (the "**ABL Collateral**"); *provided* that such lien on the ABL Collateral shall be junior in priority and subordinate to the Liens only in respect of ABL Facility Indebtedness and Prepetition ABL Indebtedness and senior in priority to any other Lien on the ABL Collateral (including without limitation, the Liens in respect of the Prepetition Obligations under the Prepetition Term Loan Documents) securing any other Indebtedness of the Loan Parties; and

(vi) pursuant to Bankruptcy Code Section 364(d), a first priority priming Lien on and security interest in (the "**Priming Liens**") all assets of the Loan Parties encumbered by a first priority lien under the Prepetition Term Loan Documents not otherwise described in clauses (i) through (v) above (now or hereafter acquired and all proceeds thereof) that were subject to a lien as of the Petition Date; *provided* that such Priming Liens shall be senior in priority to the Liens in respect of the Prepetition Obligations under the Prepetition Term Loan Documents and the Liens in respect of ABL Facility Indebtedness.

(b) The Priming Liens shall prime all of the Liens securing the Prepetition Indebtedness (other than Prepetition ABL Indebtedness in respect of the ABL Collateral) with respect to the Loan Documents, but the Liens so created as described in clauses (a)(ii), (a)(v), and (a)(vi) above shall be subject to "Permitted Liens" (as such term is defined under the Prepetition Term Loan Agreement).

(c) The Liens to be granted by the Bankruptcy Court shall cover all property of the Loan Parties (now or hereafter acquired and all proceeds thereof), including property or assets that do not secure the Prepetition Indebtedness and as expressly excluded under the Security Agreement, except until entry of the Final Bankruptcy Court Order, the Avoidance Actions, and as otherwise agreed to by the Required Lenders in their sole discretion.

(d) All of the liens described herein with respect to the assets of the Obligors shall be effective and perfected as of the Interim Bankruptcy Court Order Entry Date and without the necessity of the execution or filing of mortgages, security agreements, pledge agreements, financing statements or other agreements.

Section 12.06. *Grants, Rights and Remedies*. The Liens and security interests granted pursuant to Section 12.04(a) hereof and the administrative priority and lien priority granted pursuant to

Section 12.05 hereof may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the Bankruptcy Court Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Administrative Agent and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict the Bankruptcy Court Order controls.

Section 12.07. *No Filings Required*. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, and entry of the Interim Bankruptcy Court Order shall have occurred on or before the date of the Term Borrowing. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, or any other Loan Document.

Section 12.08. *Survival*. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Administrative Agent and the Lenders pursuant to this Agreement, the Bankruptcy Court Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) except with respect to the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Administrative Agent and the Lenders against the Borrower in respect of any Obligation;

(b) the Liens in favor of the Administrative Agent and the Lenders set forth in Section 12.04(a) hereof shall constitute valid and perfected Liens and security interests, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever (subject to Section 12.05 and any action required under foreign law with respect to the Equity Interests of Foreign Subsidiaries solely to the extent that such foreign law is applicable); and

(c) the Liens in favor of the Administrative Agent and the Lenders set forth herein and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Administrative Agent file financing statements or mortgages, take possession or control of any Collateral, or otherwise perfect its Lien under applicable non-bankruptcy law.

[signature page to follow]

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

THE GYMBOREE CORPORATION

By:_____
Name:
Title:

GIRAFFE INTERMEDIATE B, INC.,
as Guarantor

By:_____
Name:
Title:

GYMBOREE RETAIL STORES, INC.,
as Guarantor

By:_____
Name:
Title:

GYM-CARD, LLC,
as Guarantor

By:_____
Name:
Title:

GYMBOREE MANUFACTURING, INC.,
as Guarantor

By:_____
Name:
Title:

GYMBOREE OPERATIONS, INC.,
as Guarantor

By:_____
Name:
Title:

GYM-MARK, INC.,
as Guarantor

By:_____
Name:
Title:

GYMBOREE PLAY PROGRAMS, INC.,
as Guarantor

By:_____
Name:
Title:

S.C.C. WHOLESALE, INC.,
as Guarantor

By:_____
Name:
Title:

GIRAFFE ACQUISITION CORPORATION.,
as Guarantor

By:_____
Name:
Title:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent and Collateral Agent

By:_____
Name:
Title:

By:_____
Name:
Title: